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SECTION I

The Rinse Project[1]

International judicial cooperation is inherently complex. Law enforcement officials, prosecutors, lawyers, and judges face significant obstacles when dealing with foreign counterparts. These challenges become even more complex when international cooperation is required for asset recovery. To be successful, prosecutors and judges must have a thorough understanding of national laws governing the technical and legal aspects of freezing, seizing, and confiscating assets. Furthermore, it is imperative for these professionals to possess a comprehensive understanding of how these legal frameworks may vary across different legal traditions. Mutual recognition is a central instrument of international judicial cooperation. It entails the direct exchange of judicial measures between authorities of participating states. This approach diverges from the conventional system of mutual legal assistance, which is often characterized by its protracted and cumbersome nature. Rather, mutual recognition is predicated on the principles of trust and a mutual commitment to uphold the fundamental tenets of the rule of law. By strengthening this principle, international cooperation can become more efficient and effective, advancing the common goals of justice and security. In order to ensure the optimal functioning of dialogue and cooperation, it is imperative to identify and address the main obstacles and legal challenges, while highlighting the positive practices to be shared and the less efficient ones to be strengthened. The interpretation of European instruments, ranging from the scope of the measures covered to the guarantees afforded to third parties, remains a critical issue. Dialogue is particularly relevant in sensitive areas such as anti-mafia legislation, where mechanisms against organized crime play a pivotal role. A comprehensive analysis of the practical challenges surrounding the application of mutual recognition, the exchange of verified experiences among judicial offices, and the management of confiscated property by associations and local authorities is imperative. Effective judicial cooperation, in turn, depends on strengthening the capacity of law enforcement agencies, prosecutors, and courts to employ international cooperation instruments in asset recovery, including the seizure and confiscation of assets situated beyond national jurisdiction.

This publication is a response to that recommendation, with the aim of fostering improved dialogue and cooperation. The European Union has introduced legislation to facilitate the mutual recognition of freezing and confiscation orders. This initiative began with the introduction of Regulation 2018/1805 and Directive 2014/42. The aim is to promote the effective recognition of such orders and the subsequent reuse of confiscated assets for institutional and social purposes.

While the legislation has had a positive impact, there remain critical issues in its application that need to be addressed in order to ensure the effectiveness and efficiency of the mutual recognition of freezing and confiscation orders. The objective of this project is twofold: to promote the mutual recognition of orders and to facilitate the reuse of confiscated proceeds. To this end, the project will focus on improving the knowledge, skills, and competence of the judiciary and other parties involved in the various stages of the procedure under the Regulation. To that end, the project will concentrate on enhancing the knowledge, skills, and competence of the judiciary and other parties involved in the various stages of the procedure under the Regulation. This encompasses the identification, tracing, seizure, management, confiscation, disposal, and reuse of seized or confiscated property. To pursue this objective, the project will take several specific actions. The initial phase of the project entailed an exhaustive analysis of the entire life cycle of a confiscation measure, with a

[1] Section drafted by A. Esposito, full professor of criminal law, scientific coordinator of the RINSE Project

particular emphasis on the guarantees and efficiency of the system. The Regulation establishes distinct rules and actors for each of the stages, which are subsequently formulated in various ways in the individual national laws.

The purpose of this publication is twofold. Firstly, it aims to elucidate the rationale for the Regulation. Secondly, it seeks to identify the categories of freezing and confiscation measures that fall within the scope of the Regulation in each Member State. Additionally, it identifies the necessary safeguards associated with these measures and describes the fate of confiscated assets.

A structured framework for the analysis of national laws and practices was developed to obtain useful data and information on the main needs and training gaps of investigators, prosecutors, judges, and other key institutions involved in asset tracing and identification, freezing and seizing, confiscation, and international asset recovery. The development of this framework was guided by two primary objectives: first, to determine the scope of the two EU legislative instruments (Council Regulation (EU) 2018/1805 and EU Directive 2014/42) within the four Member States participating in the European project (Belgium, France, Greece, and Italy), and second, to assess their knowledge and understanding.

The result of this research effort was the production of four country reports, which provide an in-depth overview of the legal frameworks for freezing and seizure in the four participating Member States and are structured to facilitate a comparative analysis of the relevant freezing and seizure regimes. To this end, a comprehensive questionnaire has been carefully designed, consisting of two sections and several subsections. These subsections encompass a broad array of subjects, including the substantive aspects of the various confiscation models, the procedural aspects of freezing and confiscation, the rules of mutual recognition of freezing and confiscation, the protection of rights and judicial decisions, and the mechanism of management and disposal of frozen and confiscated assets.

Background of the research[2]

Ablative measures (*definitive expropriation in favor of the State of property, gains, or proceeds unlawfully obtained*) have always been an essential tool for combating organised crime within European legal traditions. The practice of confiscating the assets of the offender has been recorded since ancient times as a constant and persistent phenomenon[3] where depriving criminals of their assets served not only as a punishment but also as a mechanism to uphold social order. Stripping offenders of their economic power relegates them to a marginal social position, symbolizing their exclusion from the community and their diminished capacity to influence society[4].

In modern times, confiscation has emerged as a pivotal tool in combating organized crime and illicit financial networks. This is particularly evident in the field of economic crime, where sanctions targeting assets prove most effective, as offenders often engage in criminal activities motivated by the prospect of economic gain. By targeting the proceeds of crimes, confiscation frustrates the benefits of the illegal economy while depriving perpetrators of the resources needed to commit further offences. Moreover, this measure undermines the very foundations of criminal enterprise, serving both as a sanction that punishes, as a preventive measure that discourages future illegal activities, or as a restorative measure that restores the status quo ante prior to the crime. Confiscated assets can also be reinvested for the benefit of the civil society, funding initiatives such as victim restitution, projects with social purposes, or law enforcement improvement; thereby reinforcing the principle of justice, social welfare and public trust. In a world increasingly reliant on the exchange of

[2] Section drafted by C. Scialla, post-doctoral researcher in criminal law, RINSE Project
[3] ALESSANDRI, *Improving confiscation procedures in the European Union*, Jovene, Naples, 2019, VII.
[4] BERNARDI, op. cit., VIII.P

wealth, a substantial portion of this wealth remains under the control of organised crime. Europol's 2021 Serious and Organized Crime Threat Assessment (SOCTA) estimates that at least EUR 139 billion annually originates from unlawful sources and is subsequently laundered through parallel underground financial systems.

Against this backdrop, confiscation represents a *minimum common denominator* in the criminal policy responses of nearly all European countries.

Over time, however, confiscation measures have evolved worldwide, resulting in a complex and fragmented landscape that poses significant challenges to the consistency of safeguards and guarantees within traditional legal systems. Even interpreting and navigating the varied *archipelago* of confiscation measures at the national level can be an arduous task. When this fragmented patchwork is projected onto the broader European context, the difficulties multiply, making it even harder to ensure coherence and effective implementation across borders.

Traditional confiscation aims to seize assets connected with the offense being prosecuted. Over time, however, forms of confiscation based on a weaker link to the crime have multiplied. Such measures may serve preventive function and may be adopted before the crime is committed, based on predictive indicators or mere suspicions, often with a reversal of the burden of proof. Alternatively, they may target assets with presumed illicit origin. Confiscation has also expanded beyond the realm of criminal law. These sanctions are no longer merely ancillary to criminal punishment; they may also assume an administrative or civil character. To briefly outline their scope (with further details provided later in this report), confiscation measures can be classified as a criminal sanction, administrative sanction, civil sanction, security measure, preventive measure, compensatory measure, or restorative measure.

Literature[5] has identified three constants that can be traced in the history of these punitive instruments: a) the remarkable spread of confiscation as the preferred tool to counter illegal economy; b) the multifunctionality of confiscation measures; c) their heterogeneous application, which allows for great flexibility tailored to the specific circumstances of each offence.

Confiscation measures, on one hand, undoubtedly demonstrate significant adaptability to a wide range of illicit activities, as they are grounded in the fundamental principle of depriving offenders of the proceeds of crime. However, on the other hand, this flexibility introduces complexities in harmonizing the different legal frameworks. The involvement of multiple authorities, judicial and administrative, each with distinct roles, responsibilities, and procedural rules, often leads to challenges in ensuring a coherent and streamlined approach to confiscation proceedings. These difficulties can result in inefficiencies, inconsistencies, or even jurisdictional conflicts, which may undermine the effectiveness of the confiscation process as a whole.

The problem is further amplified when coordination must be carried out at a supranational level and among authorities from different countries. The Globalization of crime means that organized criminal groups can offences in one jurisdiction, invest the proceeds in another, and operate across multiple countries to evade detection and complicate both financial and criminal investigations. They then launder their profits and infiltrate the legitimate economy.

Given that economic crime transcends national borders, it is the responsibility of the European and national institutions to ensure that judicial cooperation is sufficiently effective to overcome the physical and legal boundaries separating European legal systems.

In this regard, the international community has established minimum standards to foster efficient cooperation in this field through various legal instruments.

[5] BERNARDI, cit., Presentation, VIII ss.

In the broader European context, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime was adopted by the Council of Europe in 1990. Subsequently, a long list of binding European Union acts has been enforced, including the Join Action 98/699/JHA of 1998 on money laundering, which addresses the judicial cooperation in the identification, tracing, freezing, seizing, and confiscation of instrumentalities and proceeds from crime. Framework decision 2001/500/JHA of the Council focuses on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, aiming for strong harmonization to provide a common framework among Member States. Framework decision 2003/577/JHA of the Council aims to strengthen judicial cooperation through the principle of mutual recognition of orders for the execution in the EU of freezing property or evidence. Framework Decision 2005/212/JHA focuses on the confiscation of crime-related proceeds, instrumentalities and property, obliging MSs to introduce extended confiscation into their legal systems for a precise list of offences. Framework Decision 2006/783/JHA regulates the principle of mutual recognition of direct confiscation, confiscation by equivalent, and extended confiscation, applying the principle of mutual recognition of the judicial orders.

Then, European legislative policy gradually became more ambitious with Directive 2014/42/EU, which harmonizes confiscation provisions, and with Regulation (EU) 2018/1805 (which replaces FD 2003/577 and 2006/783). The Regulation, directly binding all Member States, focuses on judicial cooperation in criminal matters and the principle of mutual recognition of foreign freezing and confiscation orders. It also limits the grounds on which national authorities may refuse recognition. The measures subjected to recognition apply to a broad range of offences, not limited by a list or by the principle of double criminality.

Most recently, the regulatory framework has been enriched by the new Directive (EU) 2024/1260. Back in 2022, the European Commission adopted a Proposal for a Directive to revise the asset recovery framework, aiming to extend confiscation to a wide range of offences (see Article 2 of the Proposal) and to further strengthen and expand the powers of national Asset Recovery and Management Offices (Articles 5 et seq. of the Proposal) as well as the confiscation powers of Member States (Articles 11-16, covering non-conviction-based confiscation, confiscation of unjustified wealth of suspected criminal origin).

On April 24, 2024, the European Parliament and the Council adopted Directive (EU) 2024/1260 on asset recovery and confiscation, which Member States must implement by November 23, 2026. The key innovations introduced by the Directive include a significantly broader definition of confiscable assets compared to any previous legislation, including the 2018 Regulation (Article 3), which now explicitly covers crypto assets. The new Directive also dedicates substantial attention to practical measures for asset identification and tracing, as well as cooperation among the various authorities involved in the process, to ensure that, even when an asset is subject to recognized seizure and confiscation, it is effectively recovered. For the first time, the European legislator paid attention to what happens after confiscation, namely the crucial phase of reusing illicit assets for social purposes.

Despite this progress, none of these instruments has succeeded in setting uniform safeguards applicable to the broad category of confiscation measures. Rather, applicable safeguards depend on the specific legal framework in which each measure operates, varying widely in each case. When this fragmented system is transposed to the European level, the variety of confiscation mechanisms further increases, making any attempt to approximate the legislation of Member States particularly complex. For these reasons, the current legal framework has not yet ensured effective and consistent cross-border cooperation. Regulation (EU) 2018/1805 seeks to remedy this by providing a directly applicable instrument designed to facilitate and expedite the recognition and enforcement of judicial measures throughout the Union, notwithstanding the lack of harmonization. It requires Member States to give immediate effect to freezing and confiscation

orders issued by a judicial authority of another Member State, allowing for refusal of enforcement only on a limited set of grounds explicitly provided for in the Regulation. Enforcing a criminal judicial decision in another jurisdiction extends its extraterritorial reach and, consequently, imposes further restrictions on the individual rights of affected individuals. Moreover, legal review of the decision is primarily conducted by the issuing State to reduce duplicative scrutiny and expedite the procedure.

Finally, these legislative instruments pursue an important and delicate goal: balancing the imperative of improving efficiency in the fight against economic crime with the need to protect fundamental rights, as set out in the Charter of Fundamental Rights of the European Union and in the European Convention of Human Rights.

Methodology of research[6]

This report aims to produce data and information about major training needs and gaps of investigators, prosecutors, judges and other key institutions involved in asset tracking and identification, freezing and seizure, confiscation and international asset disposal, concerning the knowledge and understanding of the 2 EU legislative provisions (Council Regulation (EU) 2018/1805 and EU Directive 2014/42[7]) in 4 involved Member States (Belgium, France, Greece, and Italy).

The analysis specifically assesses the level of awareness among the target group regarding national requirements, standards and practices, focused on recovery and reuse of confiscated assets. It lays the ground for a greater understanding of national legislation concerning the technical and legal aspects of freezing, seizure, confiscation, and asset disposal, while also highlighting how these may differ across jurisdictions. Furthermore, the report contributes to identifying forms of freezing and confiscation that comply with the parameters set by Regulation (EU) 2018/1805.

In order to conduct this research, a set of guidelines and questions was shared among the project partners to provide guidance for completing a consistent report, enabling clear comparison across legal systems.

The Report consists of three sections that comprehensively address both the legal and practical aspects of asset freezing, confiscation, and management within the European Union. The first part is dedicated to the project itself, describing the background of the research, the methodology, final remarks, and recommendations. The second part focuses on the mutual recognition of freezing and confiscation orders in Belgium, France, Greece, and Italy. It is primarily concerned with criminal and procedural criminal law, examining confiscation measures and the related guarantees and remedies, as well as issues concerning judicial cooperation and the practical implementation of the Regulation. The third part specifically addresses the management and reuse of confiscated and frozen assets, as well as the collection and analysis of statistical data. Additionally, the Report includes annexes, an online database comparing the different types of confiscation and procedural rules, the guidelines shared for collecting responses, and a bibliography.

Each part consists of an explanatory note providing the background context, a comparative note that illustrates the key findings, and the extended responses from the partners, where specific details can be found regarding the national situation. The findings presented in this report were also informed by meetings with national experts.

The data collection was completed in July 2023.

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[6] Section drafted by C. Scialla, post-doctoral researcher in criminal law, RINSE Project

[7] Originally, the project proposal considered exclusively Directive (EU) 2014/42, as Directive (EU) 2024/1260, which replaced the former, had not yet been adopted. Nevertheless, the report and the comparative notes also consider the adoption of the new Directive.

Policy Recommendations and Final remarks[8]

The RINSE research has identified a series of critical gaps that continue to hinder the effective implementation of the EU's legal framework on asset freezing and confiscation. Despite recent normative advancements, such as Regulation (EU) 2018/1805 and Directive (EU) 2024/1260, the current landscape remains highly fragmented, both in law and in practice. This fragmentation impairs legal certainty, complicates mutual recognition, and weakens the overall efficacy of cross-border judicial cooperation.

Specifically, the following issues require attention:

- **Persistent Legal Fragmentation and Lack of Harmonization:**

There is a proliferation of hybrid models of confiscation across Member States, including criminal, civil, administrative, and preventive forms. These models are grounded in different legal traditions and procedural safeguards, making them difficult to reconcile within a unified framework. While the EU legislator has introduced instruments intended to standardise procedures, the current guidance remains insufficient to resolve these systemic discrepancies. Without clearer normative alignment, mutual recognition is likely to remain inconsistent.

- **Ambiguity Surrounding the Concept of "Criminal Proceedings":**

The Regulation refers (Rec. 13 and Art, 1) to measures adopted "in the framework of criminal proceedings," yet this concept remains vague and inconsistently applied across Member States. The Regulation fails to specify the threshold of procedural guarantees required to qualify a proceeding as "criminal" for mutual recognition purposes. As a result, national authorities struggle to determine whether certain confiscation orders fall within the Regulation's scope—especially in cases of preventive or non-conviction-based confiscation.

- **Unclear Scope of Fundamental Rights Protection:**

The reference to the protection of fundamental rights "as interpreted by the European Court of Human Rights" (Rec. 13), remains ambiguous in its practical implications. Divergent interpretations persist among Member States as to whether the Strasbourg jurisprudence on criminal matters imposes limits on the forms of confiscation that may be recognized. There is uncertainty about the application of Article 6 ECHR procedural safeguards to non-conviction-based confiscation regimes.

- **Uncertainty Regarding the Degree of Connection to a Criminal Offence:**

The Regulation requires that the order be "in relation to a criminal offence," but it does not clarify the degree or nature of this relationship (Art. 2). This ambiguity gives rise to doubts regarding the admissibility of orders issued in the context of misdemeanors, minor offences, or proceedings involving presumptions of illicit origin without a specific offence being proven. In such cases, the principle of proportionality—explicitly affirmed in the Regulation and relevant Directives—may be compromised.

- **Challenges in the Recognition of Third-Party Confiscation Orders:**

Regulation confirms the applicability of mutual recognition to third-party confiscation orders (Rec. 46), provided that the rights of *bona fide* third parties are protected. Nonetheless, significant differences persist among national legal systems concerning the identification, protection, and procedural standing of third parties. These divergences continue to obstruct the harmonized implementation of safeguards and create a potential for conflicting judicial outcomes.

[8] Section drafted by C. Scialla, post-doctoral researcher in criminal law, RINSE Project

- **Limited Remedies and Restricted Judicial Review in the Executing State:**

One of the most pressing concerns emerging from the analysis is the asymmetry of procedural protections between issuing and executing states. Substantive objections to a confiscation order can only be raised before the issuing authority. In the executing state, available legal remedies are confined to those applicable to domestic orders, significantly restricting the individual's right to challenge recognition or enforcement. This raises concerns about the right to effective judicial protection under Article 47 of the Charter of Fundamental Rights of the European Union.

- **Scarcity of Relevant Case Law and Institutional Practice:**

Despite the formal entry into force of the Regulation, judicial practice in the participating Member States remains limited. The scarcity of case law not only exacerbates legal uncertainty but also hampers the development of interpretive guidance. In the absence of a consolidated jurisprudence, national authorities lack practical benchmarks for implementing mutual recognition effectively and consistently.

- **Lack of Operational Guidelines and Institutional Support Mechanisms:**

Many practitioners still lack practical tools or clear procedural protocols for implementing the Regulation. The absence of model forms, annotated templates, or institutional coordination mechanisms hinders the day-to-day application of mutual recognition instruments. Stakeholders consulted during the RINSE project emphasized the need for more targeted training and standardized operational guidance to bridge this implementation gap.

SECTION II

Mutual recognition of freezing and confiscation orders in Belgium, France, Greece and Italy

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I - Implementation of Regulation (EU) 2018/1805 and National Frameworks

CONTEXT[9]

Within the Italian legal framework, the institution of confiscation presents a distinctive feature that differentiates it from other systems: it possesses only one element of definiteness, namely the result it produces. In every hypothesis of confiscation, the ultimate outcome is the definitive deprivation of the owner's power to dispose of property. This constant result, however, is counterbalanced by the variability of the legal foundations, procedures, and functions that precede it.

A defining feature of confiscation, in Italy as well as in other national contexts, is its multi-functionality. This multi-functionality manifests itself in the heterogeneity of its legal nature, structures, and modes of application; in the variety of grounds on which it may be ordered; in the multiple purposes it serves; in the range of recipients and objects it targets; in its diverse spatial and temporal scope; and in the multiplicity of possible destinations of confiscated property, including both disposal and re-use for public or social purposes. With regard to its legal character, confiscation has been reinterpreted as a security measure, as a preventive tool, and as a general form of punishment, deployable in different ways: preventive, compensatory, restorative, reparative, and punitive. Traditionally, the grounds invoked to justify this ablative measure have been articulated as follows:

- the inherent dangerousness of the property itself;
- the dangerousness of the property in relation to the commission of the crime
- the dangerousness of the property in relation to the author of the crime
- the punitive function directed against the offender.

This fertile plurality, inherent in the legal concept, leads not to a single institution, but to a *spectrum* of confiscation regimes—what one might call *confiscations*, rather than *confiscation*. While Italy arguably presents the most articulated taxonomy of these measures, other EU Member States also display a notable diversity in forms, purposes, legal bases, and institutional frameworks for asset deprivation.

The comparative analysis undertaken in the RINSE project was designed to map and critically assess this diversity. Through targeted questionnaires addressed to national experts and practitioners, the study examined the implementation of EU legislation—specifically Regulation (EU) 2018/1805 and Directive 2014/42/EU—alongside the national legal provisions governing different types of confiscation. The focus included:

- the denomination and classification of asset freezing and confiscation measures;
- their legal effects and applicable safeguards;
- the competent authorities involved;

[9] Section drafted by A. Esposito, full professor of criminal law, scientific coordinator of the RINSE Project

- the available remedies;
- and the destination of confiscated property, especially in relation to public or social reuse.

The questions posed sought to investigate the implementation of European legislation alongside the types of seizure and confiscation provided for in national legislation. The analysis considered the nomenclature of these measures, their legal effects, the authorities involved in their execution, and the remedies available for challenging them. This inquiry culminated in the formulation of an overview of the confiscation models prevailing within the Member States, carefully distinguishing between direct confiscation, extended confiscation, non-conviction-based confiscation, and third-party confiscation.

This effort produced a structured overview of the prevailing models in the Member States under study, distinguishing between:

- direct confiscation;
- extended confiscation;
- non-conviction-based confiscation;
- and third-party confiscation.

The mapping exercise did not merely offer a stylised typology. Rather, it provided a *descriptive conceptual map* that reflects the normative and procedural realities of the systems examined. Despite the harmonisation objectives pursued at the EU level, significant differences persist in both substantive and procedural rules across Member States.

The comparative study of confiscation, in both its substantive and procedural dimensions, revealed the persistence of significant differences among the participating countries—differences not fully mitigated by the adoption of European harmonisation measures. To represent these findings, the study produced a conceptual map of national contexts. This map is not abstract or stylised; rather, it offers a descriptive and structured representation that reflects the specificities of the systems under consideration.

A particularly salient issue concerns the interpretation of the European legislative framework, specifically the expression "in the context of criminal proceedings" found in Recital 13 and Article 1 of the Regulation. The crux of the matter lies in the definition of "criminal matters," as developed in the jurisprudence of the European Court of Human Rights within the broader framework of the Council of Europe. This autonomous concept was originally elaborated to prevent national legal systems from removing sanctions, procedures, or offences from the scope of criminal guarantees by reclassifying them under other branches of law. Within the Regulation, however, the concept is employed for a distinctly different purpose: to expand the scope of the instrument, thereby enabling the recognition of confiscation measures which, in their domestic legal context, would not formally belong to criminal proceedings. In a restrictive sense, these measures are not related to a criminal offence. Thus, a concept originally devised as a guarantee for the protection of fundamental rights appears to have been "reoriented" toward the pragmatic needs of judicial cooperation—needs which, however, still betray an underlying repressive rationale.

A detailed reconstruction of the historical development of the notion of "criminal matters" within the European Union, and of its application to Regulation (EU) 2018/1805, lies beyond the scope of this section. Yet, the interpretive significance of this concept cannot be overlooked. In the supranational context of judicial cooperation, the requirement of uniform interpretation is indispensable. It is not always possible to attribute to legal concepts the same meaning they possess within a given national system. For this reason, it becomes necessary to develop an elastic notion of "criminal matters," one capable of adapting the requirements of each instrument to the practical realities in which it operates. In the present case, this requires recognizing greater flexibility in the definition of "criminal matter," so as to include forms of confiscation which, under other circumstances, might be placed outside the criminal domain.

By adopting such an approach, the scope of confiscation measures subject to recognition under the Regulation is inevitably broadened.

COMPARATIVE NOTE[10]

The national framework: implementation measures and substantial aspects of different types of freezing and confiscation.

Following the entry into force of the Lisbon Treaty, confiscation gained strategic importance at the EU level as an essential tool against organized crime and terrorism financing. In line with the European Agenda on Security of 28 April 2015, which called for more effective and comprehensive measures, the European Commission issued in February 2016 an action plan underscoring the need to ensure that individuals engaged in these offences are effectively deprived of their assets.

One of the outcomes of this process was the adoption of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing and confiscation orders in the European Union.

Applying the principle of mutual recognition – founded on mutual trust - to the freezing and confiscation orders has been considered the most effective approach to enhance the fight against transnational economic crime[11] by reinforcing cross-border judicial cooperation. Before the adoption of the 2018 Regulation, the European legal framework was fragmented across five different instruments: two mutual recognition measures - Framework Decision 2003/577/JHA of 22 July 2003 on freezing orders and Framework Decision 2006/783/JHA of 6 October 2006 on confiscation orders - and two harmonization measures - Framework Decision 2005/212/JHA of 24 February 2005 on confiscation of crime-related proceeds and Directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime. In addition, Council Decision 2007/845/JHA addresses asset tracing.

However, compared to other mutual recognition instruments, notably the European Arrest Warrant[12], the number of confiscation requests issued under these cooperation mechanisms remained limited. Indeed, practitioners, including judges, prosecutors and representatives from Member States, reported that the certificates required under the Framework Decisions were complex and time-consuming, which contributed to delays and inconsistent application. This complexity increased administrative burdens on national authorities and prolonged procedural timelines[13]. The limited scope of the measures (e.g., the Framework Decisions allowed recognition only of orders compliant with domestic law) and the slow and uneven transposition in many Member States further undermined their effectiveness[14].

The slow and fragmented transposition of the Framework Decisions illustrates broader difficulties in aligning national legal systems. Commission reports[15] confirmed that no Member State respected the transposition deadlines (2 August

[10] Section drafted by C. Scialla, post-doctoral researcher in criminal law, RINSE Project
[11] Economic crime, also known as financial crime, refers to illegal acts committed by an individual or a group of individuals to obtain a financial or professional advantage. The principal motive in such crimes is economic gain (Europol, EMPACT 2022+ Fighting crime together). Economic crimes cover a wide range of offences and often have a cross-border element: criminals move their assets to other countries to try to avoid freezing or confiscation orders.
[12] Council Framework Decision 2002/584 on the European Arrest Warrant and the Surrender Procedures between Member States (here)
[13] See Eurojust, Report on Eurojust's experience in the field of asset recovery, including freezing and confiscation, Council document 10179/15, 5
[14] V. WEYER, in BERNARDI, cit., 88
[15] Report from the Commission to the European Parliament and the Council of 22.12.2008 [COM(2008) 885 final - Not published in the Official Journal] (here)

2005 for FD 2003/577 and 24 November 2008 for FD 2006/783). As third-pillar acts, these Decisions could not be enforced through infringement procedures, leading to only partial harmonization and broad national discretion, even regarding grounds for refusal of recognition, such as differing models of extended confiscation. Italy, for example, transposed FD 2003/577 thirteen years late and FD 2006/783 after nine years. France transposed them after two and six years respectively, Belgium after three and six to seven years, and Greece only in 2017, over a decade later.

Regulation (EU) 2018/1805 aimed to overcome these weaknesses. Adopted under Article 82(1)(a) TFEU through the ordinary legislative procedure, it is binding in its entirety and does not require national transposition. While it entered into force on 19 December 2018, it became applicable only 24 months later, from 19 December 2020. Although it entered into force on 19 December 2018, it became applicable two years later, from 19 December 2020. Despite its direct applicability, implementation has required amendments to domestic criminal codes and procedural rules, given the sensitive nature and technical complexity of freezing and confiscation matters.

Since 2020, three out of the four Member States analyzed have adopted legislation to integrate the Regulation into their legal frameworks. In Belgium, the Law of 28 November 2021 amended the previous Law of 5 August 2006 on mutual recognition of judicial decisions in criminal matters, incorporating the provisions of the Regulation. France introduced relevant amendments through Law No. 1729 of 22 December 2021, which updated both the Criminal Code and the Code of Criminal Procedure. Italy adopted Legislative Decree No. 203 of 7 December 2023, comprehensively adapting national legislation and replacing Legislative Decree No. 35 of 15 February 2016, which had implemented Framework Decision 2003/577/JHA. In Greece, the Regulation has not yet been implemented through specific legislation. However, the provisions of Law 4478/2017 - adopted on 23 June 2017 and amending the Criminal Code, Criminal Procedure Code, and the Money-Laundering Law to transpose Directive 2014/42/EU, continue to apply where compatible.

As for Directive 2014/42/EU, transposition in the four Member States occurred over two to four years. Italy transposed the Directive via Legislative Decree No. 202 of 29 October 2016, two years after its adoption. The Decree amended the Criminal Code, Criminal Procedure Code, and Civil Code introducing new forms of confiscation: mandatory confiscation by equivalent for computer-related crimes (Article 240, paragraph 2, No. 1*bis* of the Criminal Code), mandatory direct or equivalent confiscation related to crimes against public faith (Article 266 *bis)*; mandatory direct or equivalent confiscation for drug-related crimes (Articles 73 par. 7 *bis* and Art. 74 of Presidential Decree No. 309 of October 9, 1990). It also extended existing regimes, such as extended confiscation under Article 12 *sexies* of Legislative Decree No. 306 of 8 June 1992. The implementing measure also introduced a new form of mandatory confiscation, either direct or equivalent, under Legislative Decree 231/2001 concerning the criminal liability of legal entities. Greece transposed the Directive into Law 4478/2017, incorporating the European provisions into the Criminal Code, the Criminal Procedural Code, and the Anti-money Laundering Law 4557/2018. Belgium adopted two laws in 2018 to amend its Criminal Code and Criminal Procedural Code, four years after the adoption of the Directive. The Law of 18 March addressed criminal investigation of illicit pecuniary benefits and extended confiscation, while the law of 4 February conferred new powers to the COSC (Central Office for Seizure and Confiscation).

One of the main challenges faced by Regulation 2018/1805 is the persistent low degree of harmonization in substantive and procedural confiscation law across the EU. Directive 2014/42/EU introduced minimum standards for direct, extended, and non-conviction-based confiscation (limited to cases of illness or flight), but full alignment has not yet been achieved. To address these gaps, Directive 2024/1260 was adopted, broadening the scope of non-conviction-based confiscation and aiming to reduce divergences that continue to slow down mutual recognition.

Integration of national criminal justice systems has thus developed along two main strategic lines: harmonization of substantive criminal law under Article 82(1) TFEU, and interstate cooperation through judicial cooperation instruments. Although these strategies are inherently connected, approximation of national laws has often encountered significant challenges, as Member States are reluctant to amend their domestic punitive frameworks, particularly regarding confiscation. Considering these limits, mutual recognition has become the preferred strategy to achieve practical integration.

The analysis of national frameworks reveals a complex situation concerning the asset freezing and confiscation measures. Freezing measures, are generally similar across Member States. They are mainly probative, conservatory, and preventive, and can serve as a preliminary step to confiscation.

In France, Articles 695-9-7 to 695-9-9 of the Code of Criminal Procedure regulate the execution of freezing certificates under Regulation 2018/1805. In Greece, in addition to traditional seizure orders, Anti-Money Law no. 4557/2018 allows the President of the Financial Intelligence Unit (FIU) to order assets freezing based on a well-founded suspicion that the goods come from money laundering activities, even without the public prosecutor's consent and in parallel with criminal proceedings pending regarding the same conducts. A significant precedent was established by the Grand Chamber of the Supreme Court of Greece (Areios Pagos) in its decision 1/2022, which confirmed the FIU President's power to order seizures during an administrative investigation, even if a criminal investigation is simultaneously ongoing. Greek Anti-Money-Laundering Law also provides for an urgent provisional freezing with a preventive nature, applicable where there is a suspicion that assets or transactions are linked to money laundering or terrorist financing. This emergency measure, lasting 15 days, enables the Financial Intelligence Unit (FIU) to further investigate the validity of the suspicion. If the suspicion is unfounded, assets are released. If confirmed, the President of the Authority orders the freezing. Similar measure can be requested by the FIU of another Member State and transmitted to the Greek FIU under the same conditions. However, in Greece, freezing orders under the Regulation can be issued only by judicial authorities (investigating judge, the public prosecutor, or any other judicial authority such as the Judicial Council) but not the FIU itself, as it is not classified as judicial authority, and must be transmitted with the prescribed certificate. In French, Articles L.562-1 to L.562-15 of the Monetary and Financial Code empower the Ministers of the Economy and the Interior to freeze funds to prevent terrorist financing. This administrative measure, which is not ordered by a judicial authority but jointly by the Minister of the Economy and the Minister of the Interior, does not constitute criminal penalty but serves as a security measure. It takes effect immediately upon publication of the decision. This legal framework enables for the prompt implementation of freezing decisions adopted by the United Nations Security Council and the European Union. The list of individuals subject to such freezing orders is public and available online. The impact of this measure is significant: the funds and economic resources of individuals or legal entities concerned are frozen from the moment the authorities (Ministers) publish the decision identifying them. Legal remedies against this measure include administrative appeals, an informal appeal to the Minister of the Interior or the Minister of the Economy and Finance, or a contentious appeal before the Paris Administrative Court.

Confiscation measures across Member States pursue a plurality of functions. They may function as criminal sanctions, usually imposed as accessory penalties following a conviction. In such cases, the assets subject to confiscation consist of the direct or indirect proceeds of the offence or their economic equivalent. Confiscation may also operate as a security measure, which does not require a prior conviction and may be ordered even when the perpetrator is unknown. This category includes measures targeting assets deemed inherently dangerous by their nature (such as drugs, weapons, counterfeit currency, etc.). Furthermore, certain forms of confiscation are preventive in nature, aiming to neutralize the

potential commission of future offences. These measures are often grounded in the suspicion of an illicit origin of the assets, without necessarily requiring a link to a specific criminal act. Additionally, confiscation can arise within the framework of civil or administrative proceedings, thereby extending its applicability beyond the traditional confines of criminal law.

Efforts toward harmonization at EU level rely primarily on the adoption of a common vocabulary, enabling Member States to interpret and apply cross-border confiscation measures consistently. However, such coherence remains partial. Significant divergences persist in the qualification and classification of confiscations across domestic legal systems. For instance, while in Belgium the notion of "direct" or "traditional" confiscation typically refers to a criminal sanction, in Italy the same terminology designates a measure of a security-related nature. The Italian direct confiscation, under Article 240(1) of the Criminal Code, is primarily a security measure, but can also have a deterrent and punitive purpose. Indeed, the Italian Constitutional Court (judgments no. 29/61, 46/64 and 196/10) and the Court of Cassation (judgment no. 26654/2008, Fisia Impianti) have repeatedly affirmed the multifunctional nature of this form of confiscation. When confiscation operates as criminal sanction, whether as a principal or accessory penalty, it requires a prior conviction. The property concerned must be linked to the offence: either as direct or indirect proceeds, their economic equivalent, or as instrumentalities used or intended to be used in the commission of the offence. If such items have been mixed with lawfully acquired property, confiscation may be extended up to the value corresponding to the tainted portion. In circumstances where direct confiscation is not feasible, value-based (or equivalent) confiscation is employed. This latter form is widely considered a criminal sanction and, as such, may raise compatibility issues with the fundamental right guarantees provided by the European Convention on Human Rights (ECHR), particularly concerning the prohibition of retroactive penalties and the principle of proportionality (Art. 7 *volet pénal).* In a judgment concerning insider trading under Article 187-bis of Legislative Decree No. 58/1998 (as amended by Law No. 62/2005), the Italian Constitutional Court reaffirmed that equivalent confiscation is "eminently punitive." The Court highlighted that "the absence of any inherent dangerousness of the asset, combined with the lack of a direct link with the offence, gives the measure a predominantly punitive character."

Confiscation may also be ordered against third parties not involved in the offence, provided that the goods belong to them and demonstrated that they acted in bad faith, i.e., they were aware of the illicit origin of the asset or that the transfer was intended to avoid confiscation. Assets deriving from, or used in, the commission of an offence may be confiscated even in the absence of a conviction if they pose a threat to public order. In such cases, confiscation operates as a security measure, aimed at neutralizing the criminal potential of the asset and preventing future offences. Where such confiscation is mandatory by law, the court is not required to assess the dangerousness of the asset, as it is presumed *ex lege*. Legislative Decree No. 202/2016, which transposed Directive 2014/42/EU, introduced in Italy a form of mandatory, direct confiscation of proceeds and instrumentalities of computer crimes, including in the form of value-based confiscation. As a rule, the imposition of criminal penalties and security measures presupposes a conviction. However, Article 240, paragraph 2, point 2, of the Italian Penal Code provides for exceptions, allowing the imposition of confiscation as a security measure even in the absence of a conviction. The Italian legal system also provides for a specific form of non-conviction-based confiscation, known as preventive confiscation, aimed at depriving individuals of assets suspected to have illicit origin. This is regulated by Article 240-bis of the Penal Code and Article 24 of Legislative Decree No. 159/2011 (Anti-Mafia Code). The measure is grounded in a rebuttable presumption that disproportionate and unjustified assets held by certain categories of individuals are the product of criminal activity, typically associated with serious or organised crime (Judgment No. 33/2018, Constitutional Court).

The recognition of the strategic role of confiscating unexplained wealth is also reflected in Article 16 of the new Directive (EU) 2024/1260 on asset recovery and confiscation, which expressly envisages such forms of confiscation. This demonstrates the EU legislator's intent to expand the scope of admissible confiscation measures as a key strategy in the fight against organized economic crime. Once transposed, Member States will be required to recognize confiscation regimes like the Italian preventive model or the German *selbstständige Einziehung* (independent confiscation)[16], even where such forms are not currently part of their domestic legal tradition.

The Italian preventive confiscation regime is based on a relative presumption deriving from a disproportion between the value of assets held or controlled by the person and their lawful income or declared economic activity, combined with the inability to provide a legitimate explanation for the assets' origin. This mechanism reflects the efficiency-oriented approach of current trends in criminal policy (both at national and at EU level). It is designed to overcome the limitations of traditional criminal confiscation, particularly the need to prove a substantial link, either instrumental or derivative, between the assets to be confiscated and the specific criminal act for which a conviction has been issued. It was introduced into the Italian system by Law No. 646/1982 (the so-called Rognoni–La Torre Law) following the assassination of General Carlo Alberto Dalla Chiesa by the mafia. Over time, Italian courts have established criteria to limit the scope of this particularly intrusive measure. In Judgment No. 4880/2015 (the Spinelli case), the Court of Cassation articulated the principle of "chronological delimitation," requiring a temporal link between the acquisition of the asset and the period in which the individual's social dangerousness emerged. As a result, only assets acquired during the relevant period may be subject to confiscation[17].

The interpretation has been considered consistent with the requirements of Directive 2014/42/EU and serves as a safeguard for the right to a fair trial under Article 24 of the Italian Constitution and Article 6 of the ECHR. It also upholds the principle of proportionality in restricting the right to private property and economic initiative, in accordance with Articles 41 and 42 of the Italian Constitution and Article 1 of Protocol no. 1 to the ECHR.

Confiscation without a conviction presents challenges in the context of cross-border enforcement. The legal bases, conditions, and procedural guarantees applicable to such measures vary significantly across Member States. In both Italy and Greece, non-conviction-based confiscation is possible even in cases of prescription of the offence, whereas Directive 2014/42 has harmonized this type of confiscation only in limited cases, namely illness or absconding of the defendant. Directive (EU) 2024/1260 represents a significant step forward, particularly in Articles 15 and 16, which broaden the scope of non-conviction-based confiscation.

It is difficult to provide a synthetic overview of non-conviction-based confiscation (NCBC) across Europe. These measures take diverse legal forms: some fall clearly within the realm of criminal law, others are administrative in nature, some operate *in rem* and thus follow a civil law schema, without requiring personal criminal liability. Often, they are loosely categorized under the broad but often unclear notion of "criminal matters", which lacks a uniform definition in both national and supranational legal instruments.

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[16] *Selbstständige Einziehung von Vermögen unklarer Herkunft*, §76a, co. 4 StGB. Introduced by the 2017 reform (*Reform der strafrechtlichen Vermögensabschöpfung*), which comprehensively redesigned the legal framework on confiscation in order to align it with the legal standards set by the then newly adopted Directive 2014/42/EU, while also introducing new and innovative asset-deprivation mechanisms.

[17] This development in case law followed the 2009 legislative reform that removed the strict interdependence between personal preventive measures (which served to demonstrate the individual's social dangerousness) and property-related preventive measures (which justified the confiscation of assets). In order to prevent the excessive expansion of asset confiscation in the absence of a clear personal danger assessment, the judiciary progressively established the need to at least ensure a temporal link between the assets and the period during which the individual was suspected of having committed offences indicative of social dangerousness.

In Italy and Greece, NCBC is possible even in the case of the prescription of the offence. In Greece, confiscation without conviction can also ordered in cases where prosecutions cannot proceeds due to the absence or withdrawal of a criminal complaint, the granting of amnesty, the application of the *ne bis in idem principle*, or following a decision by the judicial council (Article 311, paragraph 3, GCCP), or the court (Article 315, paragraph 5, GCCP) authorizing the confiscation of illicit proceeds. Here, given the criminal nature of confiscation and therefore the prohibition on imposing criminal sanctions without trial, extended confiscation has been reinterpreted in the form of civil compensation. This model allows a civil court, based on an opinion from the State Legal Council, to order the confiscation of assets even in the absence of criminal prosecution (e.g., due to the death of the accused or inadmissibility of the case). The measure may target individuals convicted of crimes punishable by three years' imprisonment and may involve claims against third parties (e.g., close relatives or donees) if they received the assets during or after criminal proceedings began, and with knowledge thereof. The list of predicate offences that can give rise to such claims is broad and includes participation in a criminal or terrorist organization, bribery, drug-related offenses, human trafficking, counterfeiting, circulation of counterfeit currency, forgery, theft, embezzlement, receiving the proceeds crimes, child pornography, sexual abuse and exploitation of children, pandering, and attacks against information systems. The exact nature of this measure - whether civil, criminal, or sui generis - remains legally uncertain, and its compatibility with the EU Regulation is debatable.

Belgium does not provide for NCBC within its legal system. However, the Law of 28 November 2021 has extended the scope of the Law of 5 August 2006 to enable the recognition of foreign non-conviction-based confiscation orders connected to criminal offences.

Regarding non-conviction-based confiscation and the Italian preventive confiscation measure (Art. 24 Anti-Mafia Code), scholars have questioned whether it falls within the scope of the Regulation (EU) 2018/1805, which applies within the framework of *proceedings in criminal matters,* as specified in Recital n. 13 and Art.2. The final wording of the text, negotiated partly at the insistence of the Italian delegation, replaced the earlier, more limited text referring solely to "criminal proceedings."

The issue therefore concerns various types of confiscation that straddle the boundary of criminal law. This includes the Italian anti-mafia confiscation but is not limited to it.

Similar observations may be made with regard to customs confiscation in French legislation. The French Customs Code includes cases of confiscation that, while subject to criminal jurisdiction, are formally classified as fiscal measures. One example is the measure outlined in Article 414 of the Customs Code, which may be imposed when offences such as smuggling or undeclared import or export are committed, particularly involving prohibited goods or manufactured tobacco products. Article 415 of the Customs Code applies in cases where any act or attempted act, through export, import, transfer, or offsetting, aims to carry out a financial transaction between France and a foreign country involving funds known to originate, directly or indirectly, from an offense specified in the Customs Code, or from conducts detrimental to the financial interests of the European Union, or from violations of legislation on legislation on poisonous substances or plants classified as narcotics.

Certain forms of confiscation introduced in Italy in relation to environmental crimes have also generate a debate regarding their legal nature. For example, the confiscation provided under Article 452-decies of the Italian Criminal Code is recognized by the courts as having a restorative purpose, since the confiscated assets are assigned to the State and the offender is required to restore the site voluntarily. A similar rationale applies to the so-called urbanistic confiscation governed by art. 44 par. 2 of D.P.R. 380/2001 (Testo Unico Urbanistico).

As regards the legal nature of urbanistic confiscation, this measure is mandatory and can be applied even in the presence of an acquittal, provided the acquittal is based on reasons other than the non-existence of the offence. Most case law considers urbanistic confiscation to be an administrative sanction, notwithstanding the fact that it is ordered by the criminal court. According to this interpretation, urbanistic confiscation should be excluded from the scope of the Regulation, as specified in Recital 13 "Freezing orders and confiscation orders that are issued within the framework of proceedings in civil or administrative matters should be excluded from the scope of this Regulation".

In many national proceedings connected to a criminal conduct, the prosecutor can order the confiscation of assets without providing their direct derivation from a specific offence. In such cases, the order is based on less stringent evidence of the suspected illicit origin of the assets. In some jurisdictions, it is even possible to confiscate an asset solely because of its disproportionate value in relation to the declared income of the person holding it; this disproportionality itself is treated as a presumption, and in practice, as evidence, of the asset's illegal origin.

OVERVIEW: *General Implementation Approach*

- **Regulation (EU) 2018/1805** is directly applicable across all Member States, but:

Belgium has adopted law of 28 November 2021.

France has adopted Law 2021-1729.

Italy has adopted Legislative Decree 203/2023

Greece have not yet adopted specific implementing legislation and rely on previous framework rules or internal guidance.

- **Directive 2014/42/EU** has been transposed in all four Member States:

Belgium amended the Penal Code and Criminal Procedure Code in 2018.

France used Law No 2016-731 of 3 June 2016 for substantive transposition and Procedural adaptations followed immediately through Ordonnance No. 2016-1636 (1 December 2016) and Decree No. 2017-511 (7 April 2017)

Greece adopted Law 4478/2017, integrated into the new Criminal Code (2019).

Italy transposed the Directive via Legislative Decree No. 202/2016.

- **Framework Decisions 2003/577/JHA and 2006/783/JHA:**

All four countries implemented them through targeted legislation, but with different procedural rules and timelines.

France FD 2003/577/JHA transposed by Law No. 2005-750 of 4 July 2005, implemented 1 month before the deadline; FD 2006/783/JHA transposed by Law No. 2012-409 of 27 March 2012, implemented 3 years and 4 months late.

Belgium FD 2003/577/JHA transposed by Law of 5 August 2006, implemented 1 year late; FD 2006/783/JHA transposed by Law of 26 November 2011 and Law of 19 March 2012, implemented 3 years and 4 months late.

Greece incorporated them into Law 4478/2017 (published on 23 June 2017), nearly 12 years late and 8 years and 7 months late.

Italy FD 2003/577/JHA transposed by Legislative Decree No. 35 of 15 February 2016, implemented 10 years and 6 months late; FD 2006/783/JHA transposed by Legislative Decree No. 137 of 7 August 2015, implemented 6 years and 9 months late.

Operational and Institutional Aspects

- **Asset Management:**

Belgium COSC (Central Office for Seizure and Confiscation) is the dedicated national body responsible for coordinating the tracing, management, and disposal of all seized and confiscated assets. Established prior to 2018, it was strengthened to comply with EU standards and provides operational support and guidance to prosecutors and enforcement authorities.

France AGRASC (Agency for the Management and Recovery of Seized and Confiscated Assets) operates under the Ministries of Justice and Budget. Created in 2010, it manages assets even before final confiscation, oversees public auctions, redistributes proceeds, and has recently undergone reforms to enhance efficiency and victim compensation.

Italy ANBSC (National Agency for the Administration and Destination of Seized and Confiscated Assets), established by Legislative Decree No 4/2010 and codified in the Anti-Mafia Code (D.lgs. 159/2011), is the central authority for managing or supervising the management of confiscated assets. ANBSC oversees a "*Piattaforma unica di destinazione*" (single assignment platform) to allocate assets to municipalities, NGOs, and social cooperatives. It is designed to enhance transparency and coordination in the allocation of confiscated assets. The platform is accessible to local authorities, regional administrations, and third-sector organizations, allowing them to:

- View available assets;
- Submit applications for social reuse or institutional purposes;
- Track the status of ongoing procedures.

The social reuse of confiscated assets is enabled by Law No. 109/1996, one of the earliest legislations worldwide to empower local and regional authorities to repurpose mafia-seized assets for community projects, such as educational cooperatives and social housing.

Greece No specialised national asset management agency exists. Seized and confiscated assets are managed by the judiciary and public prosecutors under procedural and AML laws (e.g., Law 4478/2017, Law 4557/2018). No unified system exists for centralised asset maintenance, evaluation, or social reuse; execution largely depends on case-by-case judicial decisions and ad hoc regional arrangements.

NATIONAL ANSWERS

Question 1) Indicate any legislative measures adopted in the implementation of Regulation 2018/1805, Directive 2014/42/EU, Council Framework Decisions 2003/577/JHA and 2006/783/JHA.

BELGIUM[18]

Regulation 2018/1805 is directly applicable. Nevertheless, its application sometimes requires measures of execution in national law. In this regard, the regulation has made necessary to adapt the Law of 5 August 2006 relating to the application of the principle of mutual recognition of judicial decisions in criminal matters between the Member States of the European Union. This law was amended by the law of 28 November 2021 aimed at making justice more humane, swifter and firmer (published on 30 November 2021) to incorporate the necessary measures of execution. In addition, other documents (soft law) have been adopted to facilitate the entry into force of the regulation. These include a memo accompanied by FAQs and a coordination table of applicable legal framework, which have been sent to the judicial authorities.

In order to transpose the Directive 2014/42/EU Belgium opted to amend the existing Penal Code and Criminal Procedure Code by: Law of 18 March 2018 amending various provisions of criminal law, criminal procedure and judicial law (entry into force 12 may 2018): Article 16: Criminal Procedure Code, art. 524*bis* § 1, subparagraph 2 - special investigation of pecuniary benefits; Article 21 : Penal Code, art. 43*quater* -

[18] Silvia Pirselova, Deputy adviser, Ministry of Justice

extended confiscation of additional property benefits; Subsequent internal technical adjustments that do not affect the substantive provisions of the above-mentioned directive; Law of 4 February 2018 on the assignments and composition of the Central Body for Confiscation and Forfeiture (entry into force 1st July 2018). This Body functions as an asset management office for seized assets. COSC was already in existence before the adoption of the directive.

Council Framework Decisions 2003/577/JHA has been implemented by Law of 5 August 2006 concerning the application of the principle of mutual recognition of judicial decision in criminal matters between the Member States of the EU (entry into force 17 September 2006).

The Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders has been implemented in Belgium by the following two laws: Law of 19 March 2012 amending the law of 5 August 2006 on the application of the principle of mutual recognition of judicial decisions in criminal matters between the member states of the European Union (I); Law of 26 November 2011 amending the law of 5 August 2006 on the application of the principle of mutual recognition of judicial decisions in criminal matters between the member states of the European Union (II). The legislation entered into force on 14 April 2012

FRANCE[19]

The legal possibility of seizing and confiscating goods under criminal law goes back a long way. French Law no. 2010-768 of July 9, 2010, aimed at facilitating seizure and confiscation in criminal matters, has led to real progress by enabling the seizure of all confiscable assets.

More generally, the general interest objective of combating delinquency and organized crime in the field of assets has led European and national legislators to develop these tools and to continually reflect on their implementation and application in domestic legal systems.

Order no. 2016-1636 of December 1, 2016, and Decree no. 2017-511 of April 7, 2017, transposed Directive 2014/41/EU of the European Parliament and of the Council of April 3, 2014, on the European Investigation Order (EIO) in criminal matters into domestic law. To this end, articles 694-15 to 694-50 were inserted by the order of December 1, 2016, into the Code of Criminal Procedure, within a new section 1 appearing in Chapter II of Title X of Book IV of this code relating to provisions specific to mutual assistance between France and other member states of the European Union. These legislative provisions have been clarified and completed, in the third part of the code of criminal procedure (simple decree), by those of articles D.47-1-1 to D.47-1-20 resulting from the decree of April 7, 2017. Under the terms of Article 6 of the Order and Decree, these new provisions apply throughout France, including New Caledonia, French Polynesia and the Wallis and Futuna Islands. The EIO thus replaces, throughout France, the European Union's previous instruments for obtaining evidence, and particularly the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of May 29, 2000. It replaces requests for international mutual assistance in criminal matters made in application of this convention.

Law no. 2021-1729 of December 22, 2021, on confidence in the judicial system transposed the European Regulation 2018/1805 into domestic law

[19] Elise Van Beneden, French lawyer, expert in anticorruption

through the introduction of new articles: Art. 713-35 1[20]; 713-35-2[21]; 695-9-30-1[22]; 695-9-30-1[23]; 695-9-30-2[24].

There is no need to issue an EIO when the provisions of articles 695-9-1 to 695-95-30 of the Code of Criminal Procedure apply to the freezing of assets liable to confiscation, but only when seizure is also requested because they are likely to constitute evidence.

Indeed, article 34 of the Directive states that it replaces the provisions of Framework Decision 2003/577/JHA of July 22, 2003, as regards requests for the seizure of evidence.

The provisions of articles 695-9-1 and seq. have therefore been partially rewritten by article 3 of the order of December 1, 2016, so that they now only concern requests for freezing with a view to confiscation, and no longer apply, as was previously the case under the Framework Decision of July 22, 2003, to requests for freezing evidence.

As a result, when the seizure of an item is requested because it is likely to be used as evidence - even if it is property that may be subject to confiscation at a later date - it will be necessary to use the EIO (which means that only one form, the EIO, needs to be used, without having to send the decision to freeze the evidence together with the request for transfer, and the freezing certificate).

Council Framework Decisions 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders property freezing or evidence was transposed into domestic legislation by Law no. 2005-750 of July 4, 2005, containing various provisions adapting to Community law in the field of justice.

Articles 695-9-1 to 695-9-30 were inserted into the Code of Criminal Procedure, within a new section 5 appearing in Chapter II of Title X of Book IV of this code relating to provisions specific to issuing and executing orders to freeze property or evidence.

These provisions were modified by Order n°2016-1636 of December 1sr, 2016 on the European Investigation Order in criminal matters in application of the article 34 of the Directive.

Council Framework Decisions 2006/783/JHA of the Council of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, aimed at facilitating the recovery of assets in cross-border situations was transposed into domestic legislation by art 713 to 713-41 of the Code of Criminal Procedure, as amended by Law no. 2012-409 of March 27, 2012.

These provisions made it possible to legally oppose the recognition and enforcement of confiscation orders issued under the extended confiscation. They were

[20] For the application of Regulation (EU) 2018/1805 of the European Parliament and of the Council of November 14, 2018, on the mutual recognition of freezing orders and confiscation orders, the competent authorities referred to in Article 2(8) and (9) of the same Regulation are as follows:
- 1° The issuing authority for confiscation orders issued by French courts is the public prosecutor's office of the court that ordered the confiscation.
- 2° The enforcement authority for confiscation orders issued by the courts of another EU Member State is the territorially competent criminal court, seized at the request of the public prosecutor. The territorially competent correctional court is that of the place where one of the confiscated assets is located or, failing that, the Paris correctional court.

[21] Article 33 of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders shall be applied under the conditions set out in Article 713-29 of this Code.

[22] Article 33 of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders shall be applied under the conditions set out in Article 713-29 of this Code.

[23] For the application of Regulation (EU) 2018/1805 of the European Parliament and of the Council of November 14, 2018, on the mutual recognition of freezing orders and confiscation orders, the competent authorities referred to in Article 2(8) and (9) of the same Regulation are as follows:
1° The authorities issuing freezing orders are the public prosecutor, the investigating courts, the liberties and detention judge and the trial courts with jurisdiction under this code.
2° The executing authority for freezing orders issued by the courts of another European Union member state is the territorially competent investigating magistrate, where applicable via the public prosecutor or the public prosecutor's office. The investigating magistrate with territorial jurisdiction is the magistrate in the place where one of the frozen assets is located or, failing that, the investigating magistrate in Paris.

[24] Article 33 of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders shall be applied in accordance with the conditions set out in Articles 695-9-22 and 695-9-24 of this Code.

modified by Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders.

A bill is currently being drafted to improve the effectiveness of systems for seizing and confiscating criminal assets and could be adopted in the autumn. Article 1 simplifies the procedure for appeals against pre-judgment sales decisions, thereby improving the management of seized assets and better controlling legal costs.

Article 2 aims to simplify compensation for victims in the management of confiscated assets.

On the one hand, it broadens the scope of assets on which victims can be compensated to include all seized assets whose ownership has been transferred to the State; it is thus no longer limited to those that have been subject to a confiscation order by the trial courts.

It also improves victims' rights by extending from two to six months the period within which civil parties may apply to AGRASC for compensation for their loss.

Article 3 reinforces the effectiveness of criminal convictions by providing that the confiscation of a building is equivalent to the eviction of its occupants[25].

GREECE[26]

The Law 4478/2017, which was published on 23-6-2017 in the Official Government Gazette, transposed Directive 2014/42/EU, as well as Council Framework Decisions 2003/577/JHA, 2006/783/JHA and 2005/212/JHA. It amended the confiscation and freezing provisions of the Greek Criminal Code (GCC) and the anti-money laundering Law 3691/2008, which were in force at that time, to align national legislation with the provisions of Directive 2014/42/EU and FD 2005/212/JHA. These provisions can now be found in the new Criminal Code and Code of Criminal Procedure (GCCP) adopted in 2019, as well as in Law 4557/2018 against money laundering. Moreover, the said law established a system for the mutual recognition and execution of freezing and confiscation orders transmitted between EU member states, pursuant to the provisions of FD 2003/577/JHA and 2006/783/JHA.

Regulation 2018/1805 on the mutual recognition of freezing and confiscation orders applies to freezing certificates and confiscation certificates transmitted on or after 19 December 2020 and replaces the provision of FD 2003/577/JHA and 2006/783/JHA. However, Greece has not yet adopted any legislation regarding its implementation. Therefore, the relevant provisions of Law 4478/2017 are considered to still be in force, provided that they are not against the provisions of the Regulation. In such cases, the provisions of the Regulation would be directly applicable.

ITALY[27]

Regulation (EU) 2018/1805 is a binding and directly applicable instrument in all Member States, adopted through the ordinary legislative procedure based on Article 82(1)(a) of the Treaty on the Functioning of the European Union (TFEU).

The Italian legislator has not yet adopted any implementing measures for the Regulation, not even for the purpose of determining the competent judicial authorities for the adoption and execution of freezing and confiscation measures. In the absence of such

[25] https://www.assemblee-nationale.fr/dyn/16/textes/l16b1162_proposition-loi.pdf

[26] Alexandros Tsagkalidis, Senior Criminal Defense Lawyer

[27] Francesca Mele, Ph.D. candidate in Criminal Law

measures, it is necessary to determine the applicable rules governing the competence to issue and execute the measures.

There are two solutions:

- the application of the provisions of the Code of Criminal Procedure concerning both passive and active letters rogatory, as provided for in articles 723 et seq. of the Code of Criminal Procedure, as well as the provisions concerning the execution in Italy of foreign criminal judgments and the execution abroad of criminal judgments, as provided for in articles 730 et seq. of the Code of Criminal Procedure;

- the application of Articles 4, 5 and 11 of Legislative Decree no. 35/2016 and articles 4 and 10 of Legislative Decree no. 137/2015 implementing Framework Decisions 2003/577/JHA and 2006/783/JHA.

The Ministry of Justice, through the circular of February 18, 2021, chose the second solution in order to meet the needs of efficiency and simplicity that characterize the instruments of mutual recognition.

By December 2023, the legislator will issue a legislative decree to align the Italian legal system with the Regulation[28].

Directive 2014/42/EU has been transposed by Legislative Decree no. 202 of 29 October 2016, which introduces new instances of confiscation and amends provisions of the Criminal Code, complementary laws and the Civil Code. In particular, the legislator amends article 240, paragraph 2, no. 1 bis of the Criminal Code by regulating a new instance of mandatory equivalent confiscation in cases of computer-related crimes and introduces, through article 466 bis of the Criminal Code, a new instance of mandatory direct or equivalent confiscation for certain crimes against public faith.

The decree also introduces two instances of mandatory direct or equivalent confiscation for drug-related crimes in paragraphs 7 bis of Articles 73 and 74 of Presidential Decree No. 309 of October 9, 1990.

The decree also amends the provisions on extended confiscation set forth in Article 12 *sexies* of Legislative Decree No. 306 of June 8, 1992. It introduces special cases of confiscation in the event of a conviction or a plea bargain:

- for the offence of criminal association, in accordance with article 416 of the Criminal Code, when the aim of the association is to commit the offences provided for in article 453 (counterfeiting of currency, issuing and introducing counterfeit currency into the State, in conspiracy with others), 454 (altering currency), 455 (uttering and introducing counterfeit currency into the State, not in conspiracy with others), 460 (counterfeiting watermarked paper used for the production of public credit instruments or revenue stamps), and 461 (making or possessing watermarked paper);

- for the offence of self-money laundering as provided for in Article 648 ter.1 of the Criminal Code;

- for the crime of corruption between private parties under Article 2635 of the Civil Code:

- for the crime of fraudulent use of credit or payment cards, pursuant to Article 55, § 9, Legislative Decree of November 21, 2007, No. 231;

- for the offences provided for by articles 617-quinquies (installation of devices intended to intercept, impede or interrupt telegraph or telephone communications), 617-sexies (falsification, alteration or suppression of the content of computer or electronic communications), 635-bis (damage caused to computer and telematic systems), 635-ter (damage caused to computer information, data or programs used by the State or by another public authority or otherwise of public utility), 635-quarter (damage caused to computerized or telematic systems), 635-quinquies (damage caused to

[28] Legislative Decree 7 December 2023, no. 203 "*Disposizioni per il compiuto adeguamento della normativa nazionale alle disposizioni del Regolamento (UE) 2018/1805 del Parlamento europeo e del Consiglio, del 14 novembre 2018, relativo al riconoscimento reciproco dei provvedimenti di congelamento e di confisca"*. Entry into force: 06/01/2024

computerized or telematic systems of public utility), if the conduct described therein concerns three or more systems.

The legislator specifies that extended confiscation can also be applied in cases of conviction or plea bargain for crimes committed for the purposes of international terrorism.

Article 55, paragraph 9 bis, Legislative Decree no. 231 of November 21, 2007, introduces a new scenario of mandatory confiscation, direct or by equivalent means, of objects used or intended to be used to commit the crime of unauthorized use of credit or payment cards, as provided for in Article 55, paragraph 9, of the same Legislative Decree, as well as the proceeds or products of such crime, unless they belong to a person not involved in the crime.

Framework Decision 2003/577/JHA has been incorporated into our legal system by Legislative Decree No. 35 of February 15, 2016. The Legislative Decree incorporates the guidelines set out in the Framework Decision and reflects its main innovations: the abolition of double criminality, direct contact between the judicial authorities responsible for recognizing the blocking or seizure measure without specific formalities, the provision of short deadlines for execution of the request, the provision of a list of grounds for refusal of execution and means of appeal.

The national legislator provides a more specific definition of "blocking or seizure measure" than the one contained in the Decision, since it refers to Article 240 of the Criminal Code. However, the legislative provision should not be understood as a limitation to direct confiscation only, since, as supported by the majority doctrine, the subsequent definition of property overlaps with the content of the European source.

Article 3 of the Legislative Decree excludes double criminality for the listed crimes (crimes punishable by imprisonment for a maximum of three years). For offences not included in the list, the double criminality requirement is reintroduced as a ground for refusal (Article 3, paragraph 2). The procedure for direct recognition of freezing or confiscation by the Italian judicial authority is defined analytically in Article 4 and subsequent articles.

In the passive procedure (where Italy receives the measure from the issuing authority), the Public Prosecutor of the Republic in the court in which the property or evidence is located represents the receiving authority (Article 4). The procedure then varies according to the type of request. If the recognition and execution of a measure of seizure issued for the purpose of obtaining evidence has been requested, the Prosecutor of the Republic personally issues a decree. If the recognition and execution of a confiscation measure has been requested, the procedure provided for in article 321 of the Code of Criminal Procedure is followed and the Prosecutor submits his requests to the judge for preliminary investigation. In the case of crimes of serious social concern, including mafia association, drug trafficking, terrorism, trafficking in human beings, kidnapping for extortion, the request is forwarded to the National Anti-Mafia and Anti-Terrorism Prosecutor for the necessary checks.

If the measure concerns assets or evidence located in several judicial districts, the Public Prosecutor of the Republic of the place where the greatest number of assets or evidence is located or, in case of an equal number, the judicial authority that first received the blocking or seizure measure, shall deal with the matter.

Article 6 is one of the most important in the reception text. It provides that the Italian judicial authority shall immediately issue its own order for the recognition of the blocking or seizure measure, ordering its immediate execution upon request. The execution of a freezing or seizure order issued for evidence purposes must comply with the formalities and procedures required by the judicial authority of the issuing State, in accordance with the fundamental legal principles of the executing State.

The decree specifies the cases in which the request for recognition or execution of the measure may be refused:

absence or incompleteness of the certificate; immunity of the person whose property is to be confiscated; infringement of the ne bis in idem principle; failure to comply with the conditions laid down in Article 3. Regarding the certificate received from the foreign judicial authority, there is a gap in article 6, since it does not provide for its translation into Italian. In accordance with the principle of subsidiarity, pursuant to article 696, paragraph 2, of the Code of Criminal Procedure, article 201 of the Implementing Provisions of the Code of Criminal Procedure should be applied, which stipulates those requests from a foreign authority, as well as the related acts and documents, must be accompanied by a translation into Italian.

Article 9 regulates the appeal procedure, analogous to the corresponding procedure foreseen by the Code of Criminal Procedure for real precautionary measures (art. 322 c.p.p.). The appeal does not have suspensive effect and cannot concern the merits of the blocking or seizure measure.

The reception text is quite comprehensive. Article 10 of the Decree stipulates that, in cases where the execution of a measure results in damage to a third party which is not solely attributable to the executing State, the Minister of Justice may request reimbursement from the issuing State of the sums advanced as compensation, with the sums received as reimbursement being allocated to the Single Judicial Fund.

The final provisions of the examined text regulate the active procedures (procedures in which the Italian judicial authority initiates a request for the execution of its own criminal measure in an EU country). Article 11 stipulates that the Italian judicial authority, using the European Judicial Network for the purpose of identifying the property, shall transmit the evidentiary or precautionary seizure order issued during criminal proceedings directly to the judicial authority of the Member State in whose territory the subject of the measure is located, requesting its immediate recognition and execution.

Pursuant to Article 12(4), the freezing or seizure order shall be accompanied by a certificate, drawn up in accordance with the form annexed to this Regulation and translated from the Italian language into the official language or one of the official languages of the executing State, by which that authority certifies the accuracy of the information contained in the order.

Framework Decision 2006/783/JHA was incorporated into our legal system by Legislative Decree no. 137 of 7 August 2015.

The Legislative Decree essentially reproduces the provisions of the Framework Decision. The incorporation text includes definitions of "confiscation order", "object of confiscation" and "proceeds". In particular, a "confiscation order" is a measure issued by a judicial authority in the context of criminal proceedings that permanently deprives a subject of an asset, including confiscation measures ordered pursuant to Article 12-sexies of Legislative Decree No. 306 of June 8, 1992, and those ordered pursuant to Articles 24 and 34 of the Anti-Mafia Code and Preventive Measures (Legislative Decree No. 159/2011). The reference to preventive confiscation corresponds precisely to a specific indication in the law of delegation and, at the same time, is fully in line with the European Union regulations, partially anticipating the implementation of Directive 2014/42/EU.

With regard to the list of offences contained in the Framework Decision and the provision excluding double criminality for a series of serious offences punishable by a sentence of not less than three years, Italy has aligned itself with Union provisions. Outside these situations, the recognition of confiscation orders is allowed only if the acts are classified as crimes under Italian law.

The national legislator assigns to the Minister of Justice the competence to send and receive the confiscation order, the certificate and the official correspondence. The Court of Appeal, as the competent judicial authority for recognition and enforcement, is the final recipient of

the documents transmitted, either through the Minister of Justice or directly by the competent authority of the issuing State.

In active proceedings, it is up to the Public Prosecutor to request the recognition and execution of the measures before the judge referred to in article 665 of the Civil Code or before the court that ordered the measures pursuant to articles 24 and 34 of the Anti-Mafia Code and the Preventive Measures (article 10). About procedural aspects, the Italian legislator provides that the territorially competent court of appeal recognizes and executes requests coming from another Member State (art. 4), using the procedural formalities of the chamber procedure under art. 127 of the Civil Code (art. 5). The recognition decision is sent to the Prosecutor General for execution. In accordance with national legislation, detailed procedures are laid down for the execution of the confiscation decision, which vary according to the nature of the property in question.

The Framework Decision allows the executing State to refuse to execute a confiscation order based on one of the grounds listed in Article 8 or Article 10. The grounds listed in Article 8 of the Framework Decision are optional for Member States, which may choose to apply them or not. They may also make their application subject to stricter conditions than those provided for in the relevant Article. The Italian legislator has provided for optional grounds for refusal of recognition (Article 6): the Italian executing authority may legitimately refuse to execute a confiscation decision transmitted by another EU State if the certificate is missing or incomplete, if there is a violation of the ne bis in idem principle, or if the confiscation decision relates to acts that are not considered crimes under the national legal system (with the exception of tax, customs and currency matters).

Recognition may also be refused if the person against whom the confiscation order is to be enforced enjoys immunities recognized by the State; if the certificate states that the person did not appear in person and was not represented by counsel in the proceedings that resulted in the confiscation order.

In possible cases of refusal, the Court of Appeal is obliged to consult the issuing authority before refusing recognition. The court may postpone the execution of the confiscation decision and at the same time order the necessary measures to secure the property and funds subject to confiscation. In any case, as soon as the reason for postponement ceases to exist, the court shall immediately take the necessary measures to execute the confiscation order. This is an additional option granted to the Member States (Article 10 of the Framework Decision), which the delegated legislator has included in Article 7 of the Legislative Decree.

In general, the Framework Decision provides for the transferability of a confiscation decision to only one executing State at a time (Article 5(1) of the Framework Decision), except that it lists some exceptional cases in which a confiscation decision concerning certain property or sums of money may be transferred to several States (Article 5(2) et seq. of the Framework Decision). The Italian legislator, in line with the Union, has indicated in Article 12 the situations in which a confiscation decision may be transmitted to more than one Member State. In particular, multiple execution is allowed when there are reasonable grounds to believe that the property subject to the confiscation decision is located in more than one EU Member State; or when the confiscation of the property requires activities to be carried out in more than one Member State, or when there are reasonable grounds to believe that the property is located in two or more EU Member States (Article 12, paragraph 2). It should be clarified that the transmission of a confiscation decision to one or more executing States does not limit the right of the issuing State to execute the decision itself (Article 12(1)).

With respect to the remedies available, the parties concerned may lodge an appeal against the decision of the Court of Appeal with the Court of Cassation within ten days of the notification or service of the confiscation

order. It is expressly stated that the appeal suspends the execution of the judgment. Article 14, on the other hand, contains specific provisions on the allocation of the sums obtained by the Italian State as a result of the execution of confiscation decisions issued in other States, as well as on the allocation to the Unified Justice Fund of the sums obtained as compensation pursuant to Article 15. The latter provides that, in the event of liability of the Italian State for damage caused by the execution of a confiscation decision, the Minister of Justice shall immediately request the issuing State to reimburse, in accordance with Article 18 of the Framework Decision, the sums paid as compensation to the parties, unless the damage is solely due to the conduct of the Italian State as executing State.

Question 2) Indicate how many types of *freezing* and *confiscation* are provided in your national legislation. In particular, it is necessary to underline for each type of measure:

a) Legal name;

b) Legal source;

c) Authority that issues the measure;

d) Requirements of the measure: what are the crimes for which the measures can be ordered;

e) function of the measure: for example, administrative sanction, civil sanction, criminal sanction, security measure, prevention measure, others;

f) Effects of the measures;

g) Remedies available against the measures;

h) Any other elements that characterize the measure;

i) Seizable assets.

BELGIUM[29].

Seizure under article 35 of the Criminal Procedure Code:

a. Seizure – "saisie"

b. Article 35 and 89 of the Criminal Procedure Code

c. Public prosecutor/Investigating judge

d. All items eligible for confiscation or anything that may serve to reveal the truth, may be subject to seizure. Can be ordered in case of crime or misdemeanour.

e. prevention measure

f. Seizure can take place during a preliminary investigation (article 35 Criminal Procedure Code) as well as during a judicial investigation (article 89 Criminal Procedure Code). A seizure is not always but can be the result of a search. Seizure under criminal law is a provisional measure designed to keep certain assets under judicial control and may involve assets other than those liable to confiscation (for example evidence).

g. Any interested party can appeal via summary action the decision post factum, both within a preliminary investigation (Article 28sexies CCP) and a judicial investigation (Article 61quater CCP). Even after

[29] Silvia Pirselova, Deputy adviser, Ministry of Justice

referral to the court, a request for lifting the seizure may be filed with the court before which the case was brought.

h. /

i. The public prosecutor or the investigating judge can seize everything that appears to constitute:

- the things forming the object of the offence and those that served or were intended to commit it when ownership belongs to the convicted person;
- the things that were produced by the offence;
- the patrimonial benefits derived directly from the offence to the goods and values that were substituted for them and to the income from these invested benefits;
- additional pecuniary benefits when there are serious and concrete indications that these derive from the offence for which he was convicted, and which serve to manifest the truth.

The Code of Criminal Procedure provides for seizure of immovable property (art. 35bis):

a. Seizure of immovable property - la *saisie immobilière* conservatoire

b. Article 35*bis* of the Criminal Procedure Code

c. Public prosecutor/Investigating judge (article 89 of Procedure Criminal Code)

d. This type of seizure concerns immovable property that appears to constitute a patrimonial advantage derived from an offense.

e. Preventive measure

f. No deed of alienation or constitution of mortgage relating to the seized immovable property is opposable to the State from the day of the transcription of the seizure. The seizure is valid for a period of five years (renewable).

g. Any interested party can appeal via summary action the decision post factum, both within a preliminary investigation (Article 28sexies CCP) and a judicial investigation (Article 61quater CCP). Even after referral to the court, a request for lifting the seizure may be filed with the court before which the case was brought.

h. /

i. Immovable property that appears to constitute a patrimonial advantage derived from an offense. This provision does not concern the seizure of immovable property, which constituted the object or instrument of the offence. In these cases, it is the legal instrument incriminating the offence that provides or not whether the immovable property can be seized (and confiscated).

The Code of Criminal Procedure (art. 35ter) also provides for seizure by equivalent and seizure from third parties acting in bad faith:

1. Seizure by equivalent and seizure from third parties acting in bad faith
2. Article 35*ter* and 89 of the Criminal Procedure Code
3. Public prosecutor/Investigating judge
4. All items eligible for confiscation or anything that may serve to reveal the truth, may be subject to seizure. Can be ordered in case of crime or misdemeanour.
5. Prevention measure
6. In its decision, the Public Prosecutor or the investigating judge gives the reasons for the estimated amount and recalls the serious and concrete evidence justifying the seizure. These elements are included in the written seizure report. The measure allows to keep those assets under judicial control.
7. Any interested party can appeal the decision post factum, both within a preliminary investigation (Article 28*sexies* CCP) and a judicial investigation (Article 61*quater* CCP). Even after referral to the court, a request for lifting the seizure may be filed with the court before which the case was brought;
8. /

9. The seizable assets include patrimonial benefits derived directly from the offence, goods and values that were substituted for them, and income from these invested benefits or additional pecuniary benefits when there are serious and concrete indications that these derive from the offence for which the suspect was convicted. The items representing this pecuniary advantage cannot or can no longer be found as such in the assets of the suspect in Belgium or are mixed with legal items.

The Public Prosecutor may seize other items within the assets of the suspect up to the presumed amount of the estimated pecuniary advantage. This is also applicable to the objects that were intended for the commission of the offence, as well as to things which constitute the object of the offence of money laundering and concealment defined in article 505 Penal code.

The public prosecutor's Office may seize assets other than patrimonial benefits belonging to third parties, under the following additional conditions: 1° there are sufficient serious and concrete indications that the suspect transferred the property to a third party or financially enabled him to acquire it, with the clear aim of preventing or seriously complicating the execution of a possible confiscation order issued under article 43*bis* of the Penal Code (so called special confiscation) involving a sum of money; 2° the third party knew or ought reasonably to have known that the property had been transferred to him directly or indirectly by the suspect, or that he had been able to acquire it with the suspect's financial assistance with a view to evading the execution of any special forfeiture of a sum of money.

Confiscation

a. Special Confiscation

b. Articles 42 - 43*bis* Penal Code

c. Criminal court. By way of exception, an investigative court may order a confiscation when ruling on the merits of a case.

d. In case of crime or misdemeanour. Imposed for contraventions only in cases determined by law.

e. Criminal sanction

f. Transfer of ownership: the property is withdrawn from the convicted person, either for the benefit of the State, or for that of the civil party to whom they are returned or allocated.

g. Right to appeal against the judgement containing the confiscation order; The Royal Decree of 9 August 1991 establishes remedies for third parties claiming a right to a confiscated property. The property covered by a confiscation order issued under article 43*bis* of the Penal Code (so called “special confiscation”) shall not be subject to any execution measure before the expiration of a period of 90 days, from the day on which the conviction carrying confiscation would become enforceable. Any third party claiming a right to one of the things whose confiscation has been pronounced may bring his claim before the competent judge during the period. Attention: the Royal Decree only targets third parties.

h. For the defendant, the so called ‘special confiscation’ issued under article 43*bis* of the Penal Code must always be regarded as an accessory penalty: it can only be imposed in the event of a judgement imposing a main penalty (deprivation of liberty, fine, work penalty).

Special confiscation of the patrimonial benefits derived directly from the offence to the goods and values that were substituted for them and to the income from these invested benefits (items referred to in article 42, 3° Penal Code) may be ordered by the judge, but only insofar as requested in writing by the public prosecutor.

Confiscation as a penalty must be distinguished from confiscation as a simple security measure, which aims to remove from circulation objects that are harmful because of their objectively dangerous nature. Unlike the penalty of confiscation, the security measure can be imposed even if the person has not yet been found guilty, or if the perpetrator of the offence is not known.

i. Everything that appears to constitute:

the things forming the object of the offence and those that served or were intended to commit it when ownership belongs to the convicted person;

the things that were produced by the offence;

the patrimonial benefits derived directly from the offence to the goods and values that were substituted for them and to the income from these invested benefits.

Confiscation by equivalent

a. Confiscation by equivalent («*confiscation par équivalent*»)

b. Article 43*bis*, paragraph 2, Penal Code

c. Criminal court. By way of exception, an investigative court may order a confiscation when ruling on the merits of a case.

d. Not limited to a particular offence.

e. Criminal sanction

f. It is a condemnation to the payment of a sum of money, executable on the patrimony of the convicted person, which replaces the direct confiscation of the patrimonial advantages or the replacement goods which have been placed beyond the reach of justice.

g. The same remedies as those provided for direct confiscation (supra) are available.

h. The pronouncement of this confiscation is optional. The judge may reduce, if necessary, the amount of the monetary assessment in order not to subject the convicted person to an unreasonably heavy penalty. This confiscation must also be regarded as an accessory penalty: it can only be imposed in the event of a judgement imposing a main penalty (deprivation of liberty, fine, work penalty).

i. A judge may pronounce a confiscation by equivalent when the patrimonial benefits derived directly from the offence, the goods and values substituted for them or the income from these invested benefits as well as when the goods that served or were intended to commit the offence cannot be found in the assets of the convicted person.

Extended confiscation

a. Extended Confiscation (*Confiscation élargie*)

b. Article 43*quater*, paragraph 2, Penal Code

c. Criminal court. By way of exception, an investigating judge may order a confiscation when ruling on the merits of a case.

d. For offences listed exhaustively: offences listed in article 5.2 of the Directive 2014/42

- serious breaches of international humanitarian law;
- offences related to the use of substances with hormonal effect;
- theft and extorsion with violence and threat committed within a criminal organisation
- murder to facilitate theft or extortion or to ensure impunity, committed within the framework of a criminal organisation;
- theft and extortion of nuclear materials, committed within the framework of a criminal organization;
- infringements of the legislation relating to the import and export of arms and war material committed within the framework of a criminal organisation;
- offenses relating to certain operations concerning substances with hormonal action committed within the framework of a criminal organization.

e. Criminal sanction

f. Transfer of ownership: the property is withdrawn from the convicted person, either for the benefit of the State, or for that of the civil party to whom they are returned or allocated.

g. Right to appeal against the judgement containing the confiscation order. The Royal Decree of 9 August 1991 establishes remedies for third parties

claiming a right to a confiscated property. The property covered by a confiscation order issued under article 43*bis* of the Penal Code (so called special confiscation) shall not be subject to any execution measure before the expiration of a period of 90 days, from the day on which the conviction carrying confiscation would become enforceable. Any third party claiming a right to one of the things whose confiscation has been pronounced may bring his claim before the competent judge during the period. Attention: the Royal Decree only targets third parties.

h. For the purposes of this article, the relevant period is the period starting five years before the person is charged up to the date of the sentence.

May be ordered by the judge if requested in writing by the public prosecutor.

This confiscation must also be regarded as an accessory penalty: it can only be imposed in the event of a judgement imposing a main penalty (deprivation of liberty, fine, work penalty).

i. Benefits or the goods and values that have been substituted for them and the income derived from invested benefits found in the assets or in the possession of a person.

FRANCE [30]

About Freezing. French law authorizes freezes under the same conditions as seizures, without specifying their nature, so that it is appropriate to refer to the rights of seizure in order to answer this question.

a. Legal name: ordinary seizure.

b. Legal source: 56 of the Code of Criminal procedure.

c. Authority that issues the measure: investigative judge as part of the judicial investigation.

d. Requirements of the measure: what are the crimes for which the measures can be ordered: crimes and flagrant offences.

e. Function of the measure: probationary measure but also preventive measure with a view to possible confiscation.

f. Effects of the measures: placement under judicial control.

g. Remedies available against the measures: appeal before the investigating chamber.

h. Any other elements that characterize the measure: the assets that may be seized are those found in the homes of persons who appear to have participated in the crime or to be in possession of documents, information or objects relating to the offence. Where property is liable to confiscation, it may be located anywhere. If the search is carried out for the sole purpose of searching for and seizing goods whose confiscation is provided for in the fifth (computer data) and sixth paragraphs (computer data whose possession or use is illegal or dangerous to the safety of persons or property) of this same article, it must be authorised in advance by the public prosecutor.

i. Seizable assets: all papers, documents, computer data or other objects in the possession of persons who appear to have taken part in the crime or to be in possession of documents, information or objects relating to the incriminating facts as well as all assets confiscable pursuant article 131-21 of Code of criminal procedure i.e. all movable or immovable property, of whatever kind, divided or undivided, that was used to commit the offence or that was intended to be used to

[30] Elise Van Beneden, French lawyer, expert in anticorruption

commit the offence, and of which the convicted person is the owner or, subject to the rights of the owner in good faith, of which he or she has free disposal.

Ordinary seizure. Art. 76 of the Code of Criminal procedure.

a. Legal name: ordinary seizure.

b. Legal source: article 76 of the Code of Criminal procedure.

c. Authority that issues the measure: liberties and detention judge at the request of the public prosecutor.

d. Requirements of the measure: what are the crimes for which the measures can be ordered: a crime or offence punishable by a prison sentence of three years or more or any offenses when the search for property for which confiscation is provided for in article 131-21 of the Code of Criminal procedure.

e. Function of the measure: probationary measure et prevention measure.

f. Effects of the measures: placement under judicial control.

g. Remedies available against the measures: exception of nullity raised before the criminal courts.

h. Any other elements that characterize the measure: during the investigation in flagrante delicto.

I. Seizable assets: any movable or immovable, tangible or intangible property, as well as any legal instrument or document evidencing title to or interest in such property as well as all assets confiscable pursuant article 131-21 of Code of criminal procedure i.e. all movable or immovable property, of whatever kind, divided or undivided, that was used to commit the offence or that was intended to be used to commit the offence, and of which the convicted person is the owner or, subject to the rights of the owner in good faith, of which he or she has free disposal.

Ordinary seizure, art. 97 of the Code of Criminal procedure

a. Legal name: ordinary seizure.

b. Legal source: article 97 of the Code of Criminal procedure (seizure).

c. Authority that issues the measure: investigative judge.

d. Requirements of the measure: what are the crimes for which the measures can be ordered: any crime or offence.

e. Function of the measure: probationary measure.

f. Effects of the measures: placement under judicial control, placement under seal.

g. Remedies available against the measures: appeal before the investigating chamber

h. Any other elements that characterize the measure: Computer data that is necessary to establish the truth is seized by placing either the physical medium of the data or a copy made in the presence of the persons who are present during the search. If a copy is made as part of this procedure, the investigating judge may order the permanent deletion, from the physical medium that has not been placed in the hands of the court, of the computer data whose possession or use is illegal or dangerous to the safety of persons or property.

i. Seizable assets: documents or computer data.

Special seizure.

a. Legal name: Special seizure.

b. Legal source: article 695-9-7 to 695-9-9 of the Code of Criminal procedure.

c. Authority that issues the measure: public prosecutor, the investigating courts, the liberties and detention judge and the trial courts.

d. Requirements of the measure: what are the crimes for which the measures can be ordered: transmission of the freezing order and the certificate

issued by the judicial authority of the issuing State. The freezing order shall be refused if : 1° If immunity is an obstacle or if the property or evidence cannot be seized under French law ; 2° If the certificate shows that the freezing order is based on offences for which the person referred to in the freezing order has already been finally judged by the French judicial authorities or by those of a State other than the issuing State, provided, in the case of a conviction, that the sentence has been served, is being served or can no longer be enforced under the laws of the convicting State; 3° If it is established that the freezing order was issued for the purpose of prosecuting or convicting a person on account of that person's sex, race, religion, ethnic origin, nationality, language, political opinions, sexual orientation or gender identity, or that enforcement of the freezing order may adversely affect that person's position for any of these reasons; 4° If the freezing order has been issued for the purpose of subsequent confiscation of property and the facts on which it is based do not constitute an offence that would, under French law, allow the seizure of this property to be ordered.

e. Function of the measure: criminal sanction.

f. Effects of the measures: placement under judicial control, placement under seal.

g. Remedies available against the measures: appeal.

h. Any other elements that characterize the measure: /

i. Seizable assets: any movable or immovable, tangible or intangible property, as well as any legal instrument or document evidencing title to or interest in such property, which the judicial authority of the issuing State considers to be the proceeds of an offence or to correspond in whole or in part to the value of such proceeds, or to be the instrument or object of an offence.

About Confiscations. French legislation allows the following confiscations:

Confiscation as a supplementary penalty

a. Legal name: **confiscation as a supplementary penalty applicable to individuals and legal entities.**

b. Legal source: 131-21 and 131-39 of the Code of criminal procedure.

c. Authority that issues the measure: the trial courts.

d. Requirements of the measure: what are the crimes for which the measures can be ordered: Crimes and offenses punishable by more than one year's imprisonment as well as in cases provided for by law or regulation, except for press offences.

e. Function of the measure: optional criminal sanction.

f. Effects of the measures: Transfer of ownership to the state.

g. Remedies available against the measures: appeal.

h. Any other elements that characterize the measure:

i. Seizable assets: this confiscation applies to all movable or immovable property, of whatever kind, whether divided or undivided, that has been used to commit the offence or that was intended to commit the offence. Confiscation also applies to all goods that are the direct or indirect proceed of the offence, with the exception of goods that may be returned to the victim. Confiscation may also involve any movable or immovable property defined by the law or regulation that punishes the offence. Finally, if the offense is punishable by at least five year’s imprisonment, confiscation may apply to any assets of which the convicted person is the owner or, subject to the rights of the owner in good faith, of which he or she has free disposal.

Confiscation as alternative penalty

a. Legal name: confiscation as alternative penalty applicable to individuals.

b. Legal source: 131-6 of the Code of criminal procedure.

c. Authority that issues the measure: the trial courts.

d. Requirements of the measure: what are the crimes for which the measures can be ordered: offenses and fifth-class contravention.

e. Function of the measure: criminal sanction.

f. Effects of the measures: transfer of ownership to the state.

g. Remedies available against the measures: appeal.

h. Any other elements that characterize the measure: These penalties may be ordered cumulatively. Since Law no. 2020-936 of 30 July 2020, the penalty of confiscation of weapons and the instrument or proceeds of the offence may be imposed in addition to a prison sentence.

i. Seizable assets: this confiscation applies to one or more vehicles belonging to the convicted person, weapons belonging to the convicted person or in his possession or anything used or intended for use in the commission of the offence or of the asset that is the proceed of the offense.

Confiscation as a supplementary penalty of assets whose provenance cannot be proven.

a. Legal name: confiscation as a supplementary penalty applicable to individuals and legal entities of assets whose provenance cannot be proven.

b. Legal source: 131-21 and 131-39 of the Code of criminal procedure.

c. Authority that issues the measure: the trial courts.

d. Requirements of the measure: what are the crimes for which the measures can be ordered: Crimes and offenses punishable by at least five year's imprisonment and having procured a direct or indirect profit.

e. Function of the measure: for example, administrative sanction, civil sanction, criminal sanction, security measure, prevention measure, others: optional criminal sanction.

f. Effects of the measures: transfer of ownership to the state.

g. Remedies available against the measures: appeal

h. Any other elements that characterize the measure;

i. Seizable assets: all movable or immovable property of any kind, whether divided or undivided, belonging to the convicted person when the latter, when given the opportunity to explain the property for which confiscation is envisaged, is unable to justify its origin.

Specify if there are any forms of civil or administrative freezing and confiscation that may fall within the scope of the "connection to the crime" criterion.

a. Legal name: **freezing of funds and economic resources to fight against terrorist financing.**

b. Legal source: article L562-1 to L562-15 of the Monetary and Financial Code.

c. Authority that issues the measure: The Minister for the Economy and the Minister for the Interior.

d. Requirements of the measure: what are the crimes for which the measures can be ordered: terrorist acts. This will also allow the freezing decisions of the United Nations Security Council and the European Union to be implemented without delay. The list of

persons subject to this type of freezing is available on website[31]:

e. Function of the measure: security measure.

f. Effects of the measures: the funds and economic resources of the natural or legal persons or of any other entity designated on the basis of these resolutions are frozen as from the publication by the Minister responsible for the economy of the identification details of these persons or entities. The obligation to comply with the freezing measure is broad: it extends not only to entities subject to the LCB-FT rules (Combating money laundering and the financing of terrorism), but also to certain bodies or legal entities in the public sector. It also allows to suspend real estate transactions and vehicle sales.

g. Remedies available against the measures: Any order to freeze assets may be contested within two months of its notification either by an informal appeal to the Minister of the Interior or the Minister of the Economy and Finance or by a contentious appeal to the Paris Administrative Court.

h. Any other elements that characterize the measure: for a period of six months, renewable.

i. Seizable assets: any property owned, held or controlled by natural or legal persons or any other entity that commits, attempts to commit, facilitates, finances, incites or participates in terrorist acts and any property that is owned, held or controlled by legal persons or any other entities that are themselves owned or controlled by these persons or that are acting knowingly on their behalf or on their instructions.

a. Legal name: **customs confiscation.**

b. Legal source: article 414 of the customs code.

c. Authority that issues the measure: criminal jurisdictions.

d. Requirements of the measure: what are the crimes for which the measures can be ordered: any act of smuggling or undeclared import or export where these offences relate to goods in the category prohibited under this Code or to manufactured tobacco products.

e. Function of the measure: fiscal measure.

f. Effects of the measures: transfer of ownership to the state.

g. Remedies available against the measures: contestation before the court.

h. Any other elements that characterize the measure:

i. Seizable assets: the object of the fraud, means of transport, objects used to conceal the fraud, goods and assets that are the direct or indirect proceeds of the offence.

a. Legal name: **customs confiscation**

b. Legal source: article 415 of the customs code.

c. Authority that issues the measure: criminal jurisdictions

d. Requirements of the measure: what are the crimes for which the measures can be ordered : any act or attempted act intended, by export, import, transfer or offsetting, to carry out a financial transaction between France and a foreign country involving funds that they knew to originate, directly or indirectly, from an offence provided for in this Code or damaging to the financial interests of the European Union, or from an infringement of the legislation on poisonous substances or plants classified as narcotics.

e. Function of the measure: fiscal measure.

f. Effects of the measures: transfer of ownership to the state.

g. Remedies available against the measures: contestation before the court.

[31] https://gels-avoirs.dgtresor.gouv.fr/List.

h. Any other elements that characterize the measure: the funds are presumed to be the direct or indirect proceeds of an offence under the customs Code or an offence against the financial interests of the European Union or an offence under the legislation on poisonous substances or plants classified as narcotics when the material, legal or financial conditions of the export, import, transfer or offsetting operation do not appear to have been carried out for any reason other than to conceal the fact that the funds are of such origin.

i. Seizable assets: confiscation of the sums involved in the offence or a sum in lieu thereof where seizure could not be ordered, confiscation of property used to commit the offence or intended for use in committing the offence, confiscation of property and assets that are the direct or indirect proceeds of the offence.

GREECE [32]

To secure the possible confiscation of objects and assets, the law provides for their provisional freezing or seizure. Both freezing and seizure measures establish a temporary prohibition of disposal, transfer or encumbrance of the object or asset. Their main difference is that by seizing an object/asset the authorities obtain control of its possession, whereas by freezing it the object/asset remains in the possession of its holder, who in most instances is a financial institution.

The legal basis and the scope of a freezing decision depends on the stage of the criminal proceedings, during which freezing is ordered, as well as the type of confiscation for which freezing is imposed. The main freezing provisions are to be found **in the GCCP (arts. 36, 261, 262 GCCP) and in L. 4557/2018 (art. 42).**

The provisions of the Greek Code of Criminal Procedure:

a) Freezing of assets during the preliminary investigation (art. 36 par. 2-3 GCCP) (Δέσμευση από τους εισαγγελείς οικονομικού εγκλήματος).

The prosecutors of economic crime, when conducting a **preliminary investigation** in relation to offences of their jurisdiction (mainly tax offences, economic crimes against the Greek State or EU or public legal entities, or felonies committed by public officials **– art. 33 GCCP**), have the powers to order the freezing of the assets, for which reasonable suspicions exist, that they derive, directly or indirectly, from the above offences, in order to secure the economic interests of the Greek State. They may order the freezing of assets of any type, including real estate property, ships, aircraft, bank accounts, safe deposit boxes, securities, financial products, owned by the suspect or even a third party. The freezing order is issued without previously summoning the suspect or the third party and it is not required to mention a specific asset. The assets are frozen from the time of the proven service of the order to the financial institution, organization, or agency to which they are addressed. **The freezing order remains valid for a period of 9 months**, which can be extended for another 9 months with a decision of the judicial council, due to the justified non-completion of the preliminary investigation.

The freezing order must be served **within 20 days** to the suspect or the third party whose assets were frozen, for them to be able to exercise their right to appeal. The appeal may be lodged within a period of 30 days, which commences from the day of service of the freezing order to them, and it is addressed to the competent judicial council (with the court of misdemeanours or appeals, depending on the rank of the prosecutor who issued the order). The judicial council may reject their appeal, or

[32] Alexandros Tsagkalidis, Senior Criminal Defense Lawyer

accept it, in which case it quashes the freezing order, and the assets are released, or it may partially accept it and amend the freezing order by limiting its extent accordingly. The freezing order **may also be revoked or amended by the prosecutors** (on their own initiative or following a request from the affected person) based on new facts relevant to the case or special circumstances relating to the results of the freezing.

The preliminary inquiry may end by the prosecutors in two ways: They either drop the case, and the freezing is automatically lifted, or they order the opening of a main investigation, in which case the relevant provisions of the GCCP apply.

b) Freezing of assets during the main investigation (art. 261-262 GCCP) («Δέσμευση περιουσιακών στοιχείων» κατά την κύρια ανάκριση)

During the main investigation stage of the pre-trial proceedings, which is mainly conducted when felonies are being investigated, **the investigating judge, may order the freezing of any assets belonging to the defendant**, such as accounts, securities or financial products, safe deposit boxes kept at a credit or financial institution, including those owned jointly with any other person (third person), real estate property, ships, aircraft e.tc. The freezing order may be ordered by the investigating judge under two conditions: a) the public prosecutor must provide his consent to the freezing and b) there are serious suspicions that the assets are the direct or indirect proceeds of the offence under investigation. Further, freezing may also be imposed on assets belonging solely to a third person, if these assets were acquired by him or her without any exchange of similar value and to hinder future confiscation. It should be noted that assets that are necessary for the living expenses, defence costs and the management of the frozen assets are excluded from the freezing order. The freezing order is issued without previously summoning the defendant or the third party and it is not required to mention a specific asset. The assets are frozen from the time of the proven service of the order to the financial institution, organization, or agency to which they are addressed. **The freezing order shall remain valid for a period of up to five years**, provided that a judgement of the first instance court has not been issued on the case.

The freezing order must be served **within 20 days** to the defendant or the third party whose assets were frozen, in order for them to be able to exercise their right to appeal. The appeal may be lodged within a period of 15 days, which commences from the day of service of the freezing order to them, and it is addressed to the competent judicial council (with the court of misdemeanours or appeals, depending on the rank of the investigating judge who conducts the investigation). The judicial council may reject their appeal, or accept it, in which case it quashes the freezing order, and the assets are released, or it may amend the freezing order by limiting its extent accordingly (partial acceptance of the appeal). The freezing order may also be revoked or amended by the investigating judge (on his own initiative or following a request by an affected person) on the basis of new facts relevant to the case or special circumstances relating to the results of the freezing (such as disproportionate effects on the well-being of family members etc.).

The provisions of Law 4557/2018

c) Freezing of assets during the investigation of the Financial Intelligence Unit-FIU (art. 42 par. 7 L. 4557/2018) («Δέσμευση με απόφαση του Προέδρου της Αρχής»)

Even before the opening of a criminal investigation, **the President of the FIU,** when conducting its own investigation, **may order the freezing of assets for which there are reasonable suspicions** that they relate to money laundering activities and there is real danger that they may dissipate. The freezing order may extend to any type of asset, is issued without the prior summoning of the party whose assets are frozen, and it is not necessary to mention a specific asset. Assets, which are necessary for the living expenses, defence

costs and the management of the frozen property, are in principle excluded from the freezing order (art. 42 par. 8 L. 4557/2018).

The assets are frozen from the time of the proven service of the order to the financial institution, organization, or agency to which it is addressed. Any executive or employee of the financial institution who violates the freezing order is punishable with imprisonment of up to two years and a monetary sentence. Any transfer, disposal, encumbrance of the frozen assets is considered null (i.e., non-existent) towards the Greek State. It should be noted that when an asset is frozen, this does not affect pre-existent property rights of third parties, who obtained them in in good faith.

The President's freezing decision must be forwarded without delay to the prosecutor's office. However, this does not prohibit the FIU from continuing its investigation. The freezing order remains valid for a period of 9 months, which can be extended with a decision of the judicial council or the investigating judge, depending on the stage of the criminal proceedings. In any case, freezing may extend for a period of up to five years, provided that a judgement of the first instance court has not been issued on the case, as per the general **GCCP provisions (art. 42 par. 9 L. 4557/2018, art. 262 par. 4 GCCP).**

The person whose assets are frozen has the right to lodge an appeal before the judicial council within 20 days from the service of the decision, as well as to request from the judicial authority to lift or amend it based on new facts or special circumstances (art. 42 par. 7 in conjunction with par. 4-5 L. 4557/2018).

The Grand Chamber of the Supreme Court of Greece ("Areios Pagos") with its decision 1/2022, ruled that the President of the FIU has the right to issue a freezing order, during an FIU investigation, even when a criminal investigation is simultaneously being conducted.

d) The provisional freezing of assets (art. 48 par. 2d Law. 4557/2018) («Προσωρινή δέσμευση σε επείγουσες περιπτώσεις»)

In urgent cases, when it is suspected that an asset or transaction is related to money laundering or terrorist financing, the President of the FIU has the powers to order the provisional freezing of the asset or the suspension of execution of the specific transaction, in order to investigate the validity of the suspicions as soon as possible. This temporary measure may extent to a period of up to fifteen business days. The President lifts the provisional freezing of the asset or the suspension of execution of the transaction, when the investigation is completed, and his suspicions are not confirmed. After expiry of the above period, the provisional freezing or suspension shall be automatically lifted. In case the FIU's investigation reveals that there are reasonable suspicions that the above offences have been committed, the President shall order the freezing of the assets, as per art. 42 par. 7 provisions. This type of emergency freezing or suspension can also be ordered on the same conditions when a request from a corresponding authority from another EU member state has been received by the Greek FIU.

e) Freezing of assets during the criminal pre-trial stage (art. 42 par. 1 L. 4557/2018)

1. During the preliminary or summary investigation («Δέσμευση κατά την προκαταρκτική εξέταση ή την προανάκριση»)

During a preliminary or summary investigation conducted under the provisions of L. 4557/2018, the judicial council has the powers to order the freezing of any type of assets for which reasonable suspicions exist that they derive, directly or indirectly, from money laundering or predicate offences or that may be subject to confiscation under the provisions **of art. 40 L. 4557/2018**. It should be noted that assets that are necessary for the living expenses, defence costs and the management of the frozen property are, in principle,

excluded from the freezing order. The affected individuals have the right to request from the competent judicial authority to release some of the frozen assets, to cover the said expenses **(art. 42 par. 8 L. 4557/2018)**.

The judgement of the judicial council is issued **without previously summoning the suspect or the third party** and it is not required to explicitly state the specific account, security, financial product, or safe deposit box, subject to freezing. This judgement must be served by any means that allows verification of its authenticity to the financial institution, or organization. The assets are frozen from the time of the proven service of the judgement to the financial institution, organization, or agency to which they are addressed. Any executive or employee of the financial institution who violates the freezing order is punishable with imprisonment of up to two years and a monetary sentence. Any transfer, disposal, encumbrance of the frozen assets is considered null (i.e., non-existent) towards the Greek State. It should be noted that when an asset is frozen, this does not affect pre-existent property rights of third parties, who obtained them in in good faith.

The judgement must also be served **within 20 days** of its issuance to the suspect or the third party whose assets were frozen, for them to be able to exercise their right to appeal. In particular, the person against whom the freezing order was issued, as well as any third parties who have property rights on the frozen asset, have the right to request from the judicial council, within 20 days from the service of the judgement to them, to recall it. Irrespective of whether they elect to exercise the aforementioned legal remedy they also have the right to request from the judicial authority where the case file is pending (judicial council, investigating judge or court, depending on the progress of the proceedings) to lift or amend the freezing order, based on new facts, such as evidence relating to the case, or due to special circumstances. These rights may also be exercised by the heirs of the persons whose assets were frozen.

The assets may remain frozen for a period of up to five years, provided that a judgement of the first instance court has not been issued on the case, as per the general GCCP provisions **(art. 42 par. 9 L. 4557/2018, art. 262 par. 4 GCCP).**

2. During the main investigation («Δέσμευση κατά την κύρια ανάκριση»)

When a **main** investigation is being conducted **under L. 4557/2018**, the investigating judge has the right to freeze all assets under the abovementioned conditions, with two exceptions: a) the prosecutor must provide his consent to the freezing and b) there are serious suspicions (i.e., reasonable suspicions are not sufficient) that the assets are the direct or indirect proceeds of the offence, which is being investigated. The effects of the freezing order issued by the investigating judge, as well as the legal remedies, which are available for the affected persons, are the same as above (*see. 2.1*).

It should be highlighted that imposing a freezing order does not prohibit the opening of new bank accounts, in order to cover living and professional expenses. In such a case measure of enhanced customer due diligence shall be applied to the new account, which is not covered by bank secrecy. The prosecutor or the investigating judge (depending on the stage of the criminal proceedings) shall be notified of all transactions made through this bank account *(art. 42 par. 1 fin. L. 4557/2018).*

In Greek legal system, confiscation may be considered a criminal sanction, which is usually imposed as a supplemental penalty after the conviction of the defendant, or a security measure, which is imposed irrespective of the conviction or not of the defendant. The latter case concerns the confiscation of objects which, due to their nature, pose a risk to the public order, such as drugs, weapons, forged currency e.tc. On the other hand, direct or indirect proceeds of crime and, in any case, assets of economic value are by their nature "neutral", and they do not pose a risk to the public order. Their confiscation is a form of a criminal sanction and

therefore interconnected with the commission of a criminal offence.

a) Confiscation as a criminal sanction (art. 68 GCC, 40 L. 4557/2018) («Δήμευση ως παρεπόμενη ποινή»

Article 68, which provides for the main confiscation provisions in Greek legal system, can be found in the First Book ("The Penal Law"), Chapter 4 ("Punishments, security measures, restitution"), Section II ("Supplemental Penalties") of the GCC. Another important pillar of the asset recovery provisions is Law 4557/2018 against money laundering, which in article 40 provides for confiscation of the proceeds and instrumentalities of money laundering and predicate offences.

Confiscation following conviction (arts. 68 par. 1 GCC, 40 par. 1 L. 4557/2018) («Δήμευση κατόπιν καταδίκης»).

This is the "classic" form of confiscation, **which is most frequently used in practice.** It is applied by courts following a conviction of the defendant and it is considered to be a (supplementa) criminal sanction, as it deprives the defendant of the property of the confiscated object or asset. **Article 68 par. 1 GCC** stipulates that following conviction, objects or assets, which i) derive from an offence (felony or misdemeanour committed with intent), as well as their value or any assets acquired directly or indirectly through them, or ii) were used or intended to be used, in any manner, as a whole or in part, to commit such an offence, are subject to confiscation, provided that they belong to the perpetrator or to any of the participants. In case the abovementioned objects or assets were mixed with other lawfully obtained property, such property is subject to confiscation **up to the value of the mixed objects or assets.** However, the court may decide, on its own or following a request by the defendant, not to confiscate such objects or assets, provided that it deems confiscation **would be disproportionate**, on the basis that it would cause excessive and irreparable damage on the defendant or on his/her families. In such cases, the court may impose a monetary penalty or limit the extent of the confiscated property (art. 68 par. 2 GCC).

Article 238 GCC explicitly mentions that confiscation of proceeds or instrumentalities of corruption offences (articles 235-237A of the GCC) is imposed as a supplemental criminal sanction, under the conditions of article 68 GCC. Similar provisions can also be found in article 40 par. 1 of Law 4557/2018, in relation to the confiscation of proceeds and/or instrumentalities of money laundering offences and of their predicate offences, in case of conviction of the defendant. The defendant against whom confiscation is ordered has the right to appeal such decision on the merits of the case as well as on points of law.

b) Value confiscation (arts. 68 par. 3 GCC, 40 par. 2 L. 4557/2018) (« Αναπληρωματική δήμευση »)

In case the objects or assets, which should be confiscated following the conviction of the defendant, no longer exist, **have not been found** or are impossible to confiscate, the court may decide to confiscate assets **of equal value** belonging to the convicted defendant. The value of the assets that should be confiscated is calculated by the court at the time of issuance of its decision.

c) Third party confiscation (arts. 68 par. 5 GCC, 40 par. 1 L. 4557/2018) («Δήμευση εις χείρας τρίτου»)

According to art. 68 par. 5 GCC, objects or proceeds of crime are subject to confiscation, following a conviction, even if they belong to a third party, provided that such party was aware at the time of their acquisition i) that they may derive from a felony or a misdemeanour committed with intent and ii) that the purpose of their transfer to the third party was to hinder confiscation. The knowledge of the third party must be specifically mentioned in the court's decision. In order for the court to assess the third party's knowledge, it must examine specific facts and circumstances, such as that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value or lower that the amount that it would be

expected, based on the practice of transactions of the same type. When the third party is a legal entity, the court examines whether the person who has the powers to represent or control the entity knew that the acquired asset derives from an offence. It should be noted that third party confiscation shall only be ordered, when the court cannot confiscate the amount, the defendant received for the transfer of the asset or when value confiscation cannot be imposed against the defendant's other assets. Moreover, from the wording of the abovementioned provision, which requires knowledge of the asset's potential criminal origin, it is evident that the instrumentalities of the crime, as well as other assets of the defendant, which were transferred to the third party in order to avoid value confiscation, are excluded from third party confiscation.

Article 40 par. 1 of Law 4557/2018 stipulates that third party confiscation is allowed when the third party was aware at the time of acquisition of the proceeds or the instrumentalities of the crime, that a predicate or money laundering offence has taken place. The knowledge of the third party must be specifically assessed by the court and detailed in its decision. Moreover, this type of confiscation can be imposed against legal entities, provided that the person who represents or controls them had knowledge of the predicate of money laundering offence at the time of acquisition of the transferred asset. It should also be noted that, as opposed to art. 68 par. GCC, Law 4557/2018 does not explicitly state whether third party confiscation is subsidiary or alternative to confiscation against the convicted defendant. Third parties are allowed to participate in the pre-trial or main proceedings, in order to argue against the confiscation of their assets. Moreover, they are entitled to exercise legal remedies against decisions that order the confiscation of their assets.

d) Non-conviction-based confiscation (arts. 311 par. 3 and 373 par. 5 GCCP, 40 par. 3 L. 4557/2018) («Δήμευση στην περίπτωση οριστικής παύσης της ποινικής δίωξης ή κήρυξης αυτής ως απαράδεκτης»)

In cases where prosecution is terminated due to prescription of the offence, death of the defendant, withdrawal of the criminal complaint or lack thereof, granting of amnesty, *ne bis idem*, the judicial council (article 311 par. 3 GCCP) or the court (article 315 par. 5 GCCP) may order the confiscation of the proceeds. However, in such cases confiscation is ordered, under the condition that the judicial council or the court concluded that the assets originate from the offence for which prosecution was initiated; if they assess that no offence has taken place, the judicial council or the court does not impose confiscation but they order the return of the assets to their rightful owners as per art. 311 par. 2 GCCP. The same provision can be found in art. 40 par. 3 of Law 4557/2018 against money laundering.

e) Monetary sentence (arts. 68 par. 4 GCC, 40 par. 2 L. 4557/2018) («Χρηματική ποινή»)

When one of the above forms of confiscation cannot be imposed, due to the fact that the objects or assets cannot be located or they are not sufficient or they belong as a whole or partly to a third party, against whom confiscation cannot be ordered, the court may impose a monetary sentence against the defendant. In such a case, the monetary sentence cannot exceed the value of the asset which was to be confiscated initially.

f) Compensation in favour of the State (art. 41 L. 4557/2018) («Αποζημίωση υπέρ του Δημοσίου»)

Due to the criminal nature of confiscation under the Greek legal system, which prohibits the imposition of criminal sanctions without a trial, extended confiscation has been adopted in the form of compensation in civil proceedings. In particular article 41 par. 1 of Law 4557/2018 stipulates that the Greek State, following a report/opinion of the Legal Council of the State, may claim, before the competent civil courts, from the party that is irrevocably convicted to imprisonment of at least three (3) years for one of the offences mentioned in the list of par. 2, any other property acquired by said party by any other offence of par. 2, even when there was no persecution for said offence due to death of the offender

or the persecution ceased finally or was declared inadmissible. The offences that may trigger such claim, provided that they may, directly or indirectly, lead to economic benefit, are the following: forming/participating e.tc. in a criminal or terrorist organisation, bribery offences, drug related offences, human trafficking, counterfeiting, circulating of counterfeit money, forgery, theft, embezzlement, receiving the proceeds of offence, child pornography, sexual abuse, and exploitation of children, pandering and attack against information systems. If the property has been transferred **to a third party**, the convicted person is obliged to provide compensation equal to the value of the property at the time of hearing of the civil complaint. The above claim may be also filed against the third party who acquired the property by donation, provided that at the time of acquisition said party was spouse or blood relative in straight line with the convicted person or sibling or adopted child thereof. Moreover, any third party who acquired the property after the convicted person was initially prosecuted for the triggering offence is liable for compensation, provided that at the time of acquisition the third party had knowledge of that prosecution. The third party and the convicted person shall be jointly and severally liable.

g) Confiscation as a security measure (art. 76 GCC) («Δήμευση ως μέτρο ασφαλείας»)

Article 76 par. 1 GCC stipulates that confiscation of objects, which derive from an offence (felony or misdemeanour committed with intent) or were used or intended to be used, in any manner, as a whole or in part, to commit such an offence, are subject to confiscation, even if the defendant is not convicted of the offence, if they pose a risk to public order due to their nature. Such confiscation order may also be executed against the convicted person's heirs, provided that it was made irrevocable when the defendant was still alive. If the defendant was not prosecuted or such prosecution was barred, the confiscation order against such objects may be ordered by the court or the judicial council. This type of confiscation is, also, explicitly mentioned in article 213 par. 1 GCC, which provides for the compulsory confiscation of the objects and instrumentalities of crimes committed in relation to counterfeiting (arts. 207, 208A, 208B GCC). Confiscation of counterfeited money shall be ordered even if there is no prosecution of conviction of a specific individual and irrespective of to whom they belong to.

ITALY.

EVIDENTIARY SEIZURE[33].

a) Legal Name: Evidentiary Seizure.

b) Legal source: Articles 253-265 of the Code of Criminal Procedure regulate the institution of an evidentiary seizure.

c) Authority issuing the measure: from a procedural point of view, the valid adoption of the measure requires a reasoned order, which the prosecuting judicial authority must send, with a copy to the interested party, if there is one. The latter may carry out the act personally or by delegating a police officer with the same decree, subject to the preparation of the appropriate record.

d) Conditions for the measure: the judicial authority shall order, by means of a reasoned decree, the seizure of the body of the offender and of the things related to the offence that are necessary for the investigation of the facts.

e) Function of the measure: administrative sanction, civil sanction, criminal sanction, security measure,

[33] Section drafted by Giovanni Sodano, Ph.D. in Criminal Law, magistrate

preventive measure, other: it is a special means of obtaining evidence.

f) Effects of the measure: the measure differs from other forms of seizure which, while imposing a similar constraint of unavailability of the property, imply a purpose of an eminently precautionary nature.

g) Remedies available against the measure: the accused, the person materially subjected to the seizure and the person entitled to the restitution of the property, pursuant to article 257 of the Code of Criminal Procedure, have the right to bring a review against the seizure decree. The review is a means of challenging a precautionary measure by which another judge is asked to verify the existence of the formal and substantive conditions for the adoption of the same measure.

h) Any other elements characterizing the measure: The Code regulates in detail (articles 103 and 254 et seq.) some special hypotheses of evidentiary seizure, depending on the object on which the constraint falls (correspondence and acts or documents on which secrecy has been affixed) or the addressee (seizure from the defender or credit institutions). The evidentiary seizure shall cease, with the consequent return of the object to which it was applied to the person concerned, when the evidentiary grounds for its application cease to exist. In this regard, article 262 of the Code of Criminal Procedure stipulates that if it is not necessary to preserve the seizure for evidentiary purposes, the seized property shall be returned to the person entitled to it, even before the judgment. If necessary, the judicial authority shall prescribe that the returned property shall be presented at any request and may impose a deposit for this purpose. The exception is when the bail has been maintained for preventive purposes in accordance with article 321 of the Code of Criminal Procedure. In any case, once the judgment is no longer subject to appeal, the seized property shall be returned to the person entitled to it by order of the prosecuting judicial authority, unless confiscation is ordered.

i) Seizable assets: Article 253 of the Code of Criminal Procedure defines the object of confiscation, which is the "corpus of the crime" and the things related to the crime that are necessary to establish the facts. The "corpus of the crime" means not only the things "on or through which the crime was committed", but also those that constitute its "product, profit or price".

CONSERVATIVE AND PREVENTIVE SEIZURE[34].

a) Legal name: conservative and preventive seizure.

b) Legal source: the discipline of real precautionary measures represents an autonomous corpus of legislation (Book IV, Title II). This is a choice dictated by the need to strengthen its special function in relation to the seizure of evidence.

c) Authority issuing the measure: if there is a risk that the free availability of an object related to the crime may aggravate or prolong its consequences or facilitate the commission of further crimes, the judge competent to rule on the case shall, at the request of the public prosecutor, order its seizure by means of a reasoned order. The preliminary investigation judge shall have jurisdiction to decide on such a request prior to prosecution. The seizure shall be immediately revoked at the request of the procurator or the interested party if the conditions for its application are not met, including on the basis of facts that have arisen. During the preliminary investigation, if the urgency of the situation makes it impossible to wait for the judge's decision, the seizure shall be ordered by a reasoned decision of the public prosecutor. In the same cases, prior to the intervention of the public prosecutor, the seizure is carried out by the judicial police officers who, within forty-eight hours, send the report to the public

[34] Section drafted by Giovanni Sodano, Ph.D. in Criminal Law, magistrate

prosecutor of the place where the seizure was carried out. The prosecuting judicial authority, if it does not order the return of the seized objects, shall request the judge to validate and issue the decree within forty-eight hours of the seizure, if it was ordered by the same prosecutor, or of the receipt of the report, if the seizure was carried out on the initiative of the judicial police. If the above time limits are not observed, or if the court does not issue the validation order within ten days of receipt of the request, the seizure shall be null and void. In the event of an acquittal or a verdict of not guilty, which is subject to appeal, the judge shall order the return of the seized property to the person entitled to it, unless he is required to order its confiscation in accordance with article 240 of the Criminal Code. The order is immediately executed. On the other hand, if a conviction is pronounced, the consequences of the seizure remain in force if the confiscation of the seized property has been ordered. Restitution shall not be ordered if, at the request of the public prosecutor or the civil party, the judge orders that the property of the accused or of the party liable under civil law remain seized as security for the claims referred to in Article 316 of the Criminal Code.

d) Requirements of the measure: The attachment (art. 316 et seq.) is intended to guarantee the proper execution of the sentence, through the attachment of the movable and immovable property of the accused, as well as of the sums or things due to him, whenever there are "well-founded reasons to believe that the appropriate guarantees are missing or dispersed". The emend of Legislative Decree no. 150/2022 excluded the applicability of attachment as security for a fine. Attachment continues to constitute security for the payment of court costs and other sums due to the Public Treasury, as well as for the fulfilment of civil obligations. Article 319 of the Code of Criminal Procedure allows the defendant to prevent or replace the measure of attachment by offering bail. The preventive seizure (art. 321 C.P.C.) has a more pronounced preventive purpose than the conservative seizure. The prerequisite for the adoption of the measure is the establishment of the existence of elements from which the conviction can be drawn on the configurability of the formulated hypothesis of the crime (so-called fumus delicti). Conversely, it is not necessary to have serious indications of guilt against the person under investigation or the accused.

e) Function of the measure: administrative sanction, civil sanction, criminal sanction, security measure, preventive measure, other: the measures serve a preventive purpose**.**

f) Effects of the measure: once the conviction has become irrevocable, the seizure is automatically converted into an attachment (Article 320 of the Code of Criminal Procedure). As a rule, the judge of merit is responsible for its adoption. In addition, the judge may order the seizure of the property whose seizure is authorized.

g) Remedies available against the measure: At the remedy level, the procedural code provides for the possibility for the addressee of the measure to submit a request for review to the court in collegial composition (art. 324 of the Criminal Code), both against the order applying the precautionary attachment and for evidentiary purposes. The procedure is described in detail in article 324 of the Criminal Code and is largely the same as that for personal precautionary measures of a coercive nature. Apart from the cases in which a review is possible, the public prosecutor, the accused and his counsel, the person from whom the property was seized and the person entitled to its return may appeal against the preventive seizure order and the order revoking the seizure issued by the public prosecutor. In such cases, the court of the capital of the province in which the office that issued the order is located shall have jurisdiction. Against the decisions issued on review or appeal, the public prosecutor, the accused and his defence counsel, the person from whom the things were seized and the person who would be entitled to their

restitution may appeal by the Court of Cassation for violation of the law.

h) Any other elements that characterize the measure: /

i) Seizable assets: movable and immovable property of the defendant, as well as sums or things due to him.

CRIMINAL CONFISCATION (so called traditional confiscation or direct confiscation)[35].

a) Legal Name: Criminal Confiscation. Direct confiscation is defined by Italian legislation as a "security measure", which is found in the Italian Criminal Code in the section entitled "Security measure on assets". The purpose of the measure is to confiscate assets related to the offense, the possession of which by the offender may serve as an incentive to commit another offense. According to the prevailing jurisprudence, traditional confiscation has a preventive character, aimed at neutralizing the criminal potential of assets and preventing the perpetrator from committing further crimes. In fact, the essential condition for this type of confiscation is the dangerousness of the property. The objects of criminal confiscation include items that served or were used to commit the crime, items that represent the product or profit of the crime, items that represent the price of the crime, and items that are dangerous in themselves or of illegal origin. Criminal confiscation is provided for in both optional and mandatory forms, depending on the link between the property and the specific offense.

b) Legal source: Article 240 of the Italian Criminal Code regulates direct confiscation, which is "general" in its application, covering all crimes, and "specific" in terms of confiscable assets; the legislator limits the range of confiscable assets to the proceeds, profits and instrumentalities of the crime (optional confiscation), the price and objects whose manufacture, use, possession, carrying and sale constitute a crime in themselves (mandatory confiscation).

In the context of optional confiscation, article 240, paragraph 1 of the Italian Criminal Code, it is necessary for the judge to establish an instrumental link between the asset and the crime. This first scenario refers to the confiscation of the instruments of the crime, the product and the profit, based on the perceived social danger of the offender's possession of the assets that served or were used to commit the crime and of the assets that constitute the product or the profit of the crime. Mandatory confiscation, as provided for in article 240, paragraph 2, of the Italian Criminal Code, applies to assets that constitute the price of the crime, unless they belong to a person not involved in the crime. It also applies to IT or telematic tools used in computer crimes. In addition, even in the absence of a conviction, mandatory confiscation is imposed on property the manufacture, use, carrying or disposal of which constitutes an offence, unless it belongs to a person not involved in the offence and its use is permitted by administrative authorization. The latter is a mandatory confiscation, not based on a conviction, of intrinsically dangerous property, regardless of whether a verdict of acquittal or a verdict of acquittal has been issued due to the extinction of the offense (the offense is statute-barred). This confiscation is mandatory and therefore does not require the specific assessment of the dangerousness of the object by the judge, which is inherent in the nature of the object and prescribed by the law. The division of article 240 of the Italian Criminal Code stems from the fact that, originally, confiscation was generally optional and only rarely mandatory. Subsequently, as the number of cases of confiscation increased, the Italian legislator elevated confiscation to a primary tool in the fight against the accumulation of illicit wealth, particularly in relation to organized crime, economic crime and corporate malfeasance. Today, in fact, the specialized forms of confiscation are mostly

[35] Section drafted by Caterina Scialla, post-doctoral researcher in Criminal Law, RINSE Project

mandatory and operate under a different rationale from the original one, no longer as a preventive measure, but rather as a real sanction aimed at depriving the offender of the economically valuable result of the crime, thus ensuring that "crime doesn't pay". No. 1-bis of Article 240 of the Criminal Code was introduced by Italian Legislative Decree No. 202 of October 29, 2016, transposing Directive 2014/42/EU, and provides for a new scenario of mandatory, direct confiscation of the assets that constitute the profit or product of computer crimes, or confiscation by equivalent means if direct confiscation is not possible (see later sections).

c) Authority issuing the measure: confiscation can or must be ordered (depending on whether it is optional or mandatory) by the judge who pronounced the sentence of conviction or by the executing judge (in the latter case, only for mandatory confiscation if the competent judge didn't order it). Voluntary confiscation requires a conviction stating the social danger of the offender's possession of the property used to commit the crime. Conviction is also provided for in the case of a plea bargain (so-called application of the penalty at the request of the parties, art. 444 of the Italian Code of Criminal Procedure), which consists of an agreement between the accused and the public prosecutor. The sentence pronounced at the end of the plea bargain is considered a conviction.

d) Requirements for the measure: Optional confiscation under Article 240(1) of the Italian Criminal Code is subject to two conditions: a) the criminal proceedings must have ended with a conviction, and b) the property must not belong to a person unconnected with the offense. The first condition "in case of conviction" can also be fulfilled by a plea bargain under Article 444 of the Italian Code of Criminal Procedure. Whether or not the conviction should be a necessary condition for confiscation is a matter of debate. As a rule, the existence of a judgment of conviction is a necessary condition for the imposition of penalties and security measures, but not for preventive measures or administrative sanctions. In the case of optional confiscation, as provided for in Article 240(1) of the Criminal Code, a conviction is required by law. The absence of such a conviction should prevent the application of the measure; however, confiscation may be ordered even in the absence of a formal conviction, as long as the offence and the responsibility of the accused are established. In the case of article 240, paragraph 2, point 2, confiscation of illegal objects, the law allows the imposition of the measure even in the absence of a conviction. For the mandatory confiscation of the proceeds of the offense, as provided for in Article 240, paragraph 2, point 1, the law does not explicitly require a prior conviction, but prevailing jurisprudence holds that this confiscation can be applied even without a final conviction if the offense has been established, the responsibility of the author has been established and the property to be confiscated has been identified.

The second condition is that the property cannot be confiscated if it belongs to a person who is not involved in the crime (as a perpetrator or an accomplice). It does not matter whether a third party has a right of ownership or a claim to confiscable property, nor does it matter if the owner of the object did not commit the specific crime in question, but an underlying or consequential crime (such as aiding and abetting or receiving stolen goods). About the "person unconnected to the offense" under Article 240 of the Italian Criminal Code, the Court of Cassation (26 May 2017 n. 42778) specifies that this term refers to the person who has not participated in the commission of the offense or benefited from the criminal activity of another, and who is in good faith. The legal entity that owns the property is not considered unrelated to the crime if the crime is committed in its interest or for its benefit by a natural person acting as an organ of the entity (art. 19 of Legislative Decree n. 231/2001). If a crime is involved for which the liability of legal persons is not provided for in the list of offenses under Legislative Decree no. 231/2001, confiscation can be ordered against the legal person, provided that it is completely devoid of autonomy and represents only a framework through which the administrator acts as the

real owner (Cass. Sez. un. 30 January 2014 n. 10561 Gubert).

There are exceptions to this general rule: in the case of the compulsory confiscation of illicit goods, as provided for by Article 240(4) of the Italian Criminal Code, confiscation is possible even if the goods belong to third parties in good faith, provided that the possession is unauthorized.

In both scenarios of confiscation (optional and mandatory), an instrumental link between the property and the crime is required.

As a security measure, confiscation may be ordered based on an assessment of the dangerousness of the object, understood as the likelihood that the object, if left in the possession of the offender, would serve as an incentive to commit further illegal acts.

In the case of optional confiscation, the assessment of dangerousness is left to the discretion of the judge, who must decide with a view to a particular preventive purpose, based on the possibility that the object could serve as an incentive for the commission of new offences (so-called *pericolosità relazionale*).

Confiscation as a security measure is permanent; indeed, the dangerousness of the object cannot cease if it remains in the offender's possession.

e) Function of the Measure: Confiscation involves the expropriation by the State of movable or immovable property linked to a crime or criminal in nature. Its classification as a "security measure on assets" under Article 240 of the Criminal Code has been confirmed by the Court of Cassation (26 June 2014, no. 4880, Spinelli). By requiring a relevant link between the asset and the offense, the measure reveals the prevalence of a preventive and precautionary function aimed at preventing the commission of future crimes. According to this perspective, traditional confiscation is therefore not a punishment; ablative measures that do not require a direct link between the property to be confiscated and the offense are classified as criminal sanctions. In these cases, the deprivation of property takes on a deterrent and punitive character (see the following paragraphs). However, although defined as a security measure with a preventive purpose, the doctrine asserts that direct confiscation also serves punitive and expropriative functions.

f) Effects of the measure: The Constitutional Court (n. 29/61 e 46/64 e 196/10) and the Court of Cassation (no. 26654/2008 Fisia Impianti) have confirmed the polyfunctionalism of confiscation, which can serve both as a punitive and non-criminal measure; different scenarios of confiscation are characterized by different effects that can coexist. For example, in the mandatory confiscation of objects that served or were used to commit the crime, the predominant purpose is preventive (although it also has a certain repressive implication). Traditional confiscation under Article 240 of the Criminal Code serves different functions depending on the type of property confiscated. In the case of confiscation of property used or intended for use in the commission of a crime (Article 240(1) of the Criminal Code), the special-preventive function prevails, and therefore the confiscation of the property is aimed at preventing the commission of further criminal acts. Confiscation of the proceeds or profits (Art. 240, para. 2, no. 1) aims at restoring the violated economic order, restoring the property situation that existed before the commission of the crime and preventing the offender from benefiting from the profits of his criminal activity. This objective differs from the repressive function because it does not involve a patrimonial sacrifice or a restriction of property rights, which means that traditional confiscation is a security measure rather than a criminal punishment. The confiscation of dangerous things, the use of which is forbidden, the keeping of which is forbidden, etc., has a reparative function, a projection of the legal regime of the thing. Confiscation is an irrevocable measure of an immediate and permanent nature. The Supreme Court has established the irrevocability of confiscation even in the case of the declaration of the unconstitutionality of a criminal provision.

g) Remedies available against the measures: against the confiscation provision (art. 676 of the Italian Code of Criminal Procedure), remedies are available to contest the validity of the confiscation. The defendant has access to all the remedies available against a criminal conviction. The nature of traditional confiscation as a security measure has consequences in terms of the rights and remedies available against it. As a security measure, traditional confiscation is governed by the law in force at the time of its application (*tempus regit actum* principle), in accordance with Article 200 of the Criminal Code. If the law in force at the time of execution is different, the law in force at the time of execution applies. This means that the principle of non-retroactivity (Art. 25 (2) of the Constitution) does not apply and the measure can be applied even for offenses for which it was not provided at the time of their commission (this aspect is not peaceful and there is extensive doctrinal debate). However, even if the Constitutional Court has not recognized the punitive nature of criminal confiscation, in a specific case on the notion of criminal matter according to the ECtHR, the judges have recognized that the retroactive application of those measures which have a certain degree of punitive effect can be a violation of Article 7 of the ECHR.

f) Any other element that characterizes the measure: /

g) Seizable assets: Art. 240 (1), Italian Criminal Code: "Objects used to commit the crime" - *instrumenta delicti*: objects used by the offender to commit the crime. This measure deprives the offender of the availability of items that have already been used to commit the offense and could facilitate the repetition of other offenses (in this case, a disproportionality issue may arise if the value of the confiscated property is excessive compared to the seriousness of the offense committed). "Items intended for the commission of the offense": Items that were prepared for the commission of the offense but were not actually used. "Product of the offense": the empirical result of the offense, items created, transformed, adulterated, or acquired through the offense (e.g., counterfeit currency obtained through the counterfeiting process). "Profit of the offense": economic benefit obtained directly and immediately from the offense (e.g., stolen money, money obtained from the sale of stolen goods). The prevailing jurisprudential orientation has been that the profit of the crime must be identified with an "added benefit of a patrimonial type" that is related to the crime through a cause-and-effect relationship; the profit must constitute a direct economic consequence derived from the crime. To define the scope of direct confiscation of proceeds, jurisprudence has interpreted the term "gain" to include indirect gains. This includes assets acquired with the direct profits derived from the offense, even though subsequent transfers, provided that it is demonstrated that these assets were acquired with the proceeds of illicit activities and thus represent a direct reinvestment of the profits themselves. However, this perspective still requires a relevant link between the offense and the profit/item. (Cass. Sez. Unite 6 March2008 n. 10280).

The Supreme Court of Cassation (5 March 2014, no. 10561, Gubert), clarified that within the notion of "profit" falls any direct financial benefit obtained by the commission of the offense, including cost savings, such as those resulting from the non-payment of a tax, interest or penalties due because of the determination of a tax debt. This interpretation tends to overlap the concept of "profit" with that of "advantage" and is consistent with Directive 2014/42/EU, which identifies "proceeds" as any economic advantage derived, directly or indirectly, from offenses, including any subsequent reinvestment or transformation of direct proceeds and any economically assessable advantage.

Art. 240 (2) of the Criminal Code: "Price of the offense": compensation given or promised to a certain person in exchange for committing the offense. In practice, it is not easy to distinguish between price and profit (for example, whether the proceeds from the sale of narcotics are considered price or profit). Price is distinguished from profit because the latter is a direct and immediate

economic consequence of the offense, whereas price is a motivating factor. The precise distinction between profit and price is critical because confiscation of profit is optional, while confiscation of price is mandatory. "Objectively illicit property": subject to mandatory confiscation even in the absence of a conviction, even if the property belongs to a third party unrelated to the offense, as long as its possession is not authorized. The goods in this case (narcotics, counterfeit banknotes, firearms) are inherently dangerous.

Art. 240 (2), no. 1-bis (see following paragraph).

CONFISCATION BY EQUIVALENT[36].

a) Legal name: Indirect confiscation by equivalent (value confiscation). Equivalent or value confiscation is used to overcome the difficulties encountered in the direct confiscation of assets constituting the price, product or proceeds of crime, especially in all cases where it is difficult to establish a qualified derivative link between the item and the crime, or in any case where the asset is difficult to trace. Equivalent confiscation involves the seizure of property in the offender's possession, for a value equal to the price or proceeds of the crime. This measure, as evidenced by the numerous codicistic and special provisions, is provided for in a subsidiary key to the hypothesis of direct confiscation of the proceeds of crime. It is ordered by the court only when it has not been possible to directly identify the goods that constitute the price, product or profit of the crime.

b) Legal source: The Italian legislator has not introduced equivalent confiscation in a general way, but, following the indications of supranational obligations, has provided for the possibility of applying this asset-related measure only in relation to specific crimes contained in the Criminal Code, the Civil Code or special laws.

The first instance of such confiscation in our legal system can be found in Article 735 bis of the Code of Criminal Procedure, following the ratification of the Strasbourg Convention of the Council of Europe by Law No. 328 of August 9, 1993. The provision regulates the execution of a foreign confiscation order that requires the payment of a sum of money equal to the value of the price, product or proceeds of crime.

The first provision introducing equivalent confiscation into the Criminal Code was introduced by Law No. 108 of March 7, 1996, which amended the crime of usury. Article 644 of the Criminal Code establishes, in addition to the mandatory confiscation of the price and proceeds of the crime, the possibility of extending confiscation to sums of money, property or benefits over which the offender has control, even through an intermediary, for an amount equal to the value of the usurious interest or other profits or charges. Law No. 300 of September 29, 2000, introduced Article 322-*ter* into the Criminal Code. The provision stipulates that for crimes committed by public officials against the public administration (embezzlement, embezzlement against a private person, embezzlement taking advantage of another's error, embezzlement against the State, misappropriation of funds against the State, concussion, corruption to exercise the function, corruption for an activity against the function, corruption in judicial acts, In the case of conviction or application of the penalty at the request of the parties, in accordance with Article 444 of the Code of Criminal Procedure, if direct confiscation is not possible, the judge shall order confiscation "of property over which the offender has control, for an amount equal to the price or profit".

Confiscation by equivalent is regulated by several provisions:

- Article 240, paragraph 2, point 1 bis of the Criminal Code introduces a form of equivalent confiscation, when direct confiscation is not possible, of assets at the

[36] Section drafted by Francesca Mele, Ph.D. candidate in Criminal Law

disposal of the offender, the value of which corresponds to the proceeds or products of computer-related crimes, such as *unauthorized access to a computer system* (Article 615 *ter* of the Criminal Code), *Illegal possession and distribution of access codes to computer or telematic systems* (art. 615 *quater* of the Criminal Code), *distribution of equipment, devices or computer programs intended to damage or interrupt a computer or telematic system* (art. 615 *quinquies* of the Criminal Code), *installation of equipment intended to intercept or prevent telegraph or telephone communications or conversations* (art. 617 *bis* of the Criminal Code), *falsification, alteration or suppression of the content of telegraph or telephone communications or conversations* (art. 617 *bis* of the Criminal Code), or *suppression of the content of telegraph or telephone communications or conversations* (Article 617 *ter* of the Criminal Code), *illegal interception, obstruction or interruption of computer or telematic communications* (Article 617 *quater* of the Criminal Code), *installation of equipment intended to intercept, prevent or interrupt computer or telematic communications* (Article 617 *quinquies* of the Criminal Code), *falsification, alteration, or suppression of the content of or suppression of the content of computer or telematic communications* (Article 617 *sexies* of the Criminal Code), *damage to information, data and computer programs* (Article 635 *bis* of the Criminal Code), *damage to information, data and computer programs used by the State or any other public body or of public utility* (Article 635 *ter* of the Criminal Code), *damage to computer or telematic systems* (Article 635 *quater* of the Criminal Code), *damage to computer or telematic systems of public utility* (Article 635 *quinquies* of the Criminal Code), *computer fraud* (Article 640 *ter* of the Criminal Code), *and computer fraud by the subject providing electronic signature certification services* (Article 640 *quinquies of* the Criminal Code).

- Article 270 *septies* of the Criminal Code stipulates that in the event of a conviction or a plea bargain, when direct confiscation is not possible, an equivalent confiscation of assets under the control of the offender shall be carried out. This confiscation is for a value corresponding to the price, product or profit for crimes committed with the purpose of terrorism, as defined in Article 270 *sexies*.

- Article 452 *undecies*, paragraph 2 of the Criminal Code establishes that in cases of conviction or plea bargain for crimes such as environmental pollution (Article 452 bis c.p.), environmental disaster (Article 452 *quater* c.p.), trafficking and abandonment of highly radioactive materials (Article 452 *sexies* c.p.), obstruction of controls (Article 452 *septies* c.p.), and conspiracy or aggravated mafia association as defined in Article 452 *octies* c.p., "when the confiscation of assets is foreseen, If the confiscation of assets has been ordered and is not possible, the judge shall identify assets of equivalent value over which the convicted person also has indirect or proxy control and shall order their confiscation";

- Article 452 *quaterdecies* of the Criminal Code stipulates that, in the case of organized activities related to the illegal trafficking of waste, when direct confiscation is not possible, "the judge shall identify assets of equivalent value over which the convicted person also has indirect or proxy control, and shall order their confiscation";

- Article 466 *bis* of the Criminal Code, in case of conviction or *plea bargain, for offences such as counterfeiting of coins, circulation and introduction into the State of counterfeit coins with prior agreement* (art. 453 of the Criminal Code), *altering of coins* (art. 454 of the Criminal Code), *circulation and introduction into the State of counterfeit coins without prior agreement* (art. 455 of the Criminal Code), *counterfeiting of watermarked paper used for the production of public credit cards or revenue stamps* (art. 460 of the Criminal Code), and *production or possession of watermarked paper used for the production of public credit cards or revenue stamps* (art. 460 of the Criminal Code) and *the production or possession of watermarks or instruments intended for the production of coins, revenue stamps or*

watermarked paper (art. of the Criminal Code) provides that, if direct confiscation is not possible, the judge shall order the confiscation of "assets over which the convicted person still has control, for a value corresponding to the profit, product or price of the offense";

- Article 474 *bis* of the Criminal Code, provides that in the case of *counterfeiting, falsification or use of trademarks or patents, models and designs* (art. 473 of the Cr.P.C.) and introduction into the State and trade in products with false trademarks (art. 474 of the Cr.P.C.), if direct confiscation is not possible, the judge shall order "the confiscation of assets under the control of the offender for a value corresponding to the profit"; art. 493 *ter* of the Criminal Code. provides that, in case of conviction or plea bargain, for the crime of unauthorized use of credit or payment cards, if direct confiscation is not possible, there shall be "confiscation of property, sums of money and other benefits under the control of the offender for a value corresponding to such profit or proceeds";

- Article 600 *septies* c.p. stipulates that, in case of *conviction or plea bargain, for crimes such as reducing or maintaining someone in slavery* (Article 600 of the Criminal Code), *child prostitution* (Article 600 bis of the Criminal Code), *child pornography* (Article 600 *ter* of the Criminal Code), *possession of pornographic material* (Article 600 *quater* of the Criminal Code), *virtual child pornography* (Article 600 *quater*.1 of the Criminal Code), *tourism initiatives aimed at exploiting child prostitution* (Article 600 *quinquies* of the Criminal Code), *trafficking in human beings* (Article 601 of the Criminal Code), the *buying and selling of slaves* (Article 602 of the Criminal Code), the *illegal brokering and exploitation of labor* (Article 603 *bis* of the Criminal Code) as well as *sexual violence* (Article 603 *bis* of the Criminal Code), as well as *sexual violence* (art. 609 *bis* of the Criminal Code), if the act is committed against a minor under the age of eighteen or if the crime is aggravated by the circumstances specified in art. 609 *ter* paragraph 1, numbers 1, 5 and 5 *bis*, sexual acts with a minor (art. 609 *quater* of the Criminal Code), *corruption of minors* (art. 609 *quater* c.p.), *corruption of minors* (art. 609 *quinquies* of the Criminal Code), *sexual violence in a group* (art. 609 *octies* c.p.), if the act is committed against a minor under the age of eighteen or if the offense is aggravated by the circumstances specified in art. 609 *ter* paragraph 1, numbers 1, 5 and 5 bis, and grooming of minors (art. 609 *undecies* of the Criminal Code), if direct confiscation is not possible, the judge shall order "the confiscation of property of an equivalent value to that which constitutes the product, profit or price of the offense, over which the convicted person also has indirect or vicarious control";

- Article 603 *bis*.2 of the Criminal Code. provides that, in the case of conviction or plea bargaing, for crimes of *illicit intermediation and exploitation of labor* (Article 603 *bis* c.p.), if direct confiscation is not feasible, "the confiscation of assets over which the offender has control, even indirectly or through proxy, for a value corresponding to the product, price, or profit of the offense" shall be ordered;

- Article 640 *quater* c.p. extends the applicability of Article 322 *ter* to the crimes of *fraud against the State or other public entities* (Article 640, paragraph 2, number 1 of the Criminal Code) *aggravated fraud for obtaining public funds* (Article 640 *bis* of the Criminal Code), and *computer fraud against the State or other public entities* (Article 640 *ter*, paragraph 2 of the Criminal Code);

- Article 648 *quater* of the Criminal Code establishes that, in the case of conviction or plea bargaing, for the crimes of *money laundering* (Article 648 *bis* of the Criminal Code), *use of money, assets, or benefits of illicit origin* (Article 648 *ter* of the Criminal Code), and *self-laundering* (Article 648 *ter*.1 of the Criminal Code.), when direct confiscation is not possible, "the confiscation of sums of money, assets, or other benefits under the control of the offender, even through a proxy, for an amount equivalent to the product, profit, or price of the crime" shall be ordered;

- Article 2641 of the Civil Code establishes that, in the case of conviction for one of the corporate crimes provided by the Civil Code (Articles 2621-2638 c.c.), when the identification or seizure of the assets constituting the product or profit of the offense is not possible, the judge orders "the confiscation of a sum of money or assets of equivalent value";

- Articles 73, paragraph 7 bis, and 74, paragraph 7 bis of the Consolidated text on Narcotic Drugs and Psychotropic Substances (Presidential Decree 9 October 1990, No. 309), introduce, in the case of conviction, the possibility for the judge to order the confiscation "of assets under the control of the offender for an equivalent value to the product or profit of the crime" when direct confiscation is not possible;

- Article 187 of Legislative Decree No. 58 of 24 February 1998 (Consolidated Text on Financial Intermediation) states that, in the case of conviction for *insider trading* (Article 184) or *market manipulation* (Article 185), where it is not possible to confiscate directly the proceeds or profits of the offense, the confiscation shall relate to a sum a sum of money or assets of equivalent value;

- Article 12 bis of Legislative Decree No. 74 of 10 March 2000 (introduced by Legislative Decree No. 158 of 24 September 2015) stipulates that for the tax offenses provided for by this Decree, in the case of conviction or plea bargain, when direct confiscation of the price or profit of the offense is not possible, "the confiscation of assets, over which the offender has control, for a value corresponding to such price or profit" shall be ordered;

- Article 11 of Law No. 146 of 16 March 2006, in relation to transnational crimes, requires that, "if the confiscation of items constituting the product, profit, or price of the offense is not possible, the judge orders the confiscation of sums of money, assets, or other benefits under the control of the offender, even through a proxy natural or legal person, for a value corresponding to such product, profit, or price";

- Article 19 of Legislative Decree No. 231 of 8 June 2001, concerning the administrative liability of legal entities, stipulates that, when direct confiscation of the price or profit of the offense is not possible, "the same can concern sums of money, assets, or other benefits of equivalent value to the price or profit of the offense".

The legislator has provided for cases of equivalent confiscation in relation to extended confiscation and preventive confiscation: these are specifically dealt with in the provisions of Article 240 *bis*, paragraph 2 of the Criminal Code and Article 25 of Legislative Decree No. 159/2011 (the discussion of which is deferred to the following sections).

c) Authority that issues the measure: the jurisdiction of the criminal court. The decision shall be taken during judicial proceedings. The confiscation for equivalent presupposes a judgment of conviction, which can be replaced by a judgment issued pursuant to art. 444 c.p.p., pronounced by the judge of cognition.

d) Requirements of the measure: The requirements for applying for an equivalent seizure vary depending on the type of seizure ordered. For an analysis of the requirements for each type of seizure, see the answer to the legal source.

e) Function of the measure: Regarding the legal nature of equivalent confiscation, both jurisprudence and doctrine attribute to it a fundamentally punitive character. Even the Constitutional Court, in a notable judgment on administrative confiscation for insider trading offenses pursuant to Article 187 bis of Legislative Decree No. 58/1998 and paragraph 6 of Law No. 62 of April 18, 2005, expressly reiterated that equivalent confiscation is always "eminently punitive" in nature. The Court adds that "the lack of danger of the assets subject to equivalent confiscation, combined with the absence of a link between the offense and those assets, gives the said confiscation a predominantly punitive connotation". The punitive nature of equivalent confiscation entails the application of the guarantees provided by the Constitution and the ECHR, in

particular the prohibition of retroactivity, the principle of legality and the prohibition of analogous application to the detriment of the accused. The subject of the examined confiscation is the assets, even those unrelated to the crime, over which the perpetrator of the crime has control, for a value equivalent to the price or profit of the crime.

f) Remedies available against the measures: The accused may appeal against the decision taken by the Criminal Judge using the ordinary legal remedies provided for by the Criminal Procedure Code.

g) Any other elements that characterize the measure: /

h) Seizable assets: The object of the attack is the property of the offender, regardless of its link with the illegal activity, but within the limits of the amount of the price or profit of the crime determined. This has two consequences: the broadening of the definition of confiscable profit and the weakening of the relevance link between the good and the crime.

CONFISCATION OF ASSETS WITH SUSPECTED UNLAWFUL ORIGINS[37].

a) Legal name: Confiscation of assets with suspected unlawful origins

b) Legal source: Article 240-bis of the Criminal Code: Confiscation in specific cases. Article 24 of Legislative Decree 159/2011: Preventive confiscation.

c) Authority issuing the measure: Article 240-*bis*: Court of Cassation acting as a judge of cognition or enforcement. Article 24 of Legislative Decree 159/2011: Court of Cassation acting as a judge of prevention.

d) Requirements of the Measure, **Functions of the Measure, Effects of the Measure:** The Court of Cassation and the Constitutional Court have clarified that the preventive seizure and the preventive confiscation have the same purpose as the "extended" confiscation, initially established by Article 12-*sexies* of Legislative Decree 8 June 1992, no. 306 (Urgent Amendments to the New Code of Criminal Procedure and Measures to Combat Mafia Crime), later amended by Law No. 356 of August 7, 1992. 356, and now included in article 240-bis of the Criminal Code. The Constitutional Court has ruled that this measure is based on the presumption that the disproportionate and unjustified economic resources found in the possession of the convicted person stem from the accumulation of illicit wealth that certain categories of crimes are typically capable of generating (Judgment no. 33 of 2018). This (relative) presumption is based on the observation of a disproportion between the assets subject to confiscation and the income or economic activity of the person - convicted of one of the crimes referred to in the same article 240-bis of the Criminal Code - who owns or has some form of control over these assets and who is unable to justify their lawful origin. "Preventive" and "extended" confiscation (and the seizures that precede their respective effects) are thus two variations of a single concept that the Constitutional Court itself has identified in the confiscation of assets of potentially illicit origin - determined by a legal presumption - which is a widely used tool to deal with financially motivated criminal activities at the international level. This measure is characterized by "both a relaxation of the link between the subject of the confiscation and the specific crime and, in particular, a reduction in the burden of proof borne by the prosecution", taking into account "the need to overcome the limitations of the effectiveness of *traditional* criminal confiscation: limitations linked to the need to prove the existence of a relevant link - in terms of instrumentality or derivation - between the assets subject to confiscation and the individual crime for which a conviction has been handed down. The inherent difficulties of such proof have rendered 'conventional' confiscation ineffective in adequately combating the

[37] Section drafted by Giacinto Cirioli, Ph.D. in Criminal Law

phenomenon of the accumulation of illicit wealth by criminal organizations, in particular organized crime: a particularly worrying phenomenon, both because of the potential reuse of resources to finance further illegal activities and because of their injection into the legitimate economic system, resulting in distortions in the functioning of the market"(Judgment No. 33 of 2018).

e) Remedies available against the measures: Article 24 of Legislative Decree 159/2011: On this matter, the remedies for appeal are governed by the combined provisions of Articles 27 and 10 of the same text. The Supreme Court addressed this issue through a ruling by the Court of Cassation (23 February 2017, no. 20215). Article 240-bis: The regular remedies of appeal as outlined in the Criminal Procedure Code are applicable.

f) Any Other Elements Characterizing the Measure: /

g) Seizable Assets: The necessity of social dangerousness, required for the adoption of a measure of preventive confiscation of property, also constitutes the "temporal aspect" that influences the scope of application of preventive confiscation. This establishes the principle of the so-called "chronological delimitation", meaning the essential temporal correlation between the dangerousness of the subject and the period during which the subject gained control over the assets to be confiscated. This principle was established by the Court of Cassation, Joint Sections, no. 4880/2015 (Spinelli Judgement) and reaffirmed by the Constitutional Court, no. 24 of 2019. To identify the assets subject to confiscation, the judge must chronologically define the period during which the subject has engaged in conduct that allows them to be classified in one of the categories of dangerousness. The joint section (no. 4880/2015) specifically asserts that, with respect to "general dangerousness", only assets acquired during the period in which the dangerousness became manifest are subject to confiscation, regardless of whether the subject was no longer dangerous at the time of the proposal. Regarding "qualified dangerousness", they stipulate that dangerousness must be assessed by considering the entire life course of the subject, establishing a beginning and an end. It should be emphasized that not all the goods falling within this chronological framework are subject to action, but only those for which the subject cannot prove the origin, which he can control directly or indirectly, and which fall within the two categories described by the law (art. 20 for seizure and art. 24 for confiscation): "when their value is disproportionate to the declared income or economic activity", "when there is reason to believe, based on sufficient evidence, that they are the result of illicit activities or constitute their reuse".

In terms of duration, the preventive seizure loses its effectiveness if the court does not issue the confiscation order within one year and six months from the date on which the assets came under the control of the judicial administrator. In cases involving complex investigations, this period may be extended by court order in six-month increments (Article 24(2) of Italian Legislative Decree no. 159 of 2011).

CONFISCATIONS IN TAX CRIMES[38].

a) Legal name: Tributary forfeits.

b) Legal source: Tributary confiscations are regulated by Legislative Decree no. 74 of March 10, 2000, which provides for three types of sanctions or confiscation of property: direct or in a specific form, for equivalent or value, extended or in special cases, ex articles 12-*bis* and 12-*ter*.

The confiscation system is also extended to legal persons (Legislative Decree no. 231 of June 8, 2001). The national legislation allows the direct confiscation or equivalent confiscation of the price or profit to the detriment of the legal person (art. 19) for fiscal offences, under art. 25-*quinquiesdecie*s of Legislative Decree no.

[38] Section drafted by Anna Onore, Ph.D. in Criminal Law

231/2001; direct confiscation of the profit or price of the crime at the disposal of the entity on whose behalf the natural person has acted; equivalent confiscation on the assets of the legal entity if it is assumed that the latter represents only a fictitious screen.

The obligation to confiscate the profit or any price of the offense was originally provided for by Law No. 244 of December 24, 2007 (2008 Finance Act). Article 1, paragraph 143, allowed the application of article 322-*ter* of the Criminal Code for the punishment of fraudulent, false or omitted declarations, ex articles 2, 3, 4 and 5, the issuance of invoices for non-existent transactions, ex article 8, the failure to pay taxes pursuant to articles 10-bis, 10-*ter* and 10-*quater*, the fraudulent evasion of tax payments pursuant to article 11 of Legislative Decree no. 74 of 2000, with the exclusion of the offense of concealing or destroying accounting documents, ex article 10. 10. Article 322-*ter* of the Criminal Code was supplemented by Law no. 190 of November 6, 2012, which provides for the confiscation of property (including money) to which the guilty party has access, for a value corresponding to the price or profit. Subsequently, Legislative Decree no. 158 of September 24, 2015, introduced art. 12-*bis* in Legislative Decree no. 74 of 2000 and repealed art. 1(143) of law no. 244 of 2007. The confiscation of taxes in special cases, so-called extended or disproportionate, is regulated by art. 12-*ter* of Legislative Decree no. 74 of 2000. Legislative Decree no. 74 of 2000, introduced into the criminal tax law by art. 39, paragraph 1, letter q) of Legislative Decree no. 124 of October 26, 2019, and finds its codicil reference in art. 240-bis of the Criminal Code.

c) Authority issuing the order: The competent judicial authority, after the irrevocability of the sentence, is the executing judge, ex art. 676 of the Code of Criminal Procedure, if the judge of cognition has not already exercised his jurisdiction. The jurisdiction of the execution judge is linked to the compulsory nature of the confiscation, without distinguishing between the general case described in article 240 of the Criminal Code and the special cases established by other provisions. In the event of the death of the person subject to the confiscation, the enforcement proceedings are continued against the heirs or assignees.

d) Conditions for the measure: confiscation ex art. 12-*ter* requires, in the first place, sentence of conviction or application of the penalty on request, ex art. 444 of the Code of Criminal Procedure, for one of the crimes listed in the regulation (so-called espionage or matrix crimes). Specifically, a conviction for the crimes of fraudulent, false or omitted declaration under articles 2, 3, 4 and 5, issuing invoices for non-existent transactions under article 8, non-payment under articles 10-bis, 10-ter and 10-quater, fraudulent evasion of tax payments under article 11 of Legislative Decree no. 74 of 2000, with the exception of the crime of concealment or destruction of accounting documents, under article 10. If the "direct" confiscation is not possible, the confiscation of the assets in the offender's possession must be ordered at a value equal to the price or profit (so-called indirect or value confiscation). Secondly, the confiscation of property, money or other benefits - in the direct or mediated possession of the offender, who does not give any justification for their origin - is allowed only if there is a disproportion in property between the declared income and the possessed property, the illegal origin of which is presumed.

e) Function of the measure: there is a judicial debate on the qualification of tax confiscation. Confiscation in certain cases, according to consistent case-law, is considered an atypical security measure, in contrast to confiscation for the same value, which is considered a penalty. In this case, there is a restorative purpose that is not found in the confiscation of assets, which pursues punitive-*sanctionary* goals. The question does not assume a merely theoretical valence, since the different notion of penalty-security measure affects the applicable discipline. On the relationship between confiscation ex art. 12-ter of Legislative Decree no. 74 of 2000 and the ordinary confiscation (art. 12-*bis* of the same law), these measures differ in their scope and purpose: the extended confiscation can be applied only to certain crimes; the

ordinary confiscation is extended to all tax offenses. The object of confiscation under art. 12-*bis* is parameterized to the price or the profit of the crime, while the extended confiscation is limited to the exceeding of the quantitative limits provided by the same provision with respect to the typified espionage offenses.

f) Effects of the measure: the measure deprives the offender of the economic benefits obtained through the crime and restores the status quo ante. The last question to be considered is that of the temporal effect of Article 12-ter of Legislative Decree no. 74 of 2000. According to art. 39 D. L. 26 October 2019, no. 124, the patrimonial sanction can only be applied to crimes committed after the entry into force of the conversion law no. 157 of December 19, 2019 (i.e. December 25, 2019). However, it is not excluded that the confiscation may concern the goods purchased at that time.

g) Seizable Assets: the objects of confiscation are assets representing the price and profit of the crime, unless they belong to a person not involved in the crime, or for a value corresponding to such price or profit. There is a debate as to whether the profit - the cost savings resulting from the crime - should be equal to the tax to be paid, without considering the interest and penalties that are the subject of the tax claim, or whether these additional surcharges should be considered. The Court of Cassation distinguishes between the profit in the tax crimes of declaration and non-payment and in the specific crime of fraudulent tax evasion referred to in Article 11 of Legislative Decree No. 74/2000. In the first case, the profit is identified with the evaded tax plus interest, but not with the penalties, the latter being the cost of the crime. For the offence ex art. 11 of Legislative Decree no. 74 of 2000, the profit of the offence is equal to the value of the property on which the fraud was committed and the tax evaded, including penalties and interest.

CONFISCATION IN CRIMES AGAINST THE PUBLIC ADMINISTRATION (P.A)[39]:

a) Legal name: the confiscation in crimes against p.a.: ART. 322-ter of the Criminal Code

b) Legal source: the extended or disproportionate confiscation, ex art. 322-ter of the Criminal Code also applies to crimes against the public administration, under Title II, Book II of the Criminal Code; specifically, as a consequence of the commission of the crimes of *peculation* (Articles 314 and 316 of the Criminal Code), *embezzlement to the detriment of the State* (Article 316-bis of the Criminal Code), *misappropriation of funds to the detriment of the State* (Article 316-ter of the Criminal Code), extortion (Article 317 of the Criminal Code), *bribery* (Articles 318, 319, 319-ter and 320 of the Criminal Code), *undue induction to give or promise benefits* (Article 319-quater of the Criminal Code).

c) Authority issuing the order: the confiscation falls within the competence of the criminal court as part of a judicial proceeding.

d) Conditions of the measure: this provision is based on three main legal requirements: conviction or guilty plea for one of the listed crimes; possession or availability in any capacity, including through an intermediary, of money, goods, or other benefits of disproportionate value in relation to one's declared income for income tax purposes or economic activity; failure by the offender to justify the lawful source of this wealth. In addition to these requirements, there is another condition of "temporal reasonableness", which is a matter of jurisprudential elaboration. According to the Court of Cassation, this requirement expresses the "temporal correlation between the entry into the person's possession of wealth that is disproportionate and unjustified in its origin and the presumed criminal activity". This proportionality test must also consider "the characteristics of the individual case and therefore

[39] Section drafted by Anna Onore, Ph.D. in Criminal Law

the degree of social dangerousness revealed by the fact". The interpretation given by the Supreme Court of Cassation is in accordance with Directive 2014/42/EU and as a guarantee of the right of defence, ex Art. 24 of the Constitution and Art. 6 of the ECHR, and the principle of proportionality in the limitation of the right to private property and economic initiative, pursuant to Art. 41, 42 of the Constitution and Art. 1 Prot. ECHR. Article 578 of the Code of Criminal Procedure, entitled "Decision on confiscation in special cases in the event of extinction of the crime by amnesty or statute of limitations", was amended by Law No. 3 of January 9, 2019. The regulation allows the appellate court to order confiscation even in case of acquittal by prescription or amnesty. With regard to confiscation for equivalent and other forms of confiscation that in any case have a punitive component, judges affirm that Article 578-bis of the Code of Criminal Procedure is substantive in nature; therefore, it doesn't apply to acts committed before the entry into force of Article 6(4) of Legislative Decree No. 21 of March 1, 2018.

e) Other elements characterizing the measure: /

f) Seizable Assets: article 322-*ter* of the Criminal Code, after the 2012 reform, has some peculiarities compared to the general rules. The first paragraph, which refers to the predicate offenses of articles 314 and 320, provides for the confiscation of assets constituting the price and profit of the offense, unless they belong to a person extraneous to the offense, or for a value corresponding to such price or profit. The second paragraph establishes that the confiscation order against the corruptor, convicted or plea-bargained person under article 321 of the Criminal Code entails the direct seizure of the assets at his disposal or "for a value corresponding to that of such profit and, in any case, not less than that of the money or other benefits given or promised to the public official or to the person in charge of a public service or to the other persons referred to in article 322-bis (2)". The reason is to allow the confiscation of the price of corruption in all cases where there is no profit or where the value is less than the price. Preventive seizure and confiscation of assets constituting the price and profit of the crime are also allowed against legal persons, for crimes against the P.A. The list of crimes was expanded by Law no. 3 of 2019 and subsequently by Legislative Decree no. 75 of July 14, 2020; article 25 of Legislative Decree 231/2001 includes the crime of undue inducement referred to in article 319-quater of the Criminal Code and the crime of corruption between private individuals referred to in article 2635 of the Civil Code (in the latter case, liability is limited to the entity of which the corruptor is a manager or employee).

CONFISCATION FOR ENVIRONMENTAL CRIMES[40].

a) Nomen iuris: Confiscation for environmental crimes

b) Legal source: in Title VI-bis of the Criminal Code, confiscation is regulated both in general, under Article 452-*undecies* of the Criminal Code, and in specific application for the crimes of *organized activities for the illegal trade in waste*, under Article 452-*quaterdecies*, last paragraph, of the Criminal Code, *trafficking in and abandonment of highly radioactive materials*, pursuant to Article 452-*sexies* of the Criminal Code, *obstruction of control*, pursuant to Article 452-*septies* of the Criminal Code, and *conspiracy to commit crimes against the environment*, pursuant to Article 452-*octies* of the Criminal Code. In the Environmental Code, confiscation is mentioned in Article 260-*ter*, for *illegal waste management activities* (Article 256 T.U.A.). Finally, confiscation is included in the system of penalties for administrative offences against legal persons, Articles 9, 19 and 25-*undecies* of L. Decree no. 231 of June 8, 2001. Article 452-undecies of the Criminal Code, orders the obligatory confiscation of items representing the profit or the product of the crimes committed (or used to commit them), ex articles 452-bis,

[40] Section drafted by Anna Onore, Ph.D. in Criminal Law

452-*quater*, 452-*sexies*, 452-*septies* and 452-*octies* of the Criminal Code, when there has been a conviction or application of the penalty at the request of the parties, ex art. 444 of the Criminal Code.

c) Authority issuing the measure: the confiscation falls within the competence of the criminal court, adopted in a judicial proceeding.

d) Conditions of the measure: confiscation is legitimate when the relationship of subordination between the object and the crime is demonstrated, which does not mean a relationship of mere concurrence, but rather a relationship of strict functionality between the crime committed and the confiscated object. Confiscation is not ordered when the goods belong to persons who have no connection with the crime.

e) Function of the measure: The nature of environmental confiscation is debated, according to the punitive or restorative-preventive purpose. Judges recognize a restorative purpose to the confiscation under article 452-*decies* of the Criminal Code, because the assets are attributed to the State and the guilty party spontaneously restores the places; conditions that are lacking in the confiscation under article 452-*quaterdecies*, last paragraph, of the Criminal Code, to which a punitive purpose is attributed. Also in environmental matters, a distinction must be made between direct and indirect (or value) confiscation. Direct confiscation occurs when there is a relationship of subordination between the good and the crime, which is not a mere coincidence, but rather a close functional relationship between the offense committed and the confiscated good. According to the case-law of the European Court of Human Rights, value confiscation is punitive in nature. Therefore, assets of lawful origin, present in the offender's assets and unrelated to the offense committed, may be affected. The punitive nature correlates with an essential restorative function of the status quo ante, through the imposition of a patrimonial sacrifice of a value corresponding to the unlawful advantage derived from the commission of the offense.

f) Other elements characterizing the measure: environmental confiscation is characterized by the provision of a reward mechanism, the non-forfeiture clause, which applies if "the defendant has effectively taken measures to ensure safety and, where necessary, to carry out the rehabilitation and restoration of the sites" (art. 452-*quaterdecies* of Criminal Code). This mechanism of reward, which constitutes a reason for non-punishment with regard to the imposition of the accessory sanction, does not apply when the offense committed is the *illegal trafficking of waste* pursuant to article 452-*quaterdecies* of the Criminal Code, given the structural differences between the cases envisaged; in the latter case, the so-called "active repentance" pursuant to article 452-*decies* of the Criminal Code would apply. However, article 452-*undecies* of the Criminal Code, where it refers to article 452-*octies* of the Criminal Code, which regulates the aggravating circumstance for environmental crimes, allows the extension of the non-forfeiture clause also to environmental crimes committed by criminal or mafia associations, including the crime of organized activities for the illegal trade in waste committed by criminal or mafia associations. An example: the criminal association that commits the illegal trade in waste, aggravated under art. 452-*octies* of the Criminal Code, could benefit from the non-punishment clause; otherwise, if the offense ex art. 452-*quaterdecies* of the Criminal Code is committed by an individual or in conspiracy ex art. 110 of the Criminal Code.

The Environmental Code contains two references to the confiscation: Article 256(3) of Legislative Decree 152/2006 provides that a conviction or sentence under Article 444 of the Code of Criminal Procedure for the creation or management of an illegal landfill "shall be followed by the confiscation of the land on which the illegal landfill was created, if it belongs to the perpetrator or accomplice of the offense, without prejudice to the obligation to recover or restore the land".

g) Confiscable assets: Article 452 of the Criminal Code stipulates that the confiscation of the goods constituting the product or the profit of the offense, or goods of equivalent value, shall always be ordered. The confiscated goods and proceeds are taken away from the convicted person and given to the State for recovery of the sites. Confiscation may be ordered only against the author of the crime or those who contributed to it.

URBANISTIC CONFISCATION[41].

a) Legal name: the urbanistic confiscation.

b) Legal source: pursuant to art. 44, para. 2, T.U. 380/01, the final judgment of the criminal court, which establishes the unlawful allotment, provides for the confiscation of the unlawfully allotted land and the unlawfully built structures. According to the second paragraph, the land is acquired as of right and free of charge for the property of the municipality in whose territory the illegal allotment took place. In addition, the final judgment constitutes a title for the immediate transcription of the unavailability bond in the land registers.

c) Authority issuing the measure and d) Conditions of the measure, what are the crimes for which the measure can be ordered: the power to adopt the measure belongs to the criminal court. Different is the hypothesis referred to in paragraph 3 of art. 31 of the Consolidated Law no. 380/01, in which the competence is attributed to the manager or the head of the competent municipal office, who has to adopt the confiscation measure after establishing the building abuse and verifying the non-compliance with the order of suspension and demolition of the illegally executed works.

e) Function of the measure: with regard to its legal nature, the confiscation provided for by art. 44, co. 2, of the T.U. must be distinguished from the security measure provided for by art. 240, co. 1, since it is mandatory and can be applied even in the presence of a final judgment of acquittal for reasons other than the non-existence of the offence. Another difference can be traced in the destination of the acquired assets. The latter are acquired as of right and free of charge to the municipal property and not to the state property. Moreover, the measure does not seem to overlap with the institution of compulsory confiscation regulated by article 240 of the Criminal Code. The land parcelled out and subsequently subjected to the lien has no dangerous characteristics. The dispossession measure is based solely on the particular purpose attributed to the property, which is considered illegal if it is carried out without a valid authorization. In perfect harmony with what has been maintained in relation to other hypotheses provided for by the urban planning regulations (see the demolition order in art. 31, ult. co, T.U. 380/01), most of the judges' case-law considers the urban confiscation as an administrative sanction, even though it is applied by the criminal court. Therefore, it is applicable even in the case of acquittal, unless it is established that the fact does not exist, in the case of plea bargain, as well as in the case of enforcement, if it was wrongly dismissed, in the cross-examination of its potential addressee. The solution accepted by the national case-law regarding the legal nature of the institution has not been approved by the European Court of Human Rights, which has arrived at a fundamentally criminal framing of the institution referral).

f) Effects of the measure, Remedies available against the measure: in view of the real and not personal nature of the measure, it may also be ordered to the detriment of third parties other than the offender. The latter may, however, if in good faith, seek revocation within the time limits established by law. The buyer, for this sole reason, cannot be considered a third party extraneous to the crime of unlawful allotment, since he can nevertheless prove that he acted in good faith, that is,

[41] Section drafted by Giovanni Sodano, Ph.D. in Criminal Law, magistrate

that he participated in an operation of unlawful allotment with the necessary diligence in fulfilling the duties of information and knowledge. The accused, for his part, may appeal against the decision of the criminal court through the ordinary remedies provided for by the Code of Civil Procedure.

g) Any elements that characterize the measure: /

h) Seizable assets: case-law has affirmed that the confiscation, when it is ordered in the case of a finding of the crime of illegal allotment, must be extended to the entire area affected by the allotment operation, but, if there is a prior subdivision, it must be identified in the conditions that result from the subject of a subdivision operation, as well as from the provision of the relevant infrastructure and urbanization works, regardless of the construction activity actually carried out.

ARMS CONFISCATION[42].

a) Nomen iuris: arms confiscation.

b) Legal source; confiscable property; authority issuing the measure: Article 6 of Law 152/1975 stipulates that the mandatory direct confiscation measure provided for in article 240, paragraph 1, of the Criminal Code applies to all offences involving weapons, any other object capable of causing an offence, as well as ammunition and explosives. Regarding the destination of the property subject to the confiscation measure, the provision provides for different treatment depending on the type of weapon or ammunition seized. Confiscated weapons of war and similar weapons must be given to the competent artillery directorate, which will order their scrapping and subsequent disposal, unless it deems them usable by the armed forces. On the other hand, confiscated ordinary weapons and offensive articles, which are also to be paid to the artillery directorate, should as a rule be destined for destruction. Finally, confiscated ammunition and explosives must be handed over to the competent Artillery Directorate for use by the Armed Forces or for alienation in the manner provided for in article 10, paragraph 2, of law no. 110 of April 18, 1975, or for destruction.

c) Conditions of the measure and d) effects of the measure: according to the constant case-law of the Supreme Court, the compulsory confiscation referred to in Article 6 of Law No. 152 of 1975 applies not only in the case of conviction, but also in the case of application of the penalty at the request of the parties, acquittal due to the particular tenuousness of the facts, dismissal of the proceedings for reasons other than the non-existence of the facts, and extinction of the offence due to the statute of limitations.

e) Function of the measure: The Constitutional Court was recently asked to rule on the legitimacy of the discipline imposed by Article 6 of Law No. 152/1975, in so far as it obliges the judge to order the confiscation of weapons even in the case of the extinction of the offence by means of an oblation. The question of constitutionality had been raised by the Court of Milan, which had expressed doubts as to the appropriateness of such a provision in view of the allegedly punitive nature of the measure, considering in particular that it was contrary to the principle of the presumption of innocence (art. 27 of the Constitution, art. 6 of the ECHR, art. 48 of the CDFUE) and to the fundamental right to property (art. 42 of the Constitution, art. 1 of the ECHR, art. 17 of the CDFUE). The Constitutional Court rejected the objections raised by the trial court and found them to be unfounded. The preventive and non-punitive nature of the measure in question was reaffirmed. In doing so, the Court recalls that the nature of the various forms of confiscation must be assessed in relation to the specific purpose and object of each of them, while being aware of the undeniable diversity of the rules and functions of the confiscations provided for in the Italian legal system. In this sense, since the rationale of the

[42] Section drafted by Giovanni Sodano, Ph.D. in Criminal Law, magistrate

obligation to notify the public security authority of the transfer of weapons, duly notified in advance, lies in the need to ensure that that authority is aware at all times of the place where the weapon is held, also in order to carry out the controls deemed appropriate, it seems clear that the hypothesis of compulsory confiscation, which is linked to its violation, can only have as its main objective the neutralization of the danger associated with the uncontrolled circulation of the weapon. The legislator, the Court observes, "presumes a situation of danger to public order linked to the continued possession of weapons in the head of those who have violated the obligation to communicate their transfer and the related obligation to provide assurances on the existence of the necessary security conditions of the new location (art. 38, seventh paragraph, last sentence, TULPS); a situation of danger to be neutralized precisely by the confiscation of the weapons themselves". Thus conceived, the hypothesis of confiscation under consideration, while constituting a relevant limitation of the right to property protected at the constitutional and supranational level, cannot, in the Court's view, be considered, in the light of the relevance of the objective pursued, as manifestly inappropriate, unnecessary or disproportionate in the strict sense of the term in relation to the objective underlying it.

f) Remedies available: the remedies available against confiscation are those provided for in the Code of Criminal Procedure against the criminal judgment.

II – Mutual Recognition Procedure: Authorities, Issues and National Practices

CONTEXT[43]

After the delineation of the structural intricacies and legal heterogeneity of national systems, the research advanced to a subsequent analytical stage, focusing on the specific implementation of Regulation (EU) 2018/1805 within the Member States. The focus transitioned from abstract legal provisions to the identification of institutional actors involved in the mutual recognition of freezing and confiscation orders and to the practical functioning of cooperation mechanisms. The objective of this phase was twofold: first, to delineate the range of authorities engaged in the issuance and execution of such orders; and second, to engage in a structured dialogue with practitioners, with a view to identifying recurrent obstacles, procedural inconsistencies, or interpretative tensions that may hinder full and effective transposition of the Regulation.

To this end, a detailed questionnaire was developed to collect empirical data on four main thematic axes. The questions were meticulously crafted to elicit detailed information on several dimensions of the mutual recognition system. Firstly, the survey inquired about the primary characteristics of the procedure for recognizing and executing freezing and confiscation orders. This inquiry focused specifically on the authorities that are authorized to issue and implement such orders. Additionally, the survey solicited information regarding any procedural challenges or recurring impediments that arise in practice.

Secondly, the questionnaire investigated the implementation of Article 24 of Regulation 2018/1805, focusing on the identification of competent authorities for the issuance and execution of freezing and confiscation orders. Furthermore,

[43] Section drafted by Andreana Esposito, full professor of criminal law, scientific coordinator of the RINSE Project

the survey inquired about the designation of a central authority to oversee the transmission and receipt of certificates. In cases where such a designation had been made, the survey sought to ascertain the functions and responsibilities assigned to the authority, particularly with regard to coordination, monitoring, and support. In instances where such an authority had not been established, the inquiry sought to ascertain whether centralized administrative practices had emerged in practice, thereby contributing to de facto harmonization.

A third set of questions addressed the involvement of non-judicial actors in the asset recovery process, including law enforcement bodies, financial investigation units, customs authorities, and dedicated Asset Recovery Offices (AROs). The objective of this study was to elucidate the operational reality of cross-sectoral cooperation in asset identification and tracing, extending beyond the confines of the formal judicial process. A particular emphasis was placed on the institutional architecture, the presence of integrated platforms, and the degree of inter-agency coordination at both the national and international levels.

Finally, the survey investigated the tools and networks employed in cross-border asset investigations. A particular emphasis was placed on the utilization of the European Investigation Order, in conjunction with the employment of secure communication and intelligence-sharing platforms. Notable among these is SIENA, CARIN, and other regional or thematic cooperation networks. These platforms are designed to enhance the operational dimension of mutual recognition and facilitate the effective management of complex transnational cases.

The objective of this structured inquiry was twofold: first, to obtain an accurate mapping of national frameworks, and second, to highlight differences in practice, gaps in coordination, and areas where additional support or harmonization may be required. Concurrently, it sought to contribute to the broader academic and institutional reflection on the coherence, accessibility, and effectiveness of cross-border confiscation regimes in the EU. The results of this analysis are presented in the following comparative section, which systematizes the responses received and highlights both convergences and critical divergences across the national systems examined.

COMPARATIVE NOTES[44]

A key instrument to enhance cooperation and communication among authorities is the European Judicial Network (EJN) webpage, which provides access to all notifications submitted by Member States concerning their national competent authorities for the purpose of mutual recognition procedure. In line with articles 6(3), 17(3) and 24(1) of Regulation (EU) 2018/1805, Member States may notify the European Commission of the languages in which they accept certificates. These declarations are then made available on the EJN website for consultation of other Member States[45].

In this regard, Belgium has declared its acceptance of certificates translated into Dutch, French, German, and English. Conversely, France and Italy, based on the information published on the EJN webpage, have not specified any language preferences. With respect to Greece, no notification appears to have been made, including the identification of competent authorities for issuing or executing freezing and confiscation orders. The EJN webpage also hosts a guidance document concerning the application of the Regulation [46].

[44] Section drafted by Caterina Scialla, post-doctoral researcher in Criminal Law, RINSE Project

[45] https://www.ejn-crimjust.europa.eu/ejn/libcategories/EN/4/-1/0

[46] Handbook for judges, prosecutors and other competent authorities on how to issue and execute a request for enforcement of a freezing order, in accordance with Council Framework Decision 2003/577/JHA of 22 July 2003 available at: https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/1756

Regarding supporting documentation, Belgium has stated that the original or certified copy of the freezing or confiscation order does not need to be attached to the certificate. By contrast, Italy requires that certificates transmitted for execution be accompanied by the underlying judicial order.

As for communication methods, no formal channel is mandated, provided that communication between authorities is in writing and can be documented. Belgium recommends that, in the event of difficulties interpreting the certificate, direct contact with the issuing authority by e-mail should be made without delay. Communication between Italian judicial authorities and their counterparts also takes place primarily via e-mail. In France, the investigating judge is responsible for notifying the issuing authority of the execution of the measure, or, where applicable, for providing the grounds for refusal. Notification is also required if execution proves impossible, e.g. due to the disappearance, destruction, or inaccessibility of the property, or the inability to locate it. In cases of postponement of execution, the French judge must indicate the reason and expected duration, using any means that ensures a written record.

Concerning the notifications of the four States under investigation:

Country	**Issuing Authority – Freezing Orders**	**Issuing Authority – Confiscation Orders**	**Executing Authority – Freezing Orders**	**Executing Authority – Confiscation Orders**	**Central Authority**
Belgium	Investigative judge, public prosecutor or a court.	Criminal court (*tribunal correctionnel or cour d'assises*); Public Prosecutor's Office issues the certificate under Reg. 2018/1805.	Investigating judge, typically upon request of the public prosecutor.	Criminal court of first instance.	No
France	Public prosecutor, investigating courts, liberty and custody judge, or trial courts (depending on the case).	Confiscation ordered by a judge; Public Prosecutor's Office transmits the order.	Investigating judge (mainly); public prosecutor may be involved in other contexts.	Territorial criminal court (tribunal correctionnel).	No
Greece	Prosecutors of economic crime, Judicial Council, Investigating Judge.	Criminal court; Judicial Council may issue or confirm the order in certain cases.	Investigating judge.	Prosecutor with the Court of Appeals.	The Division of Judicial Assistance and Extradition of the Prosecutor's Office with the Court of Appeal (facilitating role).
Italy	Judicial authority that adopts the measure in the proceedings: public prosecutor, judge for preliminary investigations, or prevention	Pronounced by the competent criminal or prevention court; certificate issued by the Public Prosecutor's Office.	Public Prosecutor's Office of the court where assets are located (Art. 5, D.lgs. 203/2023).	Court of Appeal with territorial jurisdiction (Art. 6, D.lgs. 203/2023).	Ministry of Justice.

	court (anti-mafia legislation).				

Under Article 24 of Regulation (EU) 2018/1805, Member States may designate a central authority to assist in the transmission and receipt of freezing and confiscation certificates. While most Member States have not appointed such an authority, Italy has designated the Ministry of Justice, which performs an administrative and coordination role comparable to that foreseen for the execution of European Arrest Warrants under Framework Decision 2002/584/JHA. Nevertheless, the involvement of the Italian Ministry of Justice is limited: under Legislative Decree No. 203/2023, national judicial authorities are allowed to communicate and transmit certificates directly to their counterparts in other Member States, provided that the Ministry is informed for statistical purposes.

The identification and seizure of criminal assets is not the sole responsibility of judicial authorities but instead involves different actors with specialised functions. Police and financial investigative bodies play a central role, often operating in close coordination with public prosecutors and investigating judges. However, the structure and operational depth of these actors vary considerably from one country to another.

France offers an integrated approach through its Platform for the Identification of Criminal Assets (PIAC), which acts as a national hub for financial intelligence and asset tracing. The platform's role is both strategic and operational, encompassing domestic and international cooperation, real-time data analysis, and coordination with multiple agencies including tax authorities, customs, and international law enforcement networks such as Europol and Interpol. PIAC is nested within the Central Office for the Repression of Serious Financial Crime and supports local police and gendarmerie units, who remain the first line of response. Although the PIAC itself cannot be directly tasked by the judiciary, it is frequently activated through co-referral mechanisms and functions as a national relay point for complex or transnational investigations. Its integration with a vast network of regional correspondents and liaison officers, coupled with multidisciplinary capabilities, reflects a comprehensive national strategy aimed at disrupting illicit financial flows.

Belgium similarly employs a diversified approach. Alongside the judiciary and law enforcement (both local and federal), a specialized Asset Recovery Office (the Central Office for Seizure and Confiscation) operates within the public prosecutor's office to support the tracing and identification of assets. The existence of this office signals Belgium's commitment to centralized expertise while still operating within a decentralized judicial architecture. Law enforcement and administrative agencies with investigative powers, such as customs, also contribute actively to the process, with coordination often channeled through the federal prosecutor's office in cases of uncertainty regarding territorial competence.

In Italy, the Guardia di Finanza, judicial police units, and public prosecutors cooperate in asset identification, especially in cases involving complex economic crimes, organised crime, and mafia-type associations. While the public prosecutor plays a pivotal role in directing investigations and submitting freezing and confiscation requests to the judiciary, operational support is primarily delegated to law enforcement agencies. Italy's system also allows for integration with preventive measures, with the National Anti-Mafia and Anti-Terrorism Directorate playing a strategic oversight role in high-profile cases.

Greece, by contrast, features a more limited but still functional structure. The Hellenic Financial Intelligence Unit (FIU) holds broad powers to investigate money laundering and related predicate offences. While not directly a law enforcement body, the FIU plays an important role in the analytical and intelligence phase of asset identification and cooperates with judicial and prosecutorial authorities in ongoing investigations. Unlike in France or Belgium, Greece has not established

a dedicated national platform for asset identification or recovery, relying instead on coordination between prosecutors, investigating judges, and existing institutional frameworks under anti-money laundering legislation.

The Asset Recovery Offices (AROs), along with national central offices supporting seizure and confiscation procedures, may also provide assistance and support to judicial and law enforcement authorities in tracing and identifying criminal assets.

Within the Asset Recovery Offices (AROs) network, the exchange of information primarily takes place through Europol's SIENA platform (Secure Information Exchange Network Application) and the Camden Asset Recovery Interagency Network (CARIN).

SIENA is a secure, encrypted communication channel managed by Europol, which enables real-time information exchange between competent national authorities (such as police, customs, and judicial bodies) and Europol itself. It is used for the transmission of operational data in cross-border criminal investigations, including those related to asset freezing and confiscation.

CARIN is an informal network composed of practitioners from both law enforcement and judicial authorities who are involved in the identification, tracing, freezing, seizure, and confiscation of criminal assets. It operates as an inter-agency platform where each participating country is represented by two contact points: one from law enforcement and one from the judiciary (e.g., public prosecutors or investigating judges, depending on the national legal system).

Similar relevant asset recovery networks include:

ARINSA (Asset Recovery Inter-Agency Network for Southern Africa), which follows the CARIN model and facilitates cooperation in asset tracing and recovery across the Southern African region;

STAR (Stolen Asset Recovery Initiative), a joint initiative by the World Bank Group and the United Nations Office on Drugs and Crime (UNODC), aimed at supporting international efforts to recover assets derived from corruption and eliminate safe havens for illicit funds.

The Global Focal Point Network on Anti-Corruption and Asset Recovery, coordinated by INTERPOL in cooperation with STAR, which connects anti-corruption practitioners and facilitates cross-border cooperation in asset recovery cases.

In addition to these networks, Financial Intelligence Units (FIUs) play a crucial role in the early stages of asset investigations. They can provide operational support by supplying information on suspicious transaction reports (STRs) submitted from banks, financial intermediaries, professionals, and other obliged entities under anti-money laundering legislation.

In the context of cross-border investigation preceding the issuance of a freezing or confiscation order concerning assets located in another EU Member State, the investigating authorities may resort to the European Investigation Order (EIO) to gather the necessary evidence. National law enforcement authorities and administrative authorities with responsibilities in criminal or fiscal matters are authorised to exchange information directly with their counterparts in other Member States. This exchange may occur even in the absence of a formal request or mandate, provided it involves information already available through an automated data processing system.

When the information exchanged concerns identifiable individuals, it must be transmitted through secure communication channels that ensure a high level of data protection. France has adopted specific provisions in this regard: Article R 49-40 of the Code of Criminal Procedure sets out the requirements for ensuring secure information exchange; Article R 49-41 mandates that judicial and police authorities maintain a register to log information requests received from other Member States and from Europol.

In this context, the establishment of interoperable databases accessible to various competent authorities represents a valuable tool for tracing assets derived from illicit activities. However, it remains essential to strike a balance between the objectives of crime prevention and the protection of individual privacy rights. A relevant example—although related to a different matter—can be found in the judgment of the European Court of Human Rights of 22 November 2022. The Court ruled that granting public access to registers of beneficial owners constituted a disproportionate interference with the right to privacy and the protection of personal data. It held that, despite the legitimate aims of preventing money laundering and terrorist financing, such access could not justify a reduced level of data protection[47].

In Belgium, investigating judges and prosecutors make active use of EIOs to request asset tracing or evidence collection in other Member States. Belgian authorities also operate through dedicated channels such as Europol's SIENA system, particularly for communication between national Asset Recovery Offices (AROs). For cooperation with third countries, Belgium uses the CARIN network, and when appropriate, other regional structures like ARINSA. In France, the Code of Criminal Procedure enables law enforcement and financial agencies (including customs and tax services) to exchange information directly with counterparts in other EU countries. France also relies on domestic registers, such as FICOBA (bank accounts), BNDP (asset data), and the Trade and Companies Register, to complement international cooperation efforts. Furthermore, the Platform for the Identification of Criminal Assets (PIAC) and its involvement in CARIN and INTERPOL networks underscores France's commitment to both operational and strategic international engagement. Greece maintains a more procedural reliance on traditional judicial cooperation mechanisms. EIOs are commonly used for intra-EU asset investigations, while requests to third countries follow bilateral or multilateral treaties. Although Greece has not developed a national operational platform comparable to PIAC, the Hellenic FIU plays an important role through its membership in the Egmont Group and its access to global financial intelligence. Additionally, Greece participates in CARIN via the Unit against Financial and Economic Crime (SDOE), which contributes to international efforts in asset recovery and mutual legal assistance. In Italy, cross-border asset investigations are coordinated through a wide range of instruments and entities. The ARO, housed within the Ministry of the Interior, acts as the central operational hub for asset tracing requests, functioning within the EU-wide network established under Framework Decision 2007/845/JHA. Italy also relies on the UIF (Financial Intelligence Unit), based in the Bank of Italy, to track suspicious transactions and cooperate with other FIUs globally. Operational cooperation is frequently facilitated by Europol, Interpol, and the SIRENE bureau, with AROs serving as the main point of entry. Italy further integrates the CARIN network into its international strategy, especially in cases involving high-value or complex criminal proceeds.

Importantly, current legislative developments at the EU level aim to reinforce the role of AROs by granting them temporary emergency freezing powers and mandating tighter coordination with Eurojust and Europol.

The comparative analysis revealed several critical issues affecting effective cross-border cooperation in asset freezing and confiscation procedures. Among the main obstacles encountered:

- Lack of centralised bank account registers, company registers, and property registers significantly hampers the identification and localisation of assets.
- Limited training opportunities have led to delayed recognition processes, including instances where public prosecutors were not promptly informed of recognition decisions, in breach of legal requirements for immediate notification.

[47] « Registre des bénéficiaires effectifs : la Cour européenne des droits de l'homme sauvera-t-elle la transparence financière ? by Jean-Philippe Foegle, March, 15th 2023, https://www.dalloz-actualite.fr/node/registre-des-beneficiaires-effectifs-cour-europeenne-des-droits-de-l-homme-sauvera-t-elle-trans

- Communication difficulties with foreign authorities that do not respond promptly. In the case of outgoing certificates, the requesting authority often faces delays due to a lack of timely responses from the executing authority, requiring multiple follow-ups before the status of the order can be clarified.
- Identification of competent authorities: despite existing EJN notifications, problems remain in identifying the competent executing authorities, particularly when assets are dispersed across multiple locations.
- Significant differences of national frameworks.
- Slow procedures: for a freezing request to be effective, it is necessary to act within 24 hours; otherwise, assets are transferred out of the EU.
- Incomplete, insufficient, or inaccurate completion of the certificate, particularly regarding the identification and location of the property. The certificates often contain incomplete, inaccurate, or vague information, especially concerning the identification and location of the property, the factual background of the case, and the justification for applying the internal freezing/confiscation measure. These deficiencies frequently lead to requests for clarification, delaying execution.
- Language and translation challenges: certificates and accompanying documents are often submitted without the required translation or with low-quality translations, generating further delays and sometimes refusals.
- Asset management issues post-freezing/confiscation: in several cases, authorities reported complications in the management of assets, including the costs incurred by the executing State, the depreciation of asset value during lengthy proceedings, and legal uncertainty regarding the early sale of perishable or high-maintenance assets.

NATIONAL ANSWERS

Question 1) Outline the main features of the mutual recognition procedure of freezing and confiscation orders involving national competent authorities for the execution and issuance of orders. Indicate if there are any problematic aspects in the procedure.

If YES, indicate which ones are the problematic aspects (e.g. failure to comply with the deadlines for executing the order; communication difficulties between authorities; difficulties in understanding the mutual recognition form attached to the Regulation 2018/1805; reasons for refusing mutual recognition other than those provided for by the Regulation; etc.)

BELGIUM [48].

Main innovations introduced by the regulation 2018/1805: the procedure for the recognition of seizure and confiscation orders is brought together in a single European legal instrument.

The scope of application has been extended to "non-conviction-based confiscation" in the context of criminal proceedings. This also includes confiscation orders without a final criminal conviction, for example, due to the death of the defendant while the case is being

[48] Section drafted by Walter Quirynen, Deputy Director of the Central Office for Seizure and Confiscation

examined by the criminal court. Belgium must recognise and enforce such confiscation orders, even if they do not appear yet in our legal system. The law of 28 November 2021 has therefore extended the scope of the law of 5 August 2006 to allow the recognition of non-conviction-based confiscation decisions in connection with a criminal offence.

Proceedings in connection with a criminal offence is an autonomous concept in European Union law, covering "all types of freezing orders and confiscation orders issued at the end of proceedings in connection with a criminal offence, and not only those falling within the scope of Directive 2014/42/EU" (Recital 13 of Regulation (EU) 2018/1805. This concerns the seizure and confiscation decision.

The formalities for transmitting certificates have been reduced, and clear deadlines have been set for recognition and enforcement.

The number of grounds for refusal has been limited and made optional.

Victims' rights have been strengthened.

Procedure regarding incoming certificates:

Belgium has issued a notification indicating that certificates in Dutch, French, German or English will be accepted.

Belgium has not made a declaration concerning the necessity to transmit the original or certified copy of the freezing or confiscation order (i.e. the seizure order or confiscation judgment/judgment). If necessary, the issuing and executing authorities can consult each other (e.g. by e-mail).

Freezing orders: the executing authority (in Belgium, the public prosecutor refers the matter to the investigative judge) takes the decision on recognition and execution without delay after receiving the freezing certificate or, where possible, on the date set by the issuing authority. In the case of immediate freezing, within 48 hours for recognition and then within 48 hours for enforcement.

Confiscation: the executing authority (in Belgium, the public prosecutor refers the matter to the criminal court) takes the decision on recognition and execution without delay and no later than 45 days after receiving the confiscation certificate.

Regarding management and disposal of frozen and confiscated assets, Belgian law applies. Regarding duration of the measures, the seizure lasts until a definitive decision on confiscation has been made or the issuing State has been informed of the decision to lift the seizure.

In response to question 3 (2nd paragraph), some public prosecutor's offices have indicated, with regard to incoming (passive) certificates, that investigating magistrates - who in Belgium are the only competent authority for the recognition and execution of European freezing and confiscation orders - do not seem to be very familiar with these instruments. This means that (1) certificates are generally not processed with the necessary urgency and (2) the public prosecutor is not automatically informed of a recognition decision, although the law requires this.

With regard to outgoing (active) certificates, two Public Prosecutor's Offices report that the foreign authorities often do not respond and that it takes several reminders before the "fate" of the EFO/ECO is known. In addition, several months often elapse before enforcement is carried out.

One of the public prosecutor's offices also finds it difficult to identify the competent authority, despite the EJN website.

Another Public Prosecutor's Office also points out that the enforcement authority often has additional questions and that the national legislation of some Member States is significantly different from Belgian legislation and hampers the proper functioning of the certificates in some cases (for example, Germany can only return material goods on the basis of a EFO, whereas for monetary amounts, return to the rightful owner can only be made on the basis of an ECO).

FRANCE[49]

In France, it is the investigating judges who receive the freezing orders and the certificate issued by the judicial authority of the issuing State.

Before taking a decision, the investigating judge to whom an application for freezing has been made shall forward it to the public prosecutor for an opinion.

The public prosecutor who receives a freezing request directly shall forward it to the investigating judge for execution, together with his opinion.

The control exercised by the courts of the executing state when recognising the freezing order is a limited one, since article 33 of the Regulation stipulates that "the substantive reasons which led to the issuing of the freezing order may not be challenged before a court in the executing state".

After ensuring that the request is in conformity with the law, the investigating judge will decide whether to execute the freezing order as soon as possible and, if possible, within twenty-four hours of receiving the order.

He shall immediately execute the freezing order or have it executed. He shall immediately inform the judicial authority of the issuing State of the execution of the freezing order by any means that leaves a written record. Orders to freeze evidence shall be executed in accordance with the French procedural rules. However, if the request or certificate so specifies, freezing orders shall be executed in accordance with the procedures set out in the second paragraph of Article 694-3, i.e. in accordance with the procedural rules of the issuing State, provided that, on pain of nullity, these rules do not reduce the rights of the parties or the procedural guarantees provided by French law.

Reasons shall be given for any refusal to execute an order freezing property or evidence. It shall be notified without delay to the judicial authority of the issuing State by any means capable of producing a written record.

Where it is impossible to execute the freezing order because the property has disappeared, has been destroyed, has not been found in the place indicated in the certificate or it has not been possible to locate it, even after consultation with the judicial authority of the issuing State, the investigating judge shall immediately inform the judicial authority of that State by any means capable of producing a written record.

The execution of an order to freeze assets may be deferred: 1° Where it is likely to prejudice an ongoing criminal investigation; 2° When any of the assets in question has already been frozen or seized in the context of criminal proceedings; 3° Where the freezing order is made with a view to the subsequent confiscation of property that is already the subject of a freezing or seizure order in the context of non-criminal proceedings in France; 4° Where any of the assets in question is a document or medium protected under national defence legislation, as long as the decision to declassify it has not been notified by the competent administrative authority to the investigating judge in charge of executing the freezing order.

The investigating judge who decides to postpone the execution of the freezing order shall immediately inform the judicial authority of the issuing State by any means that leaves a written record, specifying the reason for the postponement and, if possible, its foreseeable duration.

The person who holds the property that is the subject of the freezing order or any other person who claims to have a right to the said property may, by means of a request submitted to the registry of the Investigating Chamber of the Court of Appeal with territorial jurisdiction within ten days of the date of enforcement

[49] Section drafted by Elise Van Beneden, French lawyer, expert in anticorruption

of the order in question, lodge an appeal against the order. The provisions of article 173 shall then apply. The appeal does not have suspensive effect and cannot be used to challenge the substantive reasons for the freezing order.

The person concerned by the freezing order may also contact the registry of the investigating judge to find out about the channels for appealing against the freezing order available in the issuing State and mentioned in the certificate.

The main problems that have arisen during the seizures and confiscation of assets relate to the rights of third parties or the death of the accused person. In the case of concealment or laundering of the proceeds of crime, it may be too difficult to seize the assets. The situation of third parties acting in bad faith who allow the person being prosecuted to freely dispose of assets also poses a problem in practice as because it is difficult to prove bad faith.

Practitioners emphasized the possibility of resorting to article 41-4 of the Code of Criminal Procedure, which states that "*the return of property may be refused when it is likely to create a danger for people or property, when the property seized is the instrument or direct or indirect product of the offence or when a specific provision provides for the destruction of items placed in the hands of the law*". However, this is an application of the text that goes beyond the purpose for which it was created, showing a need for flexibility on the part of the judicial authorities to apprehend the avoidance techniques put in place by prosecuted persons and their relatives.

According to AGRASC, the courts also tend to forget that shell companies, such as non-trading property companies, can be considered as third parties acting in bad faith, which results in an appeal and a loss of one to two years in proceedings.

AGRASC also regrets that the criminal confiscation order - often obtained after a long struggle at the end of a very lengthy procedure - does not in itself constitute a deportation order for the convicted person or third party acting in bad faith. This weakness slows down proceedings by around two years. That being said, a bill currently before Parliament to improve the effectiveness of measures for the seizure and confiscation of criminal assets takes account of AGRASC's request. This bill could be adopted in the autumn.

AGRASC also highlights the inappropriate use of certain seizures and confiscations, which are complex and costly. Where mortgages or lenders' privileges exist, AGRASC often works for the banks, which mainly benefit from these procedures. In France, banks that have financed a purchase and registered a privilege often do not take the necessary steps to have them removed from the mortgage department once repayment has been made, so AGRASC does not have the information it needs to assess whether confiscation is appropriate. In this respect, it would be useful to create an obligation for banks to remove the lender's privilege from the mortgage registry before it is legally cancelled.

Regarding requests made by France to a foreign country, practitioners have expressed their desire for a faster procedure. In their view, for a freezing request to be truly effective, it must sometimes be possible to act within 24 hours, otherwise the assets are transferred and leave the European Union. This is the case in fraud cases.

They therefore expressed the wish that a procedure could be put in place to freeze a bank account in the European Union under the supervision of the police. This would be a temporary measure lasting 72 hours, with the possibility of obtaining a decision from the issuing authority within this timeframe.

A final subject that comes up regularly is the training of magistrates and investigators and communication between them. Placed at the heart of the fight against criminal assets, judicial police officers play a key role in the detection and identification of criminal assets. This is an essential prerequisite for imposing effective asset sanctions in the face of criminal or even mafia-style activities.

Judges and investigators need to establish a genuine partnership on cases so that the most appropriate measures can be taken to deal with assets as quickly as possible to prevent them from disappearing before judgment is handed down.

GREECE[50]

Although Greece has not yet adopted any legislation regarding the implementation of Regulation 2018/1805, its provisions are directly applicable in relation to receiving and transmitting freezing and confiscation orders, as well as the provisions of Law 4478/2017 are considered to still be in force (provided that they are not against the provisions of the Regulation). The transmission and/or receipt of freezing and confiscation orders is conducted by using the appropriate Regulation certificates. No problems were identified in the application of the Regulation.

1. Freezing orders

The investigating judge, the prosecutor or any other judicial authority (such as the judicial council), who have powers to issue a freezing order, may transmit it for execution to the competent executing authority of the EU member state, where this order shall be recognised and executed. The Hellenic FIU has no such powers, as it is not considered to be a judicial authority **(art. 12 par. 1 L. 4478/2014).** The transmission of the decision is conducted via submitting the appropriate certificate of the Regulation.

In relation to the recognition and execution of freezing order transmitted by other EU member states to Greece, **the investigating judge, in whose district the assets are located, acts as the executing authority** (art. 12 par. 2 L. 4478/2018). From our interview with the Investigating Judge of the Court of Athens, we were informed that 10-20 freezing orders are received on a yearly basis from other EU member states. Moreover, **no serious problems were reported in understanding the contents of the received certificates.** A freezing order is usually recognized and executed **within 7 days**, as the Investigating Judge in Athens has not yet received a certificate with a request for the express execution of the freezing order, as per art. 9 par. 3 of the Regulation. The Judicial Council with the Court of Misdemeanours is the designated judicial authority to decide on an appeal lodged against the recognition and execution of the freezing order (art. 18 L. 4478/2017).

2. Confiscation orders

The Prosecutor with the Court of Appeals of the district where the confiscated asset is located, is the competent authority for transmitting confiscation orders issued by Greek courts to the competent EU executing authorities **(art. 20 par. 1 L. 4478/2017)**. The transmission of the confiscation order is conducted via submitting the appropriate certificate of the Regulation.

The Prosecutor with the Court of Appeals, in whose district the confiscated assets are located or where the (natural or legal) person against whom the confiscation was issued has its residence, is the competent authority to receive, recognise and execute confiscation orders transmitted by other EU member states. In case the location of the asset is not mentioned and the address of the person against whom the confiscation decision is unknown, the Prosecutor with the Court of Appeals of Athens is responsible for recognizing and executing the confiscation order **(art. 20 par. 2 L. 4478/2017).** The Judicial Council with the Court of Appeals is the designated judicial authority to decide on an appeal lodged against the recognition and execution of the confiscation order (art. 25 L. 4478/2017).

[50] Section drafted by Alexandros Tsagkalidis, Senior Criminal Defense Lawyer

ITALY[51]

In passive procedures, the issuing authorities of the Member States transmit the certificates to the Ministry of Justice, which subsequently forwards them to the competent judicial authorities. In active procedures, the judicial authorities responsible for issuing the certificate transmit it through the Ministry of Justice, which plays the same administrative and mutual assistance role as it does for the execution of European arrest warrants pursuant to Framework Decision 2002/584/JHA. The transmission of the certificate leads to the opening of a file at the Ministry.

From the partial data collected, the main problems relate to:

- Incomplete, insufficient or inaccurate completion of the certificate, with particular reference to the identification and location of the property.

- Incomplete or insufficient description of the facts and explanation of the conditions for the internal freezing and confiscation measure.

- Uncertainty as to the competent authorities.

- Insufficient knowledge of the legal instrument.

- Lack of objection by the party concerned, as a third party in good faith, in respect of whom there is no evidence of involvement in the offence (Article 19(1)(e)).

- Inadequate/insufficient justification by reference (Article 19(1)(c) or (h)).

- Translation of the certificate and any additional procedural documents.

Question 2) List the national authorities identified under Article 24 of Regulation 2018/1805, responsible for issuing and executing confiscation orders, outlining their essential characteristics and functions. Specifically, the data should concern:

a. Competent authority for issuing freezing orders;

b. Competent authority for issuing confiscation orders;

c. Competent authority for executing freezing orders;

d. Competent authority for executing confiscation orders;

e. Any central authority designated as responsible for the transmission and receipt of freezing and confiscation certificates and for the assistance to be provided to its competent authorities. What functions are assigned to this authority and how it operates. If this authority has not been identified - being optional - ask if any practices have been adopted for a centralized management of the receipt and transmission of orders, and what these procedures are.

BELGIUM

Competent issuing authorities

[51] Section drafted by Caterina Scialla, post-doctoral researcher in Criminal Law, RINSE Project

- A freezing order can be issued by an investigative judge, a public prosecutor or a court.

- A confiscation order can be issued by a public prosecutor.

Competent executing authorities

Freezing order is executed by the **investigating judge**. However, certificates should be transferred to the **public prosecutor** of the district where the (majority of) items of property are located. An overview of the competent local public prosecutors' offices is available on the European Judicial Network website. The competent public prosecutor will present the case to the investigating judge. If property to be seized are localized in different judicial areas or if there are uncertainties on the localization or on the competent executing authority, contact can be taken with the Federal Prosecutor's Office in order to determine the competent authority.

Confiscation order: the competent authority to execute a confiscation order is the **criminal court of first instance**. However, certificates should be transferred to the public prosecutor of the district where the (majority of) items of property are located. An overview of the competent local public prosecutors' offices is available on the European Judicial Network website. The competent public prosecutor will bring the case before the criminal court. If property to be seized are localized in different judicial areas or if there are uncertainties on the localization or on the competent executing authority, contact can be taken with the Federal Prosecutor's Office in order to determine the competent authority.

***FRANCE*.**

a. **Competent authority for issuing freezing orders**: Depending on the case, this may be the public prosecutor, the investigating courts, the liberty and custody judge or the trial courts.

b. **Competent authority for issuing confiscation orders**: The issuing authority for confiscation orders issued by French courts is the public prosecutor's office of the court that ordered the confiscation.

c. **Competent authority for executing freezing orders**: The regulation does not specify which judicial authority is competent to recognize and enforce freezing orders issued by foreign judicial authorities. Article 23 of the regulation states that "*the execution of freezing orders and confiscation orders shall be governed by the law of the executing State, and its authorities alone shall be competent to decide how such orders are to be executed and to determine all measures relating thereto*". Article 695-9-15 of the French Code of Criminal Procedure stipulates that "*asset freezing orders for the purpose of subsequent confiscation shall be executed, at the advanced expense of the Treasury, in accordance with the procedures set out in the present Code*". In this regard, France has notified the European Commission that the enforcement authority for France is the investigating magistrate. Regarding domestic territorial jurisdiction rules, article 695-9-11 of the French Code of Criminal Procedure should be applied. According to this article, "The freezing order and the certificate issued by the judicial authority of the issuing State shall be transmitted, in accordance with the procedures set out in article 695-9-6, to the territorially competent investigating judge, if necessary, through the intermediary of the public prosecutor or the public prosecutor's office. The territorially competent investigating judge is that of the place where any of the assets covered by the freeze request are located or, if this place is not specified, the Paris investigating judge. If the judicial authority to which the freezing request has been forwarded is not competent to act on it, it shall forward the request without delay to the competent judicial authority and inform the judicial authority of the issuing State.

d. **Competent authority for executing confiscation orders**: The enforcement authority for confiscation orders issued by the courts of another EU Member State is the territorially competent criminal court, seized at the

request of the public prosecutor. The territorially competent correctional court is that of the place where one of the confiscated assets is located or, failing that, the Paris correctional court.

e. **Any central authority designated as responsible for the transmission and receipt of freezing and confiscation certificates and for the assistance to be provided to its competent authorities.** Article 4 of EU Regulation 2018/1805 stipulates that the freezing certificate is directly sent to the executing authority by any means that leaves written proof of transmission and under conditions that enable the executing authority to verify their authenticity (Article 695-9-6 of the Code of Criminal Procedure). Regulation EU 2018/1805 does, however, allow states to designate one or more central authorities to the commission to ensure the transmission of freeze certificates. In application of Article 695-9-6 of the Code of Criminal Procedure, "*The freezing order and certificate are, subject to the provisions of the second paragraph, transmitted directly by the judicial authority of the issuing State to the judicial authority of the executing State*". However, the text provides for an exception, specifying that "Where a Member State of the European Union has made a declaration to this effect, the freezing order and certificate shall be sent through one or more central authorities designated by the said State"

GREECE

Competent authority for issuing freezing orders;

Prosecutors of economic crime: During a preliminary investigation for the crimes mentioned in art. 35 GCCP under the conditions described above (see above, *Q.2 under III-A-1*). The Division against Economic Crime is part of the Prosecutor's Office with the Court of Appeals of Athens and is headlined by four Prosecutors with the Court of Appeals, who are assisted by at least eight prosecutors with the Court of Misdemeanours.

Judicial Council: It is a panel of three judges, with the court of misdemeanours or appeals, who sits in camera and has the powers to issue a freezing order during the preliminary investigation, when conducted under the provisions of L. 4557/2018 against money laundering (*Q.2 under III-B-2.1)*.

Investigating Judge: He/she is a judge with the court of misdemeanours or appeals, depending on his/her rank, who conducts the main investigation during the pretrial stage of criminal proceedings. A main investigation is opened, and the case file is refereed to an investigating judge when the prosecutor, who has conducted a preliminary investigation, decides to press charges (i.e., initiate the prosecution) for serious crimes (felonies). An investigating judge may issue a freezing order, under the conditions mentioned above (see above, *Q.2 under III-A-2, III-B-2.2*)

Competent authority for issuing confiscation orders.

As mentioned above, confiscation of assets, which are the instrumentalities or proceeds of a criminal offence, is a criminal sanction. According to art. 96 of the Greek Constitution, solely criminal courts have the powers to impose criminal sanctions. Therefore, confiscation shall be ordered by the judicial council, during the pretrial stage, or by a criminal court, following a trial hearing

a. Competent authority for executing freezing orders; Investigating judge (art. 12 par. 2 L. 4478/2018)

b. Competent authority for executing confiscation orders; Prosecutor with the Court of Appeals (art. 20 par. 2 L. 4478/2017).

c. As already mentioned above, a law implementing Regulation 2018/2015, which would designate the authorities responsible for officially transmitting and receiving freezing and confiscation certificates, has not been issued yet. However, the division of judicial assistance and extradition of the Prosecutor's Office with the Court of Appeal acts as an authority facilitating

the receipt and transmission of such certificates between the competent authorities.

ITALY[52]

a. Competent authority for issuing freezing orders;

The competent authority for issuing a freezing order is the public prosecutor or the judge who issued the freezing order in the course of criminal proceedings.

This provision refers to a measure taken during criminal proceedings, so the scope of the Regulation is wider than "criminal proceedings", since Recital No 13 states that the principle of mutual recognition applies as long as the measure is connected to a criminal offence.

This means that the scope of the Regulation also extends to preventive seizures and confiscations, which are measures that can be ordered by the President of the Court, the Court of First Instance and the Court of Appeal, pursuant to Articles 20, 22, 25 and 27 of the anti-mafia laws on preventive measures, as provided for by Legislative Decree 159/2011.

b. Competent authority for issuing confiscation orders;

The Public Prosecutor's Office attached to the executing judge, or the Public Prosecutor's Office attached to the Court of First Instance or Court of Appeal that issued the confiscation order provided for in the Code of Antimafia Laws and Preventive Measures, shall be competent to issue the confiscation order.

c. Competent authority for executing freezing orders;

The competent judicial authority at the moment of receipt of the freezing order is the public prosecutor of the court where the assets are located, who for this purpose submits his requests to the judge for preliminary investigation. If the freezing order concerns assets located in more than one judicial district, the Prosecutor of the place where the greatest number of assets is located or, in the event of an equal number, the judicial authority that first received the order, will have jurisdiction. The execution of the request is then assigned to the competent magistrate according to the criteria established by the Italian Code of Criminal Procedure. If a seizure is requested for evidentiary purposes, the same prosecutor as above will be responsible for its execution and will issue the order; if a preventive seizure is requested for confiscation purposes, the prosecutor will submit the request to the judge of the court of first instance responsible for issuing the relevant order. In the event of a conflict of jurisdiction, the Court of Cassation resolves the dispute. In the case of a serious crime (mafia-like criminal association), the request is also sent, for information and to ensure the investigation, to the National Anti-Mafia and Anti-Terrorist Prosecutor's Office and to the General Prosecutor of the competent Court of Appeal.

The authorities indicated in Article 24 of the Regulation are in line with Articles 4 and 5 of Legislative Decree 35/2016, which transposed Framework Decision 2003/577/JHA in Italy, subsequently replaced by the 2018 Regulation.

d. Competent authority for executing confiscation orders;

The judicial authority competent to receive the confiscation order is the territorially competent court of appeal where the property is located or, in the case of confiscation of a sum of money, the place where the natural or legal person has assets or income is considered instead. If this place is unknown, jurisdiction is determined by the place of residence of the natural person or the registered office of the legal entity. If there are several assets located in different places, the location

[52] Section drafted by Caterina Scialla, post-doctoral researcher in Criminal Law, RINSE Project

of the asset with the highest value is used. If jurisdiction cannot be determined in this way, the Court of Appeal of Rome has jurisdiction. The court decides with a formal chamber procedure (art. 127 of the Italian Penal Code) and transmits the decision to the Public Prosecutor's Office of the Court of Appeal for the relative enforcement.

NOTE: The Regulation extends the qualification of the issuing authority of a freezing measure to include a judicial police or administrative authority, provided that it is validated by a judicial authority prior to its transmission abroad (art. 2, no. 8, letters a) - iii)). Similarly, in the case of confiscation measures, the Regulation includes the administrative authority responsible for executing the measure as an issuing authority, provided that the measure is issued by a judicial authority (Article 2(8)(b)). The Regulation thus ensures the judicial nature of the issuing and execution of the measures.

e. Any central authority designated as responsible for the transmission and receipt of freezing and confiscation certificates and for the assistance to be provided to its competent authorities.

The Ministry of Justice, acting as the central authority, is responsible for the transmission and administrative receipt of freezing and confiscation certificates, as indicated in the notification under Article 24(2) of the Regulation. A guideline has been adopted, namely the Circular of the Ministry of Justice of 18 February 2021 - Implementation of Regulation (EU) 2018/1805 regarding the mutual recognition of freezing and confiscation measures.

The standard certificate (Annexes I and II of the Regulation) is completed and signed by the issuing authority and then sent to the Central Authority. At that point, a file is opened for the specific procedure and the certificate, possibly accompanied by the judgment imposing the measure, is recorded. The registry forwards it to the competent judicial authority for execution and informs the Rome Prosecutor's Office and Eurojust for their awareness (the Ministry signed an operational agreement with Eurojust on 12 March 2021). Communication between the authorities takes place by e-mail and through the internal interoperability system between the judicial authorities.

Everything is computerized and the documents are digitized, so there are no special problems in the process of obtaining and sending the certificate.

If the local authority encounters problems - for example, in fulfilling the certificate - and needs clarification, it can seek assistance both from the Ministry and directly from the issuing authorities. The process is extremely flexible. The designation of the Ministry as the central authority was also intended to facilitate the collection of statistical data required by Article 35 of the Regulation (see question 30 for reference). The current draft of the Legislative Decree suggests direct communication between the issuing and executing authorities as preferable to speed up the process. However, this would result in the loss of the coordination and data collection role currently held by the Ministry (final confirmation is pending the publication of the final version of the decree).

Question 3) Identify other entities involved in national proceedings for identifying and seizing assets, (such as the police, the financial police, etc).

BELGIUM

Competent authorities for the identification and seizure of assets:

- The Judiciary: investigating judges and prosecutors;

- Law enforcement: local and federal police and administrative bodies who have investigating powers (e.g. customs).

- Asset Recovery Office: the Central Office for Seizure and Confiscation, established within the Judiciary ("part of the public prosecutor's office") can assist and support judicial and police authorities in the tracing and identification of assets.

FRANCE

The national police and the national gendarmerie oversee carrying out asset investigation when public prosecutor or investigating magistrate request it.

When necessary, national police, national gendarmerie, the public prosecutor or investigating magistrate can ask the Platform for the Identification of Criminal Assets (*Plateforme d'identification* des *avoirs criminels*), herein after "**PIAC**" to carry out more complex international searches and using bilateral channels with preferred foreign countries.

Created in September 2005 within the Central Office for the Repression of Serious Financial Crime (OCRGDF) of the Central Directorate of the Judicial Police (General Directorate of the National Police), the PIAC is responsible for detecting, identifying, and seizing the assets of the perpetrator of an offence, in order to enable the courts to order confiscations.

Its missions were specified by the interministerial circular of May 15, 2007 (NOR INT/C/07/00065/C), under the terms of which the platform is responsible for identifying the financial assets and property of criminals, with a view to increase their seizure or confiscation, for systematizing the financial approach to investigations against criminal organizations and for centralizing information relating to the detection of illegal assets anywhere in France and abroad**.**

- **Centralize, cross-check and provide information on illegal assets, wealth or financial flows, share investigative capabilities and coordinate research**

Information on cases or individuals likely to be implicated in crimes or offenses generating illegal profits is passed on from the territorial level to the platform.

This information is centralized in a work file. This file, specially dedicated to this platform, is linked to the OCRGDF's documentation, to enable cross-checking with national and international information received by the Office within the "Specialized Operational Documentation" section.

The platform's inter-regional correspondents are:

- For the national police force, the suspicious asset identification and economic and financial information processing units of the inter-regional and regional judicial police directorates and the departmental public security directorates (DIPJ, DRPJ and DDSP).

- For the national gendarmerie, the gendarmerie commands for the defence zones (RGZ).

According to the Circular, these structures inform the platform after initial local processing, in real time if necessary if the information is urgent. The distribution of information, or feedback, from the national to the local level will follow the same circuit.

In the event of an emergency, a short communication circuit will be set up, directly between local services and the OCRGDF platform.

All information is subject to multi-disciplinary exploitation (police, gendarmerie, tax, customs, URSSAF, etc.), to fully determine the financial and asset environment of suspects, and to international exploitation, through searches in Europol and Interpol databases.

The platform manager or his deputy participates in international forums and expert groups in this field (CARIN group, whose secretariat is provided by Europol). He or she can also call on internal security attachés (ASI) posted abroad, via the SCTIP (Service de *coopération* technique *internationale* de police).

The studies carried out by the platform are forwarded to the regional departments.

A liaison office dedicated to the identification of criminal assets meets regularly, at least twice a year. It brings together members of the platform, correspondents based in police and gendarmerie units, GIR heads and representatives of other administrations involved in the platform. Where necessary, it may also involve the SNDJ (national judicial customs service).

- **Support traditional judicial investigations into local, national and international criminal networks (drugs, cars, forged payment cards, counterfeit goods, etc.).**

If the public prosecutor or investigating magistrate deems it necessary to carry out asset investigations on a person implicated in a crime, he or she can add to the request to the locally competent investigation department a co-referral to the OCRGDF.

However, despite its operational nature, the platform is not intended to be referred to directly by the public prosecutor or the investigating magistrate.

Only the local investigation departments of the national police and the national gendarmerie, referred to by the public prosecutor or the investigating magistrate, can ask the platform to draw up or complete the assets section of their investigations in cases where these departments or the GIRs are unable to do so, or encounter limitations in the execution of their mission, particularly for investigations with a national or international dimension.

The platform is consulted by regional correspondents, set up in inter-regional and regional criminal investigation departments and gendarmerie commands for defence zones, who work with the GIRs to ensure initial local processing or, in urgent cases, directly by the investigating departments and the GIRs.

Asset identification requests sent by local police or gendarmerie services to the OCRGDF platform will specify the searches already carried out at local level (such as consultation of national or local files - police, gendarmerie, tax, customs, URSSAF, or requests sent to the central police operational cooperation section (SCCOPOL) for consultation of Europol or Interpol files).

It can also activate the SCTIP to facilitate these procedures.

For each individual implicated in a legal proceeding, a form will be drawn up in the proceedings, providing a complete statement of his or her assets.

- **Initiate criminal investigations on its own initiative into individuals or business activities that may be linked to terrorist movements, and particularly Islamist movements.**

Based on targets designated by investigative or intelligence services specially in charge of combating terrorism, on individuals who may be linked to terrorist movements, in particular from the Islamist movement, or on commercial activities that may be related to these individuals, the platform can carry out an investigation under the provisions of the Code of Criminal Procedure in order to identify their assets, and to determine the origin and destination of the financial flows of these activities.

The operational approach developed by the platform draws on the working methods of the regional intervention groups (GIR), transposing them to the national level. It was initially made up of around thirty people, with an equal tripartite composition between the national police, the national gendarmerie and other partner ministries and administrations. It now has twelve agents. According to its members, the decline in staff numbers is due to a general difficulty in recruiting police officers.

It currently has a staff of:

- eleven investigators
- six police officers
- and five gendarmes.

It is headed by a police commander at functional level, assisted by a gendarmerie captain. The unit has an operational documentation group (two staff) and an investigation group led by a police lieutenant with a gendarmerie chief warrant officer as deputy. The team is completed by a representative of the tax authorities, seconded to the central directorate of the judicial police and more specifically to the OCRGDF.

However, the Platform relies on its network of 150 referents appointed within the regional units. This means that it is not affected by the recent reform of the criminal investigation police, which has fragmented the investigation services by placing them under the authority of the prefects, the local representatives of the executive power in France.

Finally, the **parquet national financier** is a public prosecutor's office, created by Act no. 2013-1117 of 6 December 2013 on tax fraud and serious financial crime and by Organic Act no. 2013-1115 of 6 December 2013 on the Financial Public Prosecutor, specialized in complex cases and breaches of probity.

It currently has eighteen magistrates, six specialist assistants, one legal assistant, thirteen registry staff and two technical assistants. At his initiative, the total amount of sums ordered in favour of the Treasury since 2014 has been €11.861 billion. It is currently handling more than seven hundred cases.

GREECE

The Hellenic FIU has broad powers to investigate activities related to money laundering activities and its predicate offences (art. 47-49 L. 4557/2018).

ITALY[53]

In addition to the judicial authorities, law enforcement agencies (such as the Guardia di Finanza, *Polizia giudiziaria*) are also involved in national asset identification procedures.

4) How are cross-border asset investigations conducted? Which dedicated *Asset Recovery networks* are most used (e.g. the CARIN network)?

BELGIUM.

The Judiciary (investigating judge or prosecutor) can send a European Investigation Order (EIO) to the competent authorities of another EU MS in order to collect evidence and seize evidence.

The exchange of information between AROs via the Europol SIENA channel is also possible at the request of judicial and police authorities. Information can also be shared with an ARO of a third state via the CARIN network or a CARIN style network (e.g. ARINSA).

[53] Section drafted by Caterina Scialla, post-doctor post-doctoral researcher in criminal law, RINSE Project
al researcher in criminal law, RINSE Project

FRANCE.

About cross-border asset investigations

Pursuant to Article 695-9-31 of the Code of Criminal Procedure, "*for the application of Council Framework Decision 2006/960/JHA of 18 December 2006, the services or units of the national police, the national gendarmerie, the Directorate General of Customs and Excise and the Directorate General of Public Finance designated by order of the Minister of Justice and, as appropriate, the Minister of the Interior or the Minister responsible for the Budget may, under the conditions set out in this section, for the purposes of preventing an offence, gathering evidence or tracking down the perpetrators, exchange with the competent services of another Member State of the European Union information which is at their disposal, either because they hold it or because they can access it, in particular by consulting an automated data processing system, without it being necessary to issue or request a requisition or any other coercive measure*".

The Order of 19 February 2020 designating the customs and tax services competent to exchange information with other services of the Member States of the European Union provides that the following are authorized to exchange information with other services of the Member States of the European Union:

- services carrying out judicial police missions under the authority of the financial judicial investigation service;
- the departments of the National Customs Intelligence and Investigation Directorate;
- the departments of the territorial directorates of the General Directorate of Customs and Excise authorised to carry out investigations and surveillance.

Pursuant article 695-9-33 of the Code of Criminal Procedure "*If there is reason to suppose that a Member State holds information falling within the scope of Article 695-9-31 that is useful for the prevention of an offence or for investigations to establish proof or to find the perpetrators, the services and units mentioned in the same Article may request that it be passed on to the competent services of that State.*

The request for transmission shall state the reasons for assuming that the information is held by these services. It shall specify the purposes for which the information is requested and, where the information relates to a specific person, the link between that person and the purposes of the request."

To do this, they use specific secure electronic communication methods that guarantee a high level of data security (article R 49-40 of the Code of Criminal Procedure).

The Public Prosecutor, the Investigating Magistrate and the officers or agents of the judicial police referred to in Articles 60-1, 77-1-1 and 99-3 shall keep registers enabling the traceability of requests received from foreign counterpart authorities and Europol and relating to the communication of information from the department referred to in Article L. 561-23 of the Monetary and Financial Code or declarations referred to in Article 1649 A of the General Tax Code. The registers are kept for five years after their creation (article R 49-41 of the Code of Criminal Procedure).

About *Asset Recovery networks*

Criminal assets can be identified by means of various files managed by public authorities or under their control. On this basis, orders can be issued to obtain additional information on the persons or entities concerned. The request for mutual assistance may usefully be amended in the light of this available information.

The main files used in France are as follows:

- FICOBA: le *Fichier* national des *comptes bancaires*.

FICOBA is a centralised file created in 1982 and managed by the Directorate General of Public Finances. It contains all relevant information relating to the creation, modification and closure of all accounts held in France, within the framework of a French or foreign financial institution operating in France. On this basis, information relating to financial flows can be obtained directly from the bank concerned, by court order.

- BNDP: *Fichier* national des données *patrimoniales*.

The BNDP contains information relating to assets held by persons known to the tax authorities through their various tax returns. In particular, it contains extracts of property transfer deeds for valuable consideration (sales of buildings or land) or free of charge (donations and inheritances), as well as the identities and addresses of the people and properties concerned. TRACFIN can access this database on request (without having to obtain a court order).

- Le *fichier immobilier* - The real estate file

This file contains information relating to built-up land (immovable property) or not. It can be used to determine the identity of the owners of the land, and their place of residence if they do not live in the property in question. The file can be used to determine the identity of the occupants of premises (the tenant or the occupant without right or title), and whether it is a principal or secondary residence[54].

- The Trade and Companies Register (RCS).

The Trade and Companies Register contains information on registered companies and businesses, including information enabling shareholders to be identified, as well as key financial and accounting information. This information is accessible to the public via a website www.infogreffe.com but also on the website https://www.societe.com that might give more information about legal representatives and the website https://www.pappers.fr that might give more documentation about companies (minutes of general meetings, transfer of shares, change of management, balance sheet and profit and loss accounts).

France is also involved in international initiatives to promote best practice and facilitate international cooperation.

- Register of Beneficial Ownership (Registre des *Bénéficiaires Effectifs* - RBE)

Beneficial owners of registered entities are individuals who directly or indirectly hold more than 25% of the share capital or voting rights; or exercise, by any other means, "power of control" over the company.

This register introduced by Directive (EU) 2018/843 of 30 May 2018, makes it possible to query the information of all individuals exercising control over a company. It is based on the BPR declarations, which are mandatory under the Sapin II anti-corruption law of 9 December 2016.

On 22 November 2022, the Court of Justice of the European Union struck down public access to registers of beneficial owners, ruling that such access disproportionately infringed the right to privacy and the protection of personal data of beneficial owners[55].

Nevertheless, in a press release dated 19 January 2023, the French Ministry of the Economy announced that the register of beneficial owners would remain accessible to the public[56]. In the future, we will have to pay close attention to whether these various registers, which are essential for identifying criminal assets, are maintained.

It should be noted that AGRASC has for several years been requesting easy and rapid access to the *Fichier informatisé* des données *juridiques immobilières*

[54] Ministère de la Justice "GUIDE SUR LE RECOUVREMENT DES AVOIRS CRIMINELS EN FRANCE" - G8 – Partenariat de Deauville: guide sur le recouvrement des avoirs criminels en France.

[55] « Registre des bénéficiaires effectifs : la Cour européenne des droits de l'homme sauvera-t-elle la transparence financière ? by Jean-Philippe Foegle, March, 15th 2023, https://www.dalloz-actualite.fr/node/registre-des-beneficiaires-effectifs-cour-europeenne-des-droits-de-l-homme-sauvera-t-elle-trans.

[56] https://presse.economie.gouv.fr/19012023/

(FIDJI), which is the system for managing legal real estate data under the control of the French Land Administration.

Thus, said here are the most used Asset Recovery international networks according to the Ministry of Justice.

- STAR (Stolen Asset Recovery Initiative)

STAR is a partnership between the World Bank Group and the United Nations Office on Drugs and Crime (UNODC) that supports international efforts to end safe havens for corrupt funds.

- CARIN Network (Camdem Asset Recovery Interagency Network)

CARIN is an informal network of law enforcement and judicial practitioners in the field of asset tracing, freezing, seizure and confiscation. It is an inter-agency network. Each member state is represented by a law enforcement officer and a judicial expert (prosecutor, investigating judge, etc. depending on the legal system).

- The Global Focal Point Network on Anti-Corruption and Asset Recovery

The Global Focal Point Network on Anti-Corruption and Asset Recovery is a project lead by Interpol et STAR.

It provides a secure information exchange platform for the recovery of criminal assets. Authorized law enforcement officers from each member country are designated as focal points and can respond quickly when another country requires assistance.

The aim of this initiative is to support asset freezing, and the seizure, confiscation and recovery of stolen assets. It facilitates the secure exchange of sensitive information among the focal points from anti-corruption and asset recovery agencies.

GREECE

During criminal pretrial investigations prosecuting and judicial authorities tend to use the European Investigation Order as a tool to gather information from other EU member states. In case of a third country, Greek authorities may proceed with a mutual legal assistance request, which would be issued based on the provisions of the applicable bilateral or international treaty. Moreover, the Hellenic FIU is a member of the Egmont Group of FIUs and the FIU Platform. Also, SDOE's (Unit against Financial and Economic Crime) D' Division on Recovery of Assets deriving from criminal offences and on mutual assistance collaborates with CARIN network.

ITALY

There are several instruments in European law concerning judicial cooperation tools for the identification of assets to be seized/confiscated. The Framework Decision No. 2007/845/JHA on asset recovery, adopted on December 6, 2007, plays a crucial role. Thanks to this Framework Decision, a network has been established between the police forces of the Member States (AROs). The 2007 Framework Decision is operationally integrated with Framework Decision 2006/960/JHA on the exchange of information and intelligence between law enforcement agencies, which encourages the use of pre-printed forms for the exchange of information and sets a deadline for the initiation of communication procedures.

Each Member State establishes one (or two) AROs for asset recovery. The requesting ARO provides information on the assets subject to measures (bank accounts, real estate, vehicles, vessels, other valuable assets) and on the natural and legal persons presumed to be involved in the proceedings.

In Italy, the ARO has been identified as the National Office for Asset Recovery, established within the Ministry of the Interior - Central Directorate of Criminal Investigation, within the Service for International Police

Cooperation, by decree of the Director General of Public Security dated May 18, 2011. This office uses the network of AROs as well as Interpol - National Unit; Europol National Unit and the SIRENE Division, which provides links with the countries participating in the Schengen Agreement.

National authorities do not always have sufficient resources to locate assets subject to cross-border financial measures. Indeed, one of the objectives of the new confiscation proposal is to strengthen and make more efficient the process of identifying assets located in other jurisdictions. Among other things, the Directive aims to address the lack of adequate investigations to identify assets by enhancing the operational capacity of AROs (Asset Recovery Offices) through the provision of temporary and emergency freezing powers where there is a risk that assets may disappear. It also sets up a system of cooperation between AROs and Eurojust and Europol. In some cases, such as high-profit crimes, financial investigations will have to be initiated automatically. A short deadline (7 days) will be set for the exchange of information and the initiation of cross-border cooperation.

Below is a relevant example of an asset investigation.

In the context of the fight against money laundering and the financing of terrorism, valuable information on assets located abroad can be obtained through the Financial Intelligence Unit for Italy (UIF), established at the Bank of Italy in accordance with international regulations requiring the establishment of a UIF in each country. The UIF receives suspicious transaction reports (STRs) from banks, financial intermediaries, professionals and other operators. It analyses these reports and evaluates their transmission to investigative bodies (Special Currency Police Unit, NSPV, and Anti-Mafia Investigative Directorate, DIA) to support enforcement actions. The UIF may establish channels of cooperation with foreign UIFs to obtain documents from their archives. Judicial authorities or designated law enforcement agencies may establish communications with the UIF. Contact with the UIF is recommended for money laundering and terrorism investigations and for cases involving third countries. The ARO network is used to obtain information within the European Union. The AROs and the UIF can also work together, but in such cases prior coordination is necessary to ensure the efficiency of investigations and to avoid duplication of work.

In the context of judicial cooperation for cross-border investigations, the instrument to be used is the European Investigation Order.

The Carin Network (Camden Assets Recovery Inter-Agency Network) is the international operational information platform established in The Hague in 2004. It currently has 36 participating States and 21 observer States or entities. Its objective is to combat money laundering through the recovery of the proceeds of crime or crime-related assets located abroad. It is the most widely used network.

III - Further consequences: Safeguards, Protective Measures and Legal remedies

CONTEXT[57]

The contemporary pursuit of greater efficiency in asset recovery has led to the proliferation of increasingly intrusive and expansive confiscation regimes across Europe. These developments are primarily motivated by the legitimate aim of dismantling the economic foundations of criminal enterprises and strengthening the broader framework of the rule of law. However, the proliferation of these mechanisms has concomitantly engendered profound concerns regarding their compatibility with fundamental rights. The evolving landscape of asset confiscation poses a significant challenge to long-established legal safeguards, which are typically afforded to individuals and third parties whose property becomes subject to seizure under national regimes. The risk is that, in the name of expediency and effectiveness, essential guarantees of legality, proportionality, and fair process may be gradually eroded.

This normative tension has drawn sustained attention from European supranational courts, with the European Court of Human Rights (ECtHR) emerging as a central actor in reviewing the compatibility of national confiscation measures with the rights enshrined in the European Convention on Human Rights (ECHR). The Court of Justice of the European Union (CJEU) is similarly poised to play an increasingly significant role in defining the constitutional limits of asset recovery tools within the EU's legal architecture, particularly where such mechanisms intersect with Union law principles and fundamental rights protected by the Charter of Fundamental Rights of the European Union.

According to well-established ECtHR jurisprudence, a national measure of confiscation may fall within the scope of the Convention's "criminal limb" under Article 6, based on the Court's autonomous and substantive interpretation of the notion of "criminal charge." The foundation for this approach was established by the Court's decision in *Engel and Others v. The Netherlands* (1976), which delineated three criteria to determine whether a measure is criminal in nature: the classification in domestic law, the nature of the offense, and the severity of the penalty. This framework has since been applied in numerous cases that have reaffirmed this determination. The determination is not contingent upon the formal classification of the measure under domestic law. Instead, it is contingent upon a cumulative assessment of various factors. The factors that must be considered include the nature and purpose of the measure, the degree of severity of its effects, and the procedural framework in which it is imposed. Once a measure is found to be criminal in substance, it must comply with the full array of procedural and substantive safeguards required by Article 6 (right to a fair trial), Article 7 (principle of legality in criminal matters), and Article 4 of Protocol No. 7 (prohibition of double jeopardy). These provisions are designed to protect individuals from arbitrary or disproportionate state action.

A fundamental component of the ECtHR's methodology is the principle of substance over form. This principle dictates that the evaluation of measures must be conducted in terms of their practical function and tangible impact, rather than based on their nominal designation. Consequently, the adoption of preventive, administrative, or civil labels by domestic legislators cannot insulate a measure from the scrutiny that applies to criminal proceedings if the measure pursues punitive aims or has deterrent effects and serious consequences for the individuals concerned. In other words, the formal legal taxonomy employed by the State cannot supersede the necessity to ensure Convention compliance when the underlying reality of the measure manifests a criminal nature.

[57] Section drafted by Andreana Esposito, full professor of criminal law, scientific coordinator of the RINSE Project

This jurisprudence extends robust procedural protections not only to the accused but also to third parties, such as bona fide owners or good faith acquirers of property. The European Court (ECtHR) has underscored that these individuals must not be left in a position of procedural inferiority. The establishment of a dual-track system, wherein judicial safeguards are exclusively granted to defendants while third parties are confined to remedies of lesser strength, represents a flagrant violation of the fundamental principles of fairness, equality of arms, and effective access to justice. Ensuring the right to be heard, access to independent review, and the ability to challenge the factual and legal basis of confiscation orders is imperative for all affected persons.

In this context, the jurisprudence of the European Court of Human Rights has elucidated that third parties—such as legal owners or good faith acquirers of property—must be guaranteed a level of procedural protection that is equivalent to that of the person accused or convicted of a criminal offense. The establishment of a dual regime, in which the accused is the only party to have access to full procedural safeguards and remedies, while third parties are left without equivalent means of redress, is not acceptable. The principle of procedural fairness, encompassing the right to access judicial review and the right to be heard, must be extended equally to all individuals whose property is subject to a confiscation order.

Moreover, the proliferation of mandatory or automatic confiscation regimes gives rise to significant concerns under Article 1 of Protocol No. 1 to the Convention, which protects the peaceful enjoyment of possessions. When the imposition of confiscation is triggered as an inevitable and rigid consequence of an unlawful act—without consideration of the individual circumstances or the possibility of judicial discretion—there is a real risk that such measures may amount to a disproportionate interference with property rights. In accordance with the provisions stipulated within the Convention framework, any instance of interference with possessions is required to be both lawful and to pursue a legitimate aim. Furthermore, such interference is obligated to strike a fair balance between the general interests of the community and the protection of individual rights. The evaluation of such cases necessitates a customized judicial assessment and an examination of proportionality in consideration of the particulars inherent to each individual case. Consequently, the act of confiscation must never devolve into a purely mechanical or punitive outcome. Judicial authorities must therefore retain the power to assess the appropriateness of the measure, and, where necessary, to adjust or mitigate its impact in order to respect the principle of proportionality.

In this context, it is crucial to underscore the significance of the individual's involvement in the decision-making process that results in the imposition of a confiscation measure. In adversarial proceedings, it is imperative to ensure that the individual concerned is accorded a genuine opportunity to exercise their right to a defense. Ensuring procedural participation is not merely a matter of formal compliance; it is an essential condition for preserving the legitimacy and proportionality of the confiscation itself. The credible maintenance of a balance between efficiency in asset recovery and respect for fundamental rights is only possible through a combination of effective judicial scrutiny and meaningful procedural guarantees. The legitimacy of confiscation regimes is contingent not solely on their objectives, but also on the methods employed to achieve those objectives.

The tension between the pursuit of efficiency in asset recovery and the imperative to uphold fundamental rights must not be resolved through a regression of safeguards. Instead, this issue must be addressed through the reaffirmation of fundamental legal principles and the consistent enforcement of constitutional standards. A system of confiscation that is both effective and rights-compliant is not only attainable, but indispensable in a legal order founded on democratic values and respect for human dignity. European supranational courts, in this regard, are called to act as stewards of this balance, ensuring that the evolving machinery of asset recovery remains firmly anchored in the rule of law.

COMPARATIVE NOTES[58]

Safeguards for Third Parties in Good Faith in Confiscation Procedures.

The protection of bona fide third parties in the context of confiscation orders represents one of the most sensitive areas in balancing crime repression with the respect for individual rights. It is a common practice for criminals to frequently transfer their assets to knowing third parties in order to avoid confiscation. Because of this, both national and European legislators have established provisions for third-party confiscation[59]. Nevertheless, Member States retain divergent rules when it comes to safeguarding the rights of those who acquire property in good faith, leading to complex interactions between national legal frameworks and the overarching EU instruments. This divergence poses challenges for the mutual recognition of confiscation orders and highlights the need for consistent minimum standards across the Union.

At the EU level, Regulation (EU) 2018/1805 confirms the necessity of mutual recognition, even in cases involving third-party confiscation, but clarifies that this must not prejudice the rights of bona fide third parties, as reiterated in Recital 46.

Similarly, Directive 2014/42/EU establishes minimum rules regarding the freezing and confiscation of property, including from third parties. As provided by art. 6 of the Directive "Member States shall take the necessary measures to enable the confiscation of proceeds, or other property the value of which corresponds to proceeds, which, directly or indirectly, were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person, at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value".

The Directive does not, however, provide for a comprehensive harmonization of national rules, establishing only a minimum standard, the "reasonable person test", to assess third-party bad faith. It further states that confiscation should be possible at least in cases where third parties knew or should have known that the purpose of the transfer or acquisition was to avoid confiscation. This assessment must be based on specific and concrete circumstances, including when the transfer occurred free of charge or for a price significantly below the market value. At the same time, legal instruments affirm that confiscations should not prejudice the rights of bona fide third parties. This safeguard is rooted in the broader framework of fundamental rights, including the right to property (Article 1 of the First Protocol to the ECHR) and the right to a fair trial (Article 6 of the Convention).

Article 6 § 1 of the European Convention guarantees that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in the determination of their civil rights and obligations and of any criminal charge against them. Moreover, under Article 1 of the First Protocol to the Convention, everyone has the right to respect for their possessions.

Within this framework, the notion of "third party" refers to an individual or entity that has rights over the confiscated asset but did not participate in the commission of the criminal offence. Such a party must not have contributed in any way to the commission of the crime nor have knowingly benefited from its proceeds. The protection of their rights presupposes good faith, which implies a lack of knowledge, at the time of acquisition, that the purpose of the transfer of the asset was to hinder confiscation or that the asset was linked to a criminal activity.

[58] Section drafted by Caterina Scialla, post-doctoral researcher in criminal law, RINSE Project
[59] See Recital 24 Directive 2014/42/Eu.

National systems reflect these principles with varying degrees of procedural measures.

In Belgium, third parties who claim a right over a confiscated asset are entitled to assert their claim under the Royal Decree of 9 August 1991, which governs procedural time limits and remedies available to third parties seeking to recover confiscated property. According to this framework, assets subjected to "special confiscation" order under Article 43 bis of the penal code cannot be subjected to enforcement measures for a period of 90 days from the date on which the conviction becomes enforceable. Within this period, third parties may bring their claims before the competent judge. If they prove their rights, the property remains protected from any enforcement measure until a final decision is reached. Once the decision becomes final, the Registrar of the Tribunal is required to notify third parties entitled to assert rights within thirty days. Third parties must then apply to the civil court to prevent the enforcement of the judgment. However, this procedural safeguard does not apply to confiscation orders relating to money laundering offences. If the enforcement is temporarily suspended and the confiscated asset was not seized during the criminal proceeding, the property may be subject to precautionary measures necessary to ensure the enforcement of the confiscation at a later stage. Belgian law also allows third parties to intervene at any stage of the proceedings, including for the first time on appeal, in order to demonstrate their lawful ownership or possession of the asset. According to well-established case law of the Court of Cassation, if a third party is already involved in the proceedings in another capacity, it is sufficient for them to notify the court of their claims. Furthermore, Article 5ter of the Criminal Procedure Code ensures that any interested third party who can assert rights over the property is informed of the data of the hearing, thereby enabling them to intervene either during or after the trial phase.

With regard to the different types of confiscation, Belgian law draws a distinction depending on the nature of the property. Where confiscation concerns the object of the offence, it may be either mandatory (for example, in the case of money laundering) or merely optional (such as in certain drug trafficking offences). In either case, if the property belongs to a third party, they may seek its return by demonstrating lawful possession and good faith (Art. 42 (1), penal code). When confiscation involves instrumentalities used in the commission of a drug-related offence, the optional confiscation remains possible even if the item belongs to a bona fide third party. In contrast, confiscation of the proceeds of crime is always possible against third parties (Art. 42 (2); Art. 43 and 43ter of Penal Code). In other cases, such as extended confiscation, confiscation of criminal profits, or property belonging to a criminal organisation, Belgian law permits confiscation measures against third parties, provided that their rights are duly preserved.

In France, Law no. 2021-1729 of 22 December 2021 transposed Regulation (EU) 2018/1805 into national legislation, introducing several amendments to the Code of Criminal Procedure. Among other changes, it designated the competent authorities for issuing confiscation orders (Article 713-35-1) and freezing orders (Article 695-9-30-1).

This law affirms that the enforcement of a confiscation order adopted abroad in a foreign decision must not prejudice the rights of third parties. In line with this principle, the French Court of Cassation referred to Directive 2014/42/EU, underscoring that "the rights of the owner in good faith must be preserved, even where the property constitutes the direct or indirect proceeds of the offence[60]". However, this safeguard only applies when third parties have had the opportunity to assert their rights before the foreign court under conditions like those guaranteed under French law. Previously, a legislative gap existed regarding third party's procedural rights. Articles 713-36 to 713-41 of the French Code of Criminal Procedure did not require that the convicted person or the owner of the confiscated property be notified of the court's decision authorising the enforcement of a foreign confiscation order, nor did they provide for a right of appeal against

[60] Cour de cassation, Chambre criminelle, November 7, 2018, 17-87.424

such a decision. This gap has been remedied through case law. In a landmark ruling, the French Supreme Court held that a judgment by a criminal court authorizing the enforcement of a foreign confiscation order must be notified both to the convicted person and to any third-party owner whose titles is known or who claimed ownership during the proceedings. These individuals are entitled to lodge an appeal against the decision within ten days by filing a declaration with the clerk of the criminal court[61].

More generally, Article 131-21, par. 2,5,6 and 9 of the penal code provide a legal basis for the confiscation of property belonging to third parties. The measure is possible for items constituting the direct or indirect proceeds of the offence. This measure is mandatory in relation to dangerous or harmful items or property whose possession is unlawful, regardless of whether such items are owned by the convicted person or by a third party.

In Greece, confiscation measures can be imposed on third parties if it is demonstrated that they did not acquire the asset in good faith. However, Greek law affords procedural safeguards to third parties seeking to defend their property rights within criminal proceedings. They are entitled to intervene at various stages of the process to oppose the confiscation of their assets. They can intervene during both the pre-trial phase and the trial itself. At the pre-trial stage, third parties may assert their claims pursuant Art. 311 (2) of the Greek Code of Criminal Procedure and Article 40 (4) of Law 4557/2018. During the trial phase, intervention is governed by Art. 372 GCCP, also in conjunction with Art. 40 (4) of Law no. 4557/2018. Moreover, third parties have a right to appeal judicial decisions ordering the confiscation of their property. This right is expressly recognised in Articles 495 and 504 (3) of the Greek Code of Criminal Procedure, which allow third parties to challenge such decisions before higher courts.

In Italy, confiscation of assets formally belonging to third parties is generally not allowed, except under specific circumstances established by law.

Confiscation against third parties is mandatory in cases involving intrinsically dangerous goods, under Article 240 paragraph 2 no. 2 of the Penal Code. Although the provision was originally limited to confiscation in the context of the article cited, national jurisprudence has extended its application to additional cases. Another exception concerns the so-called “fictitious third parties”, individuals who act as nominal owners but whose assets are in fact controlled by the convicted person. Article 240 bis of the Italian Penal Code allows for confiscation even when property is registered under the name of a third party, provided that it is established that the convicted person retains effective control over the asset. This is particularly relevant in cases involving assets whose value appears disproportionate in relation to the lawful income or activity of the convicted person.

Outside these exceptions, third parties who claim ownership of assets subject to confiscation may pursue legal remedies, during the proceedings. Under Article 322 bis of the Code of Criminal Procedure, third parties may lodge an appeal with the Court of Cassation against preventive seizure of assets or against the revocation decree issued by the public prosecutor, starting from the preliminary investigation stage and until the first-instance judgment. However, third parties are not considered formal parties to the criminal proceedings. Consequently, they are barred under Art. 579 (3) of the Code of Criminal Procedure from directly appealing the portion of the judgment concerning confiscation. Once the judgment becomes final, the only remedy available to third parties is to initiate enforcement proceedings to recover the confiscated property. This process does not allow for a review of the merits of confiscation itself but merely concerns the enforcement stage.

[61] Cour de cassation, chambre criminelle, January 5, 2023, 21-87.017

By contrast, preventive confiscation under Italy's Anti-Mafia Code (Legislative Decree No. 159 of 2011) provides broader procedural protections for third parties. Article 23 of that Decree ensures the right to participate in proceedings for individuals holding real rights of enjoyment or security over seized property. Recently, Law of 17 October 2017, No. 161 has expanded similar safeguards to cases of extended confiscation by amending Article 12-sexies of Legislative Decree No. 306 of 1992.

Legal remedies available for opposing the recognition of foreign freezing/confiscation orders.

Art. 33 of the Regulation (EU) 2018/1805 as a rule states that "affected persons shall have the right to effective legal remedies in the executing State against the decision on the recognition and execution of freezing orders and confiscation orders". The article continues with two important clarifications: a) the substantive reasons for issuing the freezing order or confiscation order shall not be challenged before a court in the executing State, which means that the control exercised by the courts of the executing state is limited; and b) the competent authority of the issuing State shall be informed of any legal remedy invoked in accordance with paragraph 1.

In practice, this means that individuals or third parties affected by the enforcement of a foreign freezing or confiscation orders may only raise procedural or formal objections in the executing State. If they wish to contest the substantive reasons, factual or legal basis of the order itself, they must turn to the judicial authorities of the issuing State. The legal remedies available in the executing State are limited to those that would be accessible if the order had been issued domestically.

In Belgium, the Law of 5 august 2006 specifically confirms that the execution of a foreign freezing order may be refused if it would violate the *ne bis in idem principle* (art 7). When the public prosecutor intends to enforce a foreign confiscation decision, the person concerned, including any interested third parties, must be formally notified. Those individuals have the right to challenge the execution before the correctional court within fifteen days of notification, by submitting a petition to the court registry. The grounds for contestation are limited to those listed in the statute, notably including the prohibition on double jeopardy (art. 30 of the Law of 5 August 2006). The court's ruling on the matter may be appealed to the Court of Cassation.

In the French legal system, Article 695-9-17 of the Code of Criminal Procedure allows for the refusal to enforce a foreign freezing order if it emerges from the accompanying certificate that the person concerned has already been finally judged for the same offence, either by French judicial authorities or by those of another State, other than the issuing State. The same safeguard is echoed in Article 713-37 regarding confiscation orders. In both cases, the refusal to execute the order is conditioned on the existence of a final judgment and, in case of a conviction, on the fact that the sentence has either been served, is being served, or is no longer enforceable under the law of the convicting State. French procedural rules also provide that the persons concerned are only informed once the execution of the order has been completed, unless the issuing State has requested a delay in notification to safeguard an ongoing investigation. In such cases, the executing authority waits for the issuing authority's consent before informing the affected individuals.

Furthermore, the appeal in these cases is limited in scope: it concerns the recognition and execution of the foreign order, not the underlying merits or justification for the confiscation. According to French law, the issuing State may participate in the hearing (though not as a formal party) either through a designated representative or via telecommunication means, pursuant to Article 706-71. The court's decision to authorise such participation is not open to appeal.

While the regulatory framework itself appears consistent with the principles of judicial cooperation in criminal matters, several practical shortcomings remain. Member States often face difficulties not because of legal uncertainty, but due to the inconsistent application of these legal remedies by domestic courts. This disconnects between the existence of

procedural safeguards, and their actual enforcement continues to undermine the effectiveness of mutual recognition mechanisms in cross-border confiscation and freezing procedures.

National resolution criteria to resolving conflicting confiscation measures over the same property.

National legislation does not always provide clear and uniform resolution criteria in situations where multiple confiscation measures of different types are issued against the same assets. Such overlaps may occur when national and supranational frameworks simultaneously allow different types of asset deprivation[62]. This scenario raises significant concerns regarding legal certainty, the destination of assets, and the effectiveness of available remedies for affected parties.

Across Member States, national case law often plays a key role in addressing these conflicts. Courts tend to invoke the principle of *ne bis in idem* to prevent double punishment and avoid disproportionate effects on individuals.

In Italy, the issue frequently arises in cases involving both extended confiscation and preventive confiscation (anti-mafia measure). These regimes, while grounded in different legal bases, often converge on similar criteria: both require a significant disproportion between the value of the assets and the lawful income of the person concerned, and both target assets under the direct or indirect control of that individual. The Italian Supreme Court has addressed this issue on several occasions (e.g., judgment of 29 May 2014, no. 33451), stressing the need to avoid overlapping enforcement on the same assets.

In Greece, the problem appears less prevalent. The legal system applies the principle of "*prior in tempore, potior in iure*", giving priority to the first measure issued in time, which is considered to prevail over subsequent ones.

In France, the resolution of conflicting confiscation orders is addressed primarily at the enforcement stage. The Criminal Division of the Court of Cassation has clarified that concurrent measures cannot be enforced on the same property, confirming this in the 2017 judgment (in the footnote).

In Belgium, the Penal Code expressly provides a safeguard based on the principle of proportionality. Specifically, Article 43bis, paragraph 7, and Article 43quater, §3, paragraph 3, empower the judge to reduce the amount subject to confiscation when multiple measures would result in an unreasonably severe penalty. This mechanism is aimed at avoiding excessive cumulative effects.

Application of confiscation measures in the event of extinction of the criminal offense.

The possibility of applying a confiscation measure even after the extinction of the underlying criminal offence is a legally complex issue, which varies depending on the legal classification attributed to confiscation within each national legal system. Confiscation may be regarded either as a criminal penalty (and therefore subject to the general rules governing the imposition of penalties) or as a preventive or security measure, which may be applied autonomously from the outcome of criminal proceedings.

The extinction of the criminal offence may occur for several reasons. These include the expiry of the limitation period, the issuance of an amnesty, the procedural extinction of public action, the absence or death of the accused person. The legal consequences of these causes of extinction are not uniform across Member States, particularly as regards the admissibility of applying an ablative measure such as confiscation after the criminal offence can no longer be prosecuted or punished.

[62] The French national report refers to the following as a key judicial precedent on this issue. French Court of Cassation (Chambre criminelle, 8 March 2017, no. 16-82.656), overlapping confiscation orders may be issued on the same property

In several legal systems, including Italy and Greece, it is possible for the authorities to impose a confiscation order notwithstanding the extinction of the criminal offence, provided that certain legal requirements are fulfilled. In these jurisdictions, the rationale lies in the classification of certain forms of confiscation (especially extended confiscation or anti-mafia confiscation) as preventive or security measures rather than criminal sanctions in the strict sense. This allows for the confiscation of assets suspected to derive from criminal activities even in the absence of a final conviction, or when the criminal proceedings have been extinguished due to procedural or substantive grounds.

In Belgium, by contrast, the general rule is that confiscation is considered a criminal sanction. This has significant implications; if the criminal proceedings are extinguished, the judge can no longer make findings as to the criminal responsibility of the defendant and, accordingly, cannot impose any criminal penalties, including confiscation. Belgian case law and legal doctrine underline that the imposition of a confiscation order presupposes a finding of guilt unless the confiscation is qualified as a security measure under specific legislative provisions.

Nonetheless, the Belgian legal framework contains several exceptions to this general principle in particular contexts. For instance, Article 16 of the Law of 5 May 2014 allows for confiscation to be imposed in cases involving an offender suffering from a mental disorder who, due to their condition, is not subject to criminal conviction but is instead placed under security measures such as internment. In such cases, even though a formal conviction cannot be issued, the law permits the imposition of confiscation, recognising its function as a measure aimed at protecting the public interest and depriving the individual of illicitly acquired assets. A similar approach is adopted in relation to juvenile offenders. According to Article 61 of the Law of 8 April 1965, the juvenile court may order the confiscation of assets held by minors, even though minors are not subject to criminal conviction in the same manner as adults. In the case where the accused dies before the conclusion of the proceedings, the criminal action is extinguished. Nevertheless, it remains possible to impose a confiscation order where the measure is conceived as a security measure. In cases where the accused has absconded or cannot be located and is tried in absentia, the criminal proceedings may still result in a conviction and in the imposition of confiscation. Belgian law provides for the possibility of appealing or reopening such decisions once the individual reappears, but confiscation can be lawfully imposed in the meantime. In the context of a penal transaction (transactions *pénales*), which are alternatives to prosecution negotiated between the public prosecutor and the person concerned, the law permits the prosecutor to invite the individual to renounce ownership of frozen assets as part of the agreement. This practice, while not formally a judicial confiscation, results in the definitive loss of assets as an outcome of a consensual settlement. In the context of amnesty, it is possible for the legislature to exclude confiscation from the effects of the amnesty, so confiscation continue to be applicable even when other criminal penalties are extinguished.

Under French law, the extinction of the criminal offence, whether due to prescription, amnesty, the death or absence of the defendant or other procedural causes, generally precludes the imposition of criminal penalties, including confiscation. The traditional concept of confiscation as a criminal sanction implies that it can only be ordered as a consequence of a conviction or as part of a criminal proceeding that concludes with the establishment of guilt.

However, this strict limitation is mitigated by the availability of other legal tools that enable the State to deprive individuals of illicit assets even in the absence of a conviction. In particular, French law distinguishes between criminal confiscation and so-called *in rem* or civil confiscation, which targets the asset itself rather than the person, and which may be applied irrespective of the procedural fate of the criminal case[63].

[63] Confiscation and recovery of the proceeds of crime in the European Union", Charlotte Saumagne, 2021.

Indeed, *in rem* confiscation is considered a useful remedy in situations where a criminal conviction cannot be secured pursued due to the procedural extinction of the case, the death or flight of the suspect, or the insufficiency of evidence to satisfy the criminal standard of proof. This mechanism enables French authorities to intervene in order to prevent the retention or reallocation of assets that appear to derive from criminal conduct or have been used in the commission of an offence. It is especially relevant when judicial cooperation in criminal matters proves ineffective due to the termination of proceedings in the issuing country. Although French law does not expressly provide for non-conviction-based confiscation as a rule, certain legislative innovations have introduced functional equivalents. A key example is found in Article 41-4 of the Code of Criminal Procedure, introduced by Law No. 2016-731 of 3 June 2016, which transposed Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime. This article allows for the "refusal to return the instrumentalities or the proceeds of crime" when a criminal confiscation cannot be imposed, for example, when the perpetrator cannot be convicted or prosecuted. Though not formally designated as confiscation, this procedure enables the transfer of the illegally acquired asset to the State, and operates as a *de facto* confiscation *in rem*. It is based on the unlawful nature of the asset's origin or use and does not require a finding of criminal liability. In addition, French procedural law permits criminal trials to proceed *in absentia.* Therefore, if the defendant absconds or is otherwise unavailable, the proceedings may continue, and a conviction may still be reached, which in turn allows for the imposition of a confiscation order. However, when no conviction is possible due to extinction of the offence or the termination of public prosecution, criminal confiscation cannot be ordered. French law has also demonstrated flexibility in recognising non-conviction-based confiscation orders issued by foreign jurisdictions, provided that certain safeguards are met. Prior to the entry into force of Regulation (EU) 2018/1805 on mutual recognition of freezing and confiscation orders, French courts had already developed a judicial framework for recognising foreign confiscation measures without a conviction. The French Court of Cassation had established that such recognition is possible under three cumulative conditions: a) the property must have been used or intended to commit the offence, or must appear to be the direct or indirect proceeds of the offence, or have a value corresponding to those proceeds; b) the facts underlying the request must constitute an offence under French law, even in the absence of a conviction in the issuing State; c) the foreign decision ordering the confiscation must have been rendered in compliance with minimum guarantees of the rights of defence and individual liberties. In the landmark Crisafulli judgment (Cass. Crim., 13 November 2003), the French Court of Cassation recognised the enforceability of a preventive confiscation order issued by the Prevention Measures Section of the Court of Milan (Italy). The confiscated property was a villa located on the French Riviera, and the decision marked an important precedent for the cross-border recognition of such measures. This approach was reaffirmed by the same Court in 2009 (Civ. 2e, 4 June 2009, SCI ZANORO – Villa Kismet).

In Italy and Greece, confiscation without prior conviction is permitted even in cases of prescription of the offense. This possibility extends beyond the harmonisation provided by Directive 2014/42/EU, which limits confiscation without prior conviction to narrowly defined cases, namely when criminal proceedings cannot be continued due to the death, illness or flight of the accused. Nevertheless, this extended application raises concerns in terms of fundamental rights protection, particularly regarding the principles of legal certainty, presumption of innocence, and ne bis in idem, especially when such confiscation measures must be recognised by jurisdictions that do not provide for them under their own legal systems. The broader national scope adopted by Italy and Greece reflects a domestic legal culture more open to the use of confiscation as a tool of public policy, even in the absence of a formal conviction.

In the Italian legal system, non-conviction-based confiscation is admissible. One notable example is the so-called urban confiscation, regulated by Article 44 of the Environmental Act (Testo Unico *dell'Edilizia*). According to this provision, confiscation may be imposed for illegal parcelling of land (*lottizzazione abusiva*) even when the criminal proceedings

end with a declaration of prescription. The European Court of Human Rights has examined this measure in the light of Article 7 ECHR, which enshrines the principle of legality in criminal matters. The Court has upheld the compatibility of such confiscation with the Convention, provided that the substantive elements of the criminal offence are duly established by the judge. Thus, even in the absence of a formal conviction due to the extinction of the criminal action, the confiscation may still be applied as a consequence of a judicial finding that the conduct in question fulfils the constitutive elements of the offence. The Italian Constitutional Court, in its Judgment No. 49 of 2015, confirmed that urban planning confiscation has the nature of a criminal sanction within the meaning of Article 7 ECHR. It further held that such a confiscation requires a judicial decision that has the "substance" of a conviction. This means that confiscation is compatible with outcomes other than a formal guilty verdict, provided that the final judgment contains a reasoned finding of the individual's guilt and legal responsibility, reached through a fair and adversarial trial. This principle is now expressly codified in Article 578-bis of the Italian Code of Criminal Procedure, introduced by Legislative Decree No. 21 of 1 March 2018. The provision establishes that when a confiscation measure has been imposed under Article 240-bis or other relevant provisions, and the offence is subsequently declared extinguished due to prescription or amnesty, the Court of Appeal or the Court of Cassation must still decide on the confiscation, provided that the defendant's criminal responsibility has been duly assessed. The aim is to allow confiscation to remain effective and autonomous from the outcome of the criminal action, while ensuring that it is applied only when culpability is established through a judicial finding.

Moreover, Italian law also provides for mandatory confiscation of intrinsically dangerous property, such as weapons, narcotics, or other items whose manufacture, possession, or circulation constitutes a criminal offence. This form of confiscation is not dependent on a conviction and is imposed *ex lege* even when the criminal proceedings are terminated by prescription or another cause of extinction. The rationale for this form of confiscation lies in the public interest in preventing the circulation or use of dangerous items, rather than in the punitive function of criminal sanctions.

In Greece, under Articles 311(3) and 315(5) of the Greek Code of Criminal Procedure (GCCP), confiscation may be ordered by the judicial council or the trial court even after the termination of proceedings due to prescription, death of the defendant, withdrawal or absence of a criminal complaint, granting of amnesty, or the ne bis in idem principle. In such cases, the court must ascertain that the assets in question derive from the offence originally under investigation. This ensures a minimal connection between the criminal conduct and the property subject to confiscation, thereby attempting to balance the interests of the State and the rights of the individual. Importantly, the Greek model also includes procedural guarantees by requiring a judicial finding of the illicit origin of the property, even in the absence of a conviction.

Despite this, many Member States have not yet adopted legal frameworks allowing for non-conviction-based confiscation. This legislative gap persists despite recommendations by the Parliamentary Assembly of the Council of Europe, which has expressly praised models such as the Irish and Italian systems for their legal clarity and effectiveness in combating organized crime and illicit enrichment. The European Union has also been a strong proponent of non-conviction-based confiscation, particularly through the recent Directive (EU) 2024/1260, which sets out minimum rules but encourages Member States to adopt broader regimes. On the international level, the United Nations Convention against Corruption (UNCAC) provides further endorsement of non-conviction-based confiscation. Article 54 of the Convention urges States Parties to consider enacting legislation that allows for confiscation in the absence of a criminal conviction, especially when prosecution is not possible due to the death, flight, or absence of the defendant, or "in other appropriate cases". This provision reflects the growing global consensus that effective asset recovery cannot be contingent solely on the outcome of a criminal trial, particularly in cases involving transnational organised crime, corruption, or money laundering.

Victims' rights and access to compensation or restitution in the context of asset freezing and confiscation.

Regulation (EU) 2018/1805 places particular emphasis on safeguarding victims 'rights in the context of cross-border freezing and confiscation proceedings. This is most clearly expressed in Recital 46 that "the executing authority should take the necessary measures to ensure that the property concerned is frozen and returned to the victim as soon as possible". The legal basis for this priority is further articulated in Articles 29 and 30 of the Regulation, which provide the procedural framework for the restitution of frozen property and the compensation through the proceeds of confiscated property.

Importantly, Recital 45 clarifies that, for the purposes of the Regulation, the definition of "victim" is not an autonomous concept of EU law. Instead, it is to be interpreted in accordance with the law of the issuing State, which retains discretion in defining the categories of individuals or entities that may claim victim status. The issuing State may also determine whether a legal person qualifies as a victim. This approach ensures that national legal traditions are respected, while simultaneously aiming to avoid prejudice to the victims' rights to compensation and restitution in transnational criminal cases.

The Regulation further provides that where the value of the confiscated property exceeds EUR 10,000, the proceeds are ordinarily split equally between the issuing and executing Member States (asset-sharing rule: 50% goes to the issuing Member State and 50% to the executing Member State). This mechanism may be waived if the issuing State decides to allocate the entirety of the proceeds or property in favour of the victim. Therefore, the victim may be granted either the restitution of the asset itself or the compensation derived from its sale.

In the Belgian legal system, Article 43bis of the Penal Code allows for the restitution or assignment of confiscated property to the injured party. The recognition of a victim's entitlement to such restitution depends on procedural formalities, notably the so-called *déclaration de partie lésée* (declaration of injured party), which may be presented before the investigative judge, the investigative chamber, or at trial. In the absence of this formal declaration, the injured party may still seek restitution or compensation through other procedural channels. Specifically, they may intervene in the main criminal proceedings, or alternatively, they may initiate a separate proceeding regulated by the Royal Decree of 9 August 1991, which provides the procedural rules, time limits, and remedies available to third parties who claim a right to an item subject to confiscation

The French legal system does not expressly provide for the direct restitution of frozen or confiscated property to victims. Nevertheless, it allows for compensation through the allocation of the proceeds from the sale of such property. This is governed by Articles 706-164 and 706-165 of the Code of Criminal Procedure, which authorise the payment of damages to victims from the proceeds of confiscated assets. In situations where the victim has obtained a final judgment recognising their right to compensation, but has not been satisfied through the confiscated assets, they may obtain payment from the funds held by AGRASC (the Agency for the Management and Recovery of Seized and Confiscated Assets). Under Article 706-164, the term "victim" refers to any person who, having brought a civil action (*constitution de partie civile*), has obtained a final judgment awarding damages as a result of harm suffered from a criminal offence.

In Greece, the law explicitly prioritises the protection and compensation of victims over the confiscation of property. Articles 311(3), 373(3) and 373(5) of the Greek Code of Criminal Procedure empower the court to order the restitution of frozen or confiscated assets to the victim, not only following a conviction but also in cases of termination of proceedings, including when the prosecution ends due to the death of the accused. This ensures that victims are not left without remedy solely because the prosecution cannot be completed. The legal definition of "victim" is contained in Article 63 of the same Code, which covers both natural and legal persons who have suffered material and/or moral harm directly resulting from the criminal act.

In contrast to Greece and Belgium, the Italian legal system generally does not permit the restitution of confiscated property to the victim. However, the victim is entitled to compensation for the damages caused by the crime, and this may be satisfied using the proceeds derived from the sale of confiscated assets. This mechanism ensures that the victim may be indemnified, albeit indirectly. The Italian legal definition of a victim is provided by Article 42, paragraph 1, letter b) of Legislative Decree No. 150 of 10 October 2022, which identifies the victim as a natural person who has directly suffered pecuniary or non-pecuniary harm as a result of the offence. The definition also extends to family members of a person whose death was caused by the offence, provided that they have suffered consequential harm. In practical terms, compensation to the victim in Italy is achieved either through civil action joined to the criminal proceedings (*costituzione di parte civile*) or through separate civil litigation. Confiscated assets are not directly transferred to the victim; instead, the value obtained from their liquidation may be used to satisfy a final civil judgment awarding damages. However, certain specific provisions allow for victim protection, particularly in cases involving organised crime or serious offences. Under Law No. 512/1999 and Legislative Decree No. 159/2011 (*Codice* Antimafia), victims of organised crime, extortion, terrorism or mafia-related offences may apply for public compensation through a Solidarity Fund, managed by the Ministry of the Interior. Additionally, according to Law No. 109/1996, confiscated assets from mafia-related crimes may be allocated to public or private social use (e.g., municipalities, associations, cooperatives). These are often used for projects that support victim communities, but not for direct restitution or compensation to individual victims.

Coordination between company's freezing or confiscation and insolvency proceedings.

In situations where a company is subject to a seizure or confiscation order, it is not uncommon for that same company to be declared in a state of insolvency. This overlap often arises in the context of criminal proceedings, especially when companies have been functioning using resources derived from illicit activities. Once such assets are frozen or confiscated, the company may collapse, leading to the initiation of insolvency proceedings.

This situation, where a company is simultaneously subjected to confiscation and insolvency proceedings, raises serious challenges in terms of legal coordination and hierarchy between competing objectives. On the one hand, the purpose of confiscation is to remove illegal gains, restore social justice through redistribution or reuse, or compensate the victim through restitution or sale proceeds. On the other hand, insolvency procedures are designed to protect creditors' rights by ensuring the equitable distribution of the debtor's assets through liquidation or judicial reorganisation. When seizure occurs, a seal of unavailability (*vincolo* di *indisponibilità*) is typically imposed, creating a legal conflict with the prerogatives of the insolvency administrator, who is entrusted with managing and liquidating the debtor's assets. Despite the practical relevance of this issue, not all Member States have established legal provisions to regulate the relationship between confiscation and insolvency proceedings. This is partially due to the fact that the confiscation of companies is a relatively rare occurrence across the EU, as states face significant challenges in administering confiscated corporate entities and preserving their presence on the lawful market. Italy represents a significant exception in this context, as the confiscation of companies is more frequent and the legal framework reflects a higher degree of procedural integration between criminal and insolvency domains.

In Belgium, no specific legislative provision governs the coordination between criminal confiscation and insolvency procedures. Nonetheless, some level of practical coordination is made possible through the Central Office for Seizure and Confiscation (COSC), that has some competences also within the insolvency procedure[64].

[64] *The present text of Art. 16bis § 2 of the COSC law reads as follows: The Central Office may, without the necessity of further formalities, place any sum, due to be returned or paid, at the disposition of civil servants responsible for collection of taxes and to the*

In the French legal system, the opening of collective insolvency proceedings, including safeguard (*sauvegarde*), judicial reorganisation, or liquidation, does not affect criminal seizure or confiscation orders. This principle has been consistently upheld by the French Court of Cassation, which has developed case law clarifying the coexistence of the two proceedings. For instance, in its decision of 5 December 2019 (n°17-23.576), the Court ruled that "the pronouncement of a safeguard measure does not prohibit the penal seizure of a debt, nor does it limit the effects of such a seizure previously ordered".

Similarly, in the judgment of 24 June 2020 (n°19-85.874), the Court affirmed that the opening of judicial liquidation proceedings against a person does not prevent the issuance of a confiscation order or a preliminary seizure measure designed to ensure its enforcement. The Court explicitly stated that confiscation "the fact that the person being prosecuted has been put into judicial liquidation does not preclude him from being sentenced to a confiscation and a preliminary seizure measure intended to guarantee the execution of this measure, as confiscation cannot be analysed as an action for payment".

In Greece, there are no specific provisions addressing the coordination between asset freezing or confiscation and insolvency procedures. Greek law does not explicitly provide for the freezing or confiscation of companies as a whole, and the application of ablative measures is generally limited to specific assets. As a result, the coexistence of confiscation and insolvency tends to be resolved on a case-by-case basis, without a specific legislative framework guiding the interaction.

Italy stands out as the jurisdiction with the most detailed and structured system for harmonising criminal and insolvency proceedings, particularly in cases involving asset freezing and confiscation. The need for such coordination arises from the widespread use of preventive and criminal confiscation orders against companies or their assets, especially in cases involving organised crime or complex economic offences. The legal framework governing this interaction is primarily set out in Legislative Decree No. 14 of 12 January 2019, known as the "New Code of Business Crisis and Insolvency". Article 317, paragraph 2 of this Decree establishes that a preventive seizure aimed at confiscation always prevails over insolvency proceedings, effectively granting priority to criminal measures. This rule has been confirmed by the Italian Court of Cassation, notably in judgment no. 31921 of 30 August 2022, which applied it in a case involving the preventive seizure aimed at the direct confiscation of funds belonging to a limited liability company under bankruptcy administration. Moreover, Article 317(2) explicitly refers to Title IV of Legislative Decree No. 159 of 2011, the Anti-Mafia Code, thereby incorporating the guarantees and procedural mechanisms designed to protect third parties and fundamental rights. This reference elevates the Anti-Mafia Code to a pivotal role not only in combating organised and economic crime but also in regulating the interaction between asset measures and insolvency proceedings.

Several provisions of the Anti-Mafia Code address these intersections:

- Article 63 applies when the declaration of judicial liquidation follows a seizure already imposed on part or all the entrepreneur's assets.
- Article 64 addresses the reverse situation, in which bankruptcy proceedings predate the seizure order.

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institutions responsible for the collection of the social security contributions (...) for the purposes of paying such sums of money as may be owed by the beneficiary of said return of payment. The first paragraph remains applicable in the case of seizure, transfer, concurrence or insolvency procedure. See https://eucrim.eu/articles/payment-fiscal-and-social-debts-seized-money-has-be-reimbursed-belgium/ Francis Desterbeck, The Payment of Fiscal and Social Debts with Seized Money, that Has to Be Reimbursed, in Belgium in Eucrim 1/2011

- If the seizure or confiscation occurs after the bankruptcy has been closed, it is carried out only on residual assets remaining from liquidation.
- Article 52 provides procedural guarantees to protect third parties with legitimate claims over the assets subject to seizure or confiscation.

Additionally, Article 320 of the Italian Code of Criminal Procedure recognizes the right of the insolvency administrator to lodge an appeal, request review, and file for cassation against seizure orders and related judicial measures.

Disqualification measures and confiscation of companies polluted by organized crime.

The involvement of companies in organised crime can manifest in various forms, ranging from occasional facilitation to systematic complicity. This reality requires tailored legal responses that distinguish between enterprises that can be reintegrated into the legal economy and those that are irredeemably criminal in nature and therefore subject only to confiscation. However, not all Member States have adopted a comprehensive legislative framework to address the phenomenon of corporate criminal infiltration, and differences across national legal systems remain significant. Some jurisdictions, particularly those where corporate confiscation is rarely practiced, still lack specific rules in their criminal or administrative codes to sanction or disqualify companies involved in organised crime. In contrast, countries with more extensive experience in dealing with criminally infiltrated enterprises, such as Italy, have developed robust and detailed legislative instruments to address the phenomenon.

Italy has developed one of the most advanced legal frameworks in Europe for managing companies that are infiltrated, polluted, or controlled by organised crime. The Anti-Mafia Code, enacted through Legislative Decree No. 159 of 2011, is the main legal source governing disqualification and ablative measures targeting such companies. The Code provides a set of progressive and differentiated instruments depending on the level and nature of the company's involvement with criminal networks. These include:

Article 33, preventive measures applicable to individuals suspected of belonging to mafia-type organisations, which may indirectly affect corporate assets.

Article 34, the temporary administration of companies that facilitate the activities of criminal organisations in a non-structural or occasional way. This measure allows the judicial authority to temporarily remove the management and appoint a public administrator while preserving the economic continuity of the company.

Article 34-bis, introduced to further strengthen the possibility of business recovery in cases where the company's involvement is not central to its structure. This provision allows for judicial oversight with a focus on restoring legality while avoiding abrupt liquidation.

Article 94-bis, extends the logic of administrative control to companies that are awarded public contracts and are exposed to the risk of mafia infiltration.

These measures can be applied when the companies' involvement with organized crime is limited to either occasional or stable facilitation. If a company is found to be an integral part of a mafia-type association, meaning it satisfies the criteria of complicity, operational support, or concealment of criminal proceeds, the only measure applicable is confiscation. The same applies when the corporate structure is created solely as a vehicle for criminal purposes, such as money laundering or asset shielding.

On the other hand, when a company is only indirectly involved, such as being used sporadically to launder proceeds or support logistics, the Italian legal system aims at restoring legality rather than immediately eliminating the business from the legal market. The prefectural authority (*Prefetto*) plays a central role in this phase by conducting risk assessments based on a "more likely than not" evidentiary threshold. When indicators of mafia infiltration are present, the prefect can impose administrative prohibition measures based on Article 82 and following of the same Code. These include restrictions on participating in public procurement, suspension of licenses, and, in severe cases, the suspension of the company's activity itself.

In Belgium, the criminal liability of legal persons is recognized and regulated, allowing for sanctions to be imposed on companies found responsible for criminal conduct. However, Belgian law does not provide specific measures for disqualifying companies contaminated by organized crime. As a result, the response to criminal involvement of companies tends to be limited to traditional criminal and financial penalties.

French legislation also lacks a dedicated mechanism to prohibit or administratively disqualify companies associated with organized crime. Although French criminal law provides for confiscation of company assets as proceeds or instrumentalities of crime, it does not include broader regulatory mechanisms for corporate disqualification or temporary judicial administration of suspect enterprises. Measures are typically reactive and criminal in nature, rather than preventive and administrative as in the Italian model.

In the Greek legal system, there are no specific provisions addressing disqualification or special sanctions against companies involved in organized crime. However, Greek criminal law does allow for the freezing or confiscation of company assets when they are determined to be the proceeds of criminal activity. This is possible under Article 68, paragraph 5 of the Greek Criminal Code, which permits the confiscation of assets belonging to legal entities if the person in control of the company knew they derived from a criminal offence. Additionally, Article 40, paragraph 1 of the GCC allows for confiscation in the context of money laundering when the perpetrator had knowledge of the illicit origin of the assets at the time of their acquisition. Nonetheless, the Greek system does not provide for the confiscation or freezing of an entire company as a legal entity, nor does it include administrative risk assessment tools or preventive measures analogous to Italy's.

NATIONAL ANSWERS

Question 1) Identify the safeguards provided by the national legal system to protect third parties in good faith who have become holders of real rights on an asset subject to a confiscation order. Identify the protective measures provided by national legislation in favour of third-party holders of real security rights regarding assets subject to confiscation orders.

BELGIUM.

When the confiscated goods belong to a civil party, the Penal Code states that the assets will be returned to them. The confiscated asset will likewise be attributed to the civil party when the judge has ordered their confiscation on the grounds that they constitute property or securities substituted by the convicted person for assets belonging to the civil party or because they constitute the equivalent of such asset.

In addition, any other third party claiming a right to the confiscated item may assert their rights according to the terms determined the **Royal Decree of 9 August 1991 relating to the time limit and the remedies for third parties claiming a right to a confiscated property.** This Royal decree establishes a procedure where property covered by a confiscation order issued under article 43*bis* of the Penal Code (so called "special confiscation") shall not be subject to any execution measure before the expiration of a period of 90 days, from the day on which the conviction carrying confiscation would become enforceable.

Any third party claiming a right to one of the items for which confiscation has been ordered may bring his claim before the competent judge during the period. If, before the expiry of the period of 90 days, a third party claiming a right to the confiscated item is able to prove that he/she has brought his claim before the competent judge, the property covered by the confiscation order will not be subject to any enforcement measures until the decision relating to this claim has become final.

The court shall notify, by registered letter within thirty days, any person claiming a right to one of the items subject to confiscation as well as all other persons indicated to him by the public prosecutor's office as being able, according to the indications provided by the procedure, to claim rights to one of these things.

When the property covered by the confiscation has not been seized during the criminal proceedings, it will be subject to the precautionary measures necessary to guarantee the subsequent execution of the confiscation.

A third party may intervene at any stage of the proceedings, including for the first time on appeal, in order to assert his rights to property that may be subject to confiscation and to demonstrate his lawful possession of such property, whether he is already a party to the proceedings.

He/she can therefore exercise remedies against the decision confiscating property to which he/she holds a title.

If a third party is already, in another capacity, a party to the proceedings in which the property in question is liable to be confiscated, it is sufficient for him to inform the judge of the fact that he is asserting title to the property. (Constant jurisprudence of the Court of cassation).

In addition, any interested third party who, according to the indications provided by the proceedings and by virtue of his legitimate possession, can assert rights to the property benefits referred to in articles 42, 3°, 43bis and 43quater of the Criminal Code or any third party who can assert rights to the property referred to in article 42, 1, or to the property referred to in article 505 of the Criminal Code is informed of the setting of the hearing before the court which will judge on the merits of the case (Article 5ter of the Criminal Procedure Code).

FRANCE.

Article 713-38, paragraph 3, of the French Code of Criminal Procedure stipulates that the authorization of execution may not have the effect of prejudicing the rights lawfully constituted for the benefit of third parties, in application of French law, over the property confiscated by the foreign decision.

In a decision of 2018, the Supreme ruled that "*in accordance with the precise and unconditional provisions of Article 6 § 2 of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014, the rights of the owner in good faith must be preserved, even where the property constitutes the direct or indirect proceeds of the offence*" (Cour de cassation, Chambre *criminelle*, 7 November 2018, 17-87.424).

However, if this decision contains provisions relating to the rights of third parties, it is binding on the French courts unless the third parties have not been able to

assert their rights before the foreign court under conditions similar to those provided by French law.

Article 713-39 of the French Code of Criminal Procedure stipulates that, if it deems it useful, the criminal court may hear, if necessary, by rogatory commission, the owner of the seized property, the convicted person and any person with rights to the property which has been the subject of the foreign confiscation order. This is merely an option.

These persons may be represented by a lawyer.

Article 713-39 also stipulates that "*the criminal court is bound by the factual findings of the foreign decision. If these findings are insufficient, it may request, by means of a letter rogatory, that the foreign authority which issued the decision provide the necessary additional information, within a time limit set by the court*".

Similarly, articles 713-36 to 713-41 of the French Code of Criminal Procedure do not require the convicted person and the owner of the confiscated property to be notified of the criminal court's decision authorizing enforcement of the confiscation, nor do they provide for an appeal against this decision.

However, according to Article 6 § 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, in the determination of his civil rights and obligations and of any criminal charge against him.

Moreover, under Article 1 of the First Protocol to the said Convention, everyone has the right to respect for his possessions.

Finally, Article 13 of the same Convention provides that everyone whose rights and freedoms as set forth in the Convention have been violated shall have an effective remedy before a national authority, notwithstanding that the violation may have been committed by persons acting in an official capacity.

Filling the gaps in the code of criminal procedure, the French Supreme Court recently ruled that the judgment of the criminal court authorizing the enforcement of a confiscation order issued by a foreign judicial authority must be notified to the convicted person and to the third party owner of the confiscated property if his title is known or if he has claimed this status during the proceedings. These persons may appeal against the decision within ten days by filing a declaration with the clerk of the criminal court (Cour de cassation, chambre *criminelle*, January 5, 2023, 21-87.017).

Since this decision, any decision authorizing the execution of a confiscation order without having noted that the owner of the property had been notified of the judgment is liable to cassation.

GREECE.

Confiscation against a third party is allowed provided that he/she did not acquire the asset in good faith. According to the GCC (art. 68 par. 5), this presupposes that the third party had knowledge that the purpose of the transfer of the asset to him/her was to hinder confiscation and that the asset may have originated from an offence, or according to L. 4557/2018 (art. 40 par. 1), the third party was aware, at the time of acquisition of the asset, that a predicate or money laundering offence has taken place. In both instances, the knowledge of the third party must be specifically assessed by the court and detailed in its decision.

Third parties are allowed to *intervene* and *participate* in the criminal proceedings in order to defend their property rights and request that the asset is not confiscated. In practice, they may intervene during the pre-trial stage (art. 311 par. 2 GCCP, art. 40 par. 4 L. 4557/2018) or during the hearing of the case (art. 372 GCCP, art. 40 par. 4 L. 4557/2018). They also have the right to lodge an appeal against the decisions that order

the confiscation of any asset belonging to them (art. 495 and 504 par. 3 GCCP).

ITALY.

Article 240, paras. 3 and 4 of the Criminal Code limits the scope of confiscation when the object of the measure coincides with things "belonging to a person not involved in the crime".

An exception is made in the case of "intrinsically dangerous" objects, for which confiscation is mandatory under Art. 240, paragraph 2, no. 2 of the Criminal Code, unless the production, use, carrying, possession or disposal of the same is permitted only with an administrative authorization (art. 240, paragraph 4 of the Criminal Code). Although this provision was dictated with exclusive reference to the cases of confiscation governed by it, doctrine and case-law hold that, in the absence of special legislation, it may also apply to the cases of confiscation provided for in the Code and in complementary legislation.

The exact definition of the term "property" used in article 240 of the Criminal Code is controversial. It is generally considered that it includes, in addition to the right of ownership, real rights of guarantee and enjoyment.

This discipline presupposes the non-participation of the person in the commission of the crime for which he is being or has been prosecuted. He must not have contributed in any way to the commission of the crime or to the use of the profits attributable to him.

The position of the "bona fide" third party must therefore be distinguished from that of the fictitious third party who merely acts as a "front man" for the perpetrator of the crime. The latter is referred to by the dictate of article 240-bis, where it is provided that an ablative measure called to strike at assets of disproportionate value in relation to the economic activity carried out or the declared income, of which the convicted person is unable to justify the provenance and of which "even through a third party, natural or legal person, he proves to be the owner or to have the availability in any capacity" (article 240-bis of the Criminal Code). According to case law, the presumption that the property belongs to the person convicted under this provision does not apply to the convicted person's ownership or availability of property formally registered in the name of a third party. It is therefore up to the prosecution to prove the fictitious nature of the title and the actual traceability of the property to the offender.

From a procedural point of view, the instruments of protection provided by the Italian legal system in favour of the third party are as follows.

At the **preliminary investigation stage** and until the judgment of the first instance, the Code of Criminal Procedure gives the third party who wishes to obtain the return of the seized property the possibility of appealing to the Court of Cassation against the preventive seizure orders and against the decree of revocation of the seizure issued by the Public Prosecutor (art. 322 *bis* of the Code of Criminal Procedure).

The jurisprudence extends this possibility until the judgment has acquired the force of *res judicata.*

However, since he is not a party to the proceedings, he cannot appeal against the part of the judgment relating to confiscation, in accordance with article 579, paragraph 3, of the Code of Criminal Procedure.

However, once the judgment has become irrevocable, the third party may institute enforcement proceedings to claim the return of the confiscated property.

It is well established that in enforcement proceedings the third party may only contest his right to restitution, without being allowed to contest the factual and legal elements that led to the confiscation, for which the judge

may use all the evidence already obtained in the judgment of recognition.

The rules governing preventive confiscation are different. Article 23 of the Anti-Mafia Code (Legislative Decree no. 159 of 2011) guarantees the procedural participation of the third party who has "real or personal rights of enjoyment as well as real rights of guarantee over the seized property".

Recently, L. Oct. 17, 2017, No. 161 extended similar jurisdictional protection to third parties with reference to extended confiscation, amending the text of Art. 12-sexies Legislative Decree No. 356 of 1992.

In its current wording, the provision states that "in the process of cognition, third parties holding real or personal rights of enjoyment over the seized property, which the defendant is found to have at his disposal in any capacity, must be named". Furthermore, it is expressly provided that the rules for the protection of third parties, as well as for the management and destination of the seized and confiscated property or the execution of the seizure, established by Legislative Decree no. 159 of 2011 for preventive measures shall also apply to the cases of seizure and confiscation provided for in paragraphs 1 and 2-ter of Article 12-sexies of Law No. 356 of 1992 (Article 240 bis of the Criminal Code), as well as to the other cases of seizure and confiscation of assets adopted in proceedings relating to the crimes referred to in Article 51, co. 3-bis, of the Criminal Code.

The provisions in question were subsequently repealed (Art. 7, (1), l) by Legislative Decree No. 21 of March 1, 2018, which introduced the principle of code reservation in criminal matters and incorporated it in Art. 104-bis, co. 1-quater and 1-quinquies disp. att. c.p.p. by Art. 6 co. 3 of Legislative Decree no. 21 of 2018, which in paragraph 1 also introduced Art. 240-bis c.p.

Question 2) What are the legal remedies available for opposing a freezing/confiscation order executed in a different State from the one in which the owner is charged/convicted? (for example, if a private individual wishes to complain about being subject to multiple seizure/confiscation orders in different states for the same offence/proceeding or for the failure to respect the principles of proportionality or the *ne bis in idem* principle?).

BELGIUM.

Legal remedies under Belgian law:

(a) Seizure

All items eligible for confiscation or anything that may serve to reveal the truth, may be subject to seizure.

Seizure can take place during a preliminary investigation as well as during a judicial investigation. A seizure is not always but can be the result of a search. In the event that a written decision to seize has been taken (seizure of real estate), the decision to seize cannot be challenged before its execution.

According to the law of 5 August 2006 (art. 15), any aggrieved person may request the lifting of the seizure. The procedure provided for in article 61*quater* of the criminal investigation code is applicable. The competence of the investigating judge is limited to verifying the existence of the substantive conditions. The law of 5 August 2006 specifically provides that the execution of the freezing order may be refused if the execution of the judicial decision is contrary to the principle *ne bis in idem* (art 7).

(a) Confiscation

When the public prosecutor decides to execute a confiscation decision, he informs any person concerned and any interested third party. The person concerned or

the interested third party may seize the correctional court by petition addressed to the registry, within a period of fifteen days from the notification of the decision. The court can decide only based on certain provisions listed in the statute, which includes the cause of refusal on the grounds of non-compliance with the *non bis in idem* principle (art. 30 of the Law of 5 August 2006). The court's decision is subject to appeal before the Court of cassation.

FRANCE.

Any person subject to a freezing or confiscation order may challenge its enforcement before the judge of the country of enforcement and may challenge the decision itself before the judge of the issuing country.

About freezing orders

Under the terms of article 695-9-17 of the French Code of Criminal Procedure, the execution of freezing orders issued by foreign judicial authorities is refused:

1. If immunity is an obstacle or if the property or evidence cannot be seized under French law;

2. If it appears from the certificate that the freezing order is based on offences for which the person referred to in the said order has already been finally judged by the French judicial authorities or by those of a State other than the issuing State, provided, in the case of a conviction, that the sentence has been served, is in the process of being served or can no longer be enforced under the laws of the convicting State;

3. If it is established that the freezing order was made with the aim of prosecuting or convicting a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinions, sexual orientation or gender identity, or that the enforcement of the said order may adversely affect the position of that person for one of these reasons;

4. If the freezing order has been issued for the purpose of subsequent confiscation of property and the facts on which it is based do not constitute an offence that would, under French law, allow the seizure of this property to be ordered.

The control exercised by the courts of the executing state when recognizing the freezing order is a limited one, since article 33 of the Regulation stipulates that "*the substantive reasons which led to the issuing of the freezing order may not be challenged before a court in the executing state*".

Furthermore, the executing authority does not inform the persons concerned until the execution of the decision has been completed, unless the issuing authority has requested that this information be delayed preserving an ongoing investigation. In the latter case, the executing authority will wait for the issuing authority's authorization before proceeding to inform the persons concerned.

If a freezing order is executed despite this legislative provision, French law allows for an appeal, in accordance with the conditions set out in article 695-9-22 of the French Code of Criminal Procedure that stipulates that:

"*The person who owns the property that is the subject of the freezing order, or any other person who claims to have a right to the said property, may lodge an appeal against the said order with the clerk's office of the investigating division of the territorially competent court of appeal within ten days of the date of enforcement of the order in question. The provisions of article 173 shall then apply.*

The appeal does not have suspensory effect and cannot be used to challenge the substantive grounds for the freezing order.

The Investigating Chamber may, by a decision that is not subject to appeal, authorize the issuing State to intervene at the hearing through a person authorized by the said State for this purpose or, where applicable,

directly through the telecommunications means provided for in article 706-71. When the issuing State is authorized to intervene, it does not become a party to the proceedings."

About confiscation. Under the terms of article 713-37 of the French Code of Criminal Procedure, the enforcement of confiscation orders issued by foreign judicial authorities is refused:

1° if the facts giving rise to the request do not constitute an offence under French law;

2° if the property to which the request relates is not liable to confiscation under French law;

3° if the foreign decision was handed down under conditions that do not offer sufficient guarantees regarding the protection of individual liberties and the rights of the defence;

4° if it is established that the foreign decision was issued for the purpose of prosecuting or convicting a person on account of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation or gender identity;

5° if the French Public Prosecutor's Office has decided not to prosecute the offences for which confiscation has been ordered by the foreign court, **or if these offences have already been finally judged by the French judicial authorities or by those of a State other than the requesting State, provided, in the event of conviction, that the sentence has been served, is in the process of being served or can no longer be enforced under the laws of the convicting State;**

6° if it relates to a political offence.

Of course, the right of appeal relates to the decision to recognize and enforce the freezing order, and not to the freezing order itself.

In any event, the executing authority must inform the issuing authority of any appeal lodged against the decision to recognize and execute the freezing order.

If a confiscation is nevertheless ordered, French law allows for an appeal, in accordance with the conditions set out in article 713-29 of the French Code of Criminal Procedure that stipulates that:

"The convicted person may appeal against the decision authorizing execution of the confiscation in France.

The person who holds the property that is the subject of the confiscation order, or any other person who claims to have a right to the property, may lodge an appeal against the confiscation order by submitting a request to the clerk's office of the criminal appeals chamber with territorial jurisdiction within ten days of the date on which the order was enforced.

In the event of an appeal against the confiscation order, the public prosecutor shall inform the competent authority of the issuing State of the appeal lodged by any means that leaves a written record.

The appeal has suspensive effect but cannot be used to challenge the substantive reasons for the confiscation order.

The court may, by a decision which is not subject to appeal, authorize the issuing State to take part in the hearing through a person authorized by the said State for this purpose or, where appropriate, directly through the telecommunications means provided for in article 706-71. When the issuing State is authorized to intervene, it does not become a party to the proceedings."

GREECE.

<u>In relation to freezing orders:</u> Art. 18 L. 4478/2017 stipulates that the affected persons, which include the person against whom the freezing order was issued, as well as any third parties who have legal interests/rights

on the frozen asset, have the right to oppose the execution of an order issued by another EU member state by lodging an appeal before the judicial council with the court of misdemeanours. The appeal must be lodged within 20 days from the day of the service of the freezing order to them. With their appeal, they may argue that one of the Regulation's grounds for non-recognition and non-execution applies (art. 8 Regulation 2018/1805). However, they do not have the right to oppose the execution on substantive grounds. The appeal against the execution of the freezing order and its deadline do not have suspensive effect.

In relation to confiscation orders: Art. 25 L. 4478/2017 stipulates that the affected persons, which include the person against whom the order was issued, as well as any third parties who have legal interests/rights on the confiscated asset, have the right to oppose the execution of an order issued by another EU member state by lodging an appeal before the judicial council with the court of appeals. The appeal must be lodged within 10 days from the day of the service of the confiscation order to the affected persons. With their appeal, they may argue that one of the Regulation's grounds for non-recognition and non-execution applies (art. 19 Regulation 2018/1805). However, they do not have the right to oppose the execution on substantive grounds. The appeal against the execution of the confiscation order and its deadline has suspensive effect. Against the judgement of the judicial council, which will be issued on the appeal, the affected persons, as well as the prosecutor, have the right to lodge an appeal solely on points of law before the Supreme Court, within 10 days from the service of the judgement.

ITALY

When a freezing or confiscation order is executed in Italy but originates from another EU Member State, the legal remedies available are regulated by both EU law, specifically Regulation (EU) 2018/1805, and domestic procedural law. According to Article 33 of Regulation (EU) 2018/1805, any legal remedies against the substance of the freezing or confiscation order must be exercised in the issuing State, and the executing State (Italy, in this case) must ensure that the person concerned is informed of this right (Art. 32, Regulation (EU) 2018/1805).

However, individuals may challenge the execution of the order in Italy on procedural grounds, such as: a) violation of fundamental rights, including the principle of ne bis in idem, which prohibits being sanctioned multiple times for the same offense; b) failure to meet the conditions for recognition or execution, such as errors in the certificate, or violation of the rights of third parties in good faith; c) violation of the proportionality principle, particularly when the measure is manifestly excessive or unjustified in relation to the offence or the value of the property; d) multiple enforcement procedures for the same assets or for the same facts in different jurisdictions. In such cases, the person concerned may lodge an appeal with the competent Italian judicial authority, generally the Court of Appeal designated for recognition and execution under Italian law. The decision of the Court of Appeal can be further challenged before the Supreme Court.

Question 3) Indicate the resolution criteria provided for by national legislation to resolve the hypothesis that several ablative measures of different kinds are issued against the same property.

BELGIUM.

Various provisions of the Penal Code provide that, if necessary, the judge shall reduce the confiscated amount to not subject the convicted person to an unreasonably heavy sentence (article 43*bis*, subparagraph 7, article 43*quater*, §3, subparagraph 3.

FRANCE.

Contrary to the rules governing civil procedure, it is possible, particularly in the case of criminal seizures, to assert a seizure subsequent to another ablative measure. The simple reason for this is that the aim is not to recover a debt but to ensure that confiscation is carried out.

Confiscation can be ordered at the time of each conviction, regardless of whether a previous decision has already ordered confiscation of the same assets. Everything will then be settled at the enforcement stage, when it is established that the property is already the property of the State because of a previous decision.

This is the result of a ruling by the Criminal Division on 8 March 2017. A cash sum had been seized as part of a judicial investigation into drug trafficking. It was entrusted to the AGRASC, which placed it in an account opened with the Caisse des *dépôts* et consignations. Further investigations revealed that these funds could be the proceeds of misuse of corporate assets. The public prosecutor obtained authorization from the liberty and custody judge to seize this sum from the account held with the Caisse des *Dépôts*.

The Court of Cassation confirmed the possibility of a single asset being subject to multiple criminal measures (Chambre *criminelle*, 8 March 2017, no. 16-82.656).

GREECE.

In such cases the principle "*prior in tempore, potior in iure*" applies. This means that the older ablative measure has priority over the newer one

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ITALY[65]*.*

The Supreme Court has clarified on several occasions that the principle of ne bis in idem, which prohibits double jeopardy, also applies in the relationship between extended confiscation and preventive confiscation, when the same assets under the control of the subject are the subject of different confiscation requests, such as extended confiscation and anti-mafia confiscation (for example, Supreme Court, May 29, 2014, no. 33451, in the Legal Information Centre of the Court of Cassation, no. 260247). However, the prerequisites for the applicability of the prohibition of double jeopardy are identity of the parties, identity of the assets and homogeneity of the scope of cognition.

It should also be clarified that the judgment based on which preventive confiscation is carried out has a broader scope than that of extended confiscation, since the origin and methods of accumulation of property become directly relevant. Property becomes confiscable even if its origin is determined to be illicit or if its increase is determined by the reinvestment of illicit proceeds (Supreme Court, Section VI, November 27, 2012, no. 47983, unpublished; Supreme Court, Section I, October 23, 2013, no. 48173, in the Legal Information

[65] Drafted by G. Cirioli, Ph.D. in criminal law

Centre of the Court of Cassation, no. 257669; Supreme Court, Section VI, February 6, 2014, no. 18267, ibid., no. 259453; Supreme Court, Section I, October 27, 2017, no. 53625, ibid., no. 272168).

Therefore, preventive confiscation and extended confiscation have partially coinciding prerequisites for application. For both, it is necessary that the assets to be confiscated have a disproportionate value in relation to the declared income or activity and that they are under the direct or indirect control of the interested party. However, for preventive confiscation, an additional requirement is that the assets be the result of illicit activities or the reinvestment of illicit proceeds. Consequently, in accordance with the ne bis in idem principle, which is also relevant at the Convention level, once a preventive confiscation decision has been made, it may prevent a subsequent decision involving extended confiscation, but not vice versa.

Question 4) Is it possible to apply an ablative measure if a cause of extinction of the crime has occurred? If yes, indicate how confiscation operates in case of extinction of the crime.

BELGIUM.

No.

Extinction of public action:

If a circumstance prevents the prosecution, the judge declares the extinction of criminal proceedings. The court does not rule on the guilt or innocence and does not impose a criminal penalty. Considering that the confiscation is currently only a form of criminal penalty under Belgian law, the judge cannot pronounce a confiscation measure in case of extinction of criminal proceedings. There are various causes of extinction of criminal proceedings such as the statute of limitations or the death of the accused. However, in the case of extinction by payment of a penal transaction, in practice, certain public prosecutors consider that certain conditions must be met before proposing a transaction, namely the voluntary relinquishment of seized property.

Causes of extinction of a crime include statute of limitations, death of the person and amnesty. The application of confiscation depends on the type of cause of extinction as well as on the moment when the cause of extinction occurs (before the judgment, after the pronouncement of the judgment or after the judgment has the force of *res iudicata*).

- Amnesty:

The regulation of the amnesty depends on the law which establishes it. In principle, it extinguishes the sentence. Nevertheless, the legislator has the possibility of excluding certain penalties from the benefit of the amnesty, such as ordered confiscations.

- Death of the convicted person:

In principle, the death of the convicted person is a cause for the extinction of the sentences.

FRANCE.

It isn't possible under French law to apply a criminal ablative measure if a cause of extinction has occurred.

However, as Charlotte Saumagne, a doctoral student, points out in her thesis "Confiscation and recovery of the proceeds of crime in the European Union", provisions relating to judicial cooperation in civil matters may apply. These provisions enable civil and in *personam* confiscation. Article 43 of the United Nations Convention against Corruption states that "States Parties shall consider assisting each other in investigations of and proceedings in civil and administrative matters relating to corruption". This legal assistance in civil

cases is a useful remedy for the impossibility of confiscating and recovering the proceeds of crime through traditional channels of judicial cooperation in criminal matters because of the impossibility of obtaining a confiscation order due to the death, statute of limitations or absence of the offender. In addition to these factors, these provisions benefit from all the advantages associated with civil action: the possibility of obtaining a confiscation order in the absence of a criminal conviction, or even after a dismissal or acquittal; the possibility of using the evidentiary rules of civil procedure. However, the system is still based on a civil action in which one party seeks to recover the assets[66].

The writer of this report was unable to find any concrete applications of this approach.

Please also refer to the explanation of the application of article 41-4 of the Code of Criminal Procedure.

GREECE.

Yes. In cases where prosecution is terminated due to prescription of the offence, death of the defendant, withdrawal of the criminal complaint or lack thereof, granting of amnesty and ne bis idem, the judicial council (article 311 par. 3 GCCP) or the court (article 315 par. 5 GCCP) may order the confiscation of the proceeds. The same provision can be found in art. 40 par. 3 of Law 4557/2018 against money laundering. In such cases confiscation is ordered, when the judicial council or the court are satisfied that the assets originate from the offence for which prosecution was initiated; if they assess that no offence has taken place, they do not impose confiscation but they order the return of the assets to their rightful owners as per art. 311 par. 2 GCCP.

ITALY[67].

Confiscation is still admissible even if the criminal offence is extinguished by prescription, provided that the unlawful origin of the assets has been established during the proceedings. Even when the offence is extinguished, the criminal court must carry out an evidentiary assessment sufficient to demonstrate that the assets: a) derive from an offence; b) or are disproportionate and linked to criminal activity (for extended or preventive confiscation). A confiscation order may survive the extinction of the criminal offence, as long as the unlawful conduct is judicially ascertained in a proceeding that complies with due process and fair trial guarantees. Such an approach reflects the broader function of confiscation in Italy, which is not merely punitive, but also preventive and restorative, aiming to remove illicit gains and prevent the consolidation of benefits obtained through crime, even when prosecution is no longer possible. A key precedent is the joint sections of the Italian Supreme Court[68] which established the following principle of law: "The confiscation provided for by Article 44 of Presidential Decree No. 380 of 2001 (concerning unlawful land parcelling) may be imposed even where the offence has been extinguished by prescription, provided that the unlawful development (*lottizzazione abusiva*) has been established both subjectively and objectively, in proceedings where the parties have had the opportunity to participate fully and adversarially. However, once the offence has been extinguished, the proceedings may not continue for the sole purpose of carrying out such findings, in accordance with Article 129 of the Code of Criminal Procedure". Furthermore, the Court ruled that:

[66] "Confiscation and recovery of the proceeds of crime in the European Union", C. Saumagne, 2021.

[67] Drafted by C. Scialla, post-doctoral researcher in criminal law, RINSE Project

[68] Cass., Sez. Unite, 30/01/2020, n. 27421

"In cases where, at the appellate or cassation level, the offence of unlawful parcelling is declared extinguished due to prescription, the appellate court and the Court of Cassation must nonetheless rule on the confiscation under Article 44 of Presidential Decree No. 380/2001, pursuant to Article 578-bis of the Code of Criminal Procedure". The same has been affirmed by the Constitutional Court Judgment No. 49 of 2015, which addressed the compatibility of urban planning confiscation (under Article 44 of Presidential Decree No. 380/2001) with Article 7 of the European Convention on Human Rights. According to the Constitutional Court: "Urban planning confiscation, having the intrinsic nature of a criminal sanction within the meaning of Article 7 ECHR, requires a judicial decision that has the 'substance' of a conviction. In other words, confiscation is compatible with an outcome other than a formal conviction, provided that the final decision includes an incidental finding of the factual and legal conditions required to impose a penalty — namely, a finding of the individual's guilt and, therefore, responsibility." This means that even in the absence of a formal conviction, for instance due to the statute of limitations, the court may still order confiscation if it makes an explicit and reasoned finding of the defendant's criminal liability. However, such finding must result from a full and fair trial, ensuring respect for the right to defence and adversarial procedure. This principle finds explicit legal basis in Article 578-bis of the Italian Code of Criminal Procedure, introduced by Legislative Decree No. 21 of March 1, 2018. The provision states: "When special confiscation has been ordered under the first paragraph of Article 240-bis of the Criminal Code, or under other legislative provisions, or when confiscation is ordered under Article 322-ter of the Criminal Code, the Court of Appeal or the Court of Cassation, upon declaring the offence extinguished due to prescription or amnesty, shall still rule on the appeal with regard to confiscation alone, provided that the defendant's criminal responsibility is ascertained". This article establishes that if the criminal offence is no longer prosecutable, the appeal courts remain competent to decide on confiscation measures, but only after conducting a judicial assessment of the defendant's responsibility. This guarantees that confiscation is anyway applied based on established culpability, ensuring coherence with the penal nature of the measure.

Question 5) Does the national legislation provide for mechanisms to protect and satisfy the victim of the crime through the return of the frozen property (Art. 29 Regulation) confiscated (Art. 30 Regulation) or compensation for the damage suffered? What are these mechanisms?

BELGIUM.

The public prosecutor decides on the destination of the confiscated property. By way of derogation from the "asset sharing" rules (according to which 50% goes to the issuing Member State and 50% to the executing Member State when the amount obtained exceeds 10,000 euros), the confiscated property can be returned to the victim. In addition to the restitution of the confiscated property to the victim (restitution), the allocation of the money obtained from the sale of the confiscated property (compensation) to the victim is also possible.

Belgian confiscations with restitution or assignment to the injured party (article 43*bis* of the Penal Code) are enforceable in other Member States. Previously, this was only possible with the agreement of the executing Member State.

Under Belgian law, article 43bis subparagraph 3 of the Penal Code provides that when the confiscated property

belongs to the injured party, it will be returned to them. The confiscated property will also be attributed to the injured party when the judge has ordered their confiscation on the grounds that they constitute property or value substituted by the convicted person for things belonging to the injured party or because they constitute the equivalent of such things within the meaning of subparagraph 2 of the same article.

The concept of victim includes the injured party who has made a so called "declaration of injured party" in person or via an attorney before the investigative judge, before the investigative court or during the hearing before the criminal court.

If the victim has not made a declaration to become an injured party, the law has organized two procedures to enable this person to assert their rights. These rights can be exercised by the intervention mechanism in the ongoing proceedings on one hand, and, on the other hand, by the recourse to the procedure set up by the Royal Decree of 9 August 1991 regulating the time limit and the remedies for third parties claiming a right to a confiscated thing. The royal decree establishes a procedure where property covered by a confiscation order issued in accordance with article 43*bis* of the Penal Code shall not be subject to any execution measure before the expiration of a period of 90 days, from the day on which the conviction carrying confiscation would become enforceable. When the property covered by the confiscation has not been seized during the criminal proceedings, it will be subject to the precautionary measures necessary to guarantee the subsequent execution of the confiscation.

FRANCE.

Pursuant to article 99 of the Code of Criminal Procedure, the investigating judge may, with the agreement of the public prosecutor, decide of his or her own motion to return or arrange for the return to the victim of the offence of items placed in legal custody whose ownership is not disputed.

However, this provision is not intended to satisfy the victim of the crime through the return of the frozen property. The aim is simply to recover property belonging to the victim.

There is no actual mechanism allowing to protect and satisfy the direct victim of the crime through the return of the frozen property.

About compensation for the damage suffered, the French system does allow damages to be paid from confiscated assets (Articles 706-164 to 706-165 of the Code of criminal procedure)

Pursuant to article 706-164 of Code of Criminal procedure, "*Any person who, having brought a civil action, has benefited from a final decision awarding damages and interest to compensate for the harm he or she has suffered as a result of a criminal offence, as well as costs pursuant to articles 375 or 475-1, and who has not obtained compensation or reparation pursuant to articles 706-3 or 706-14, or recovery assistance pursuant to article 706-15-1, may obtain from the Agence de gestion et de recouvrement des avoirs saisis et confisqués (Agency for the Management and Recovery of Seized and Confiscated Assets) payment of these sums by deduction from the funds or the liquidated value of the debtor's assets, the confiscation of which has been ordered by a final decision and of which the Agency is the custodian pursuant to articles 706-160 or 707-1. This request for payment must, under penalty of foreclosure, be sent by registered letter to the agency within two months of the date on which the decision referred to in the first paragraph of this article became final.*"

About ill-gotten gains, the Law no. 2021-1031 of 4 August 2021 on programming for inclusive development and the fight against global inequalities provides that "*France shall, in cooperation with the foreign States concerned, and as close as possible to the*

populations of these States, ***return the funds resulting from the disposal of so-called "ill-gotten" assets****, as part of the mechanism provided for in Article 2 of this programming law, and in accordance with SDG 16 of the 2030 Agenda and the Addis Ababa Action Programme. In accordance with the principles of transparency and accountability, as reiterated at the Global Forum on Asset Recovery in 2017, France will ensure that Parliament, citizens and civil society organisations are properly informed and involved in monitoring the implementation of the mechanism provided for in Article 2. The cooperation and development actions financed in the countries concerned, using the appropriations opened at the same time as the proceeds from the sale of the so-called "ill-gotten" assets, are not included in France's official development assistance*."

The status of victim giving entitlement to compensation for loss through the allocation of confiscated sums is defined by article 706-164 of the Code of Criminal Procedure, in the following terms: "Any person who, having brought a civil action, has benefited from a final decision awarding damages and interest to compensate for the harm he or she has suffered as a result of a criminal offence".

This definition corresponds to the legal definition of a civil party, with an additional condition: that the court has ordered the person being sued to pay compensation for the loss suffered.

GREECE.

A "victim of a crime" is the person who is entitled to compensation according to the relevant provisions of the Greek Civil Code (art. 63 GCCP). Natural and legal persons are considered victims of a crime, and they have the right to participate in the criminal proceedings as injured parties supporting the charges, only if they have suffered material and/or moral damage resulting directly from the alleged criminal offence. The direct damage criterion originates from tort law, to exclude parties who have suffered indirect damage from being considered victims.

The court at the end of the hearing, may decide to return frozen property to the victim of the crime, in case of conviction of the defendant or when prosecution is terminated due to the death, prescription of the offence etc. (art. 373 par. 3, 5 GCCP). Also, during the pretrial stage, the judicial council may decide the return of frozen property to the victim, in cases of termination of the prosecution (art. 311 par. 3). In the abovementioned cases, the law prioritises the satisfaction of the victim over confiscation.

ITALY[69]*.*

In the Italian legal system, there is no general mechanism by which victims of crime are automatically compensated through the return of frozen or confiscated property, nor are they always given priority in the distribution of confiscated assets, unless it is the direct proceeds of the crime. However, certain specific provisions allow for victim protection, particularly in cases involving organised crime or serious offences. Under Law No. 512/1999 and Legislative Decree No. 159/2011 (*Codice* Antimafia), victims of organised crime, extortion, terrorism or mafia-related offences may apply for public compensation through a Solidarity Fund, managed by the Ministry of the Interior.

In all other cases, the victim is entitled to compensation for the harm caused by the crime, and this right can be satisfied by the proceeds of the forced sale of seized and

[69] Drafted by C. Scialla, post-doctoral researcher in criminal law, RINSE Project

confiscated assets. In this case, victims may file a civil claim within criminal proceedings (*costituzione* di *parte* civile) in order to seek compensation. However, this does not guarantee that the victim will receive compensation. According to Law No. 109/1996, confiscated assets from mafia-related crimes may be allocated to public or private social use (e.g., municipalities, associations, cooperatives). These are often used for projects that support victim communities, but not for direct restitution or compensation to individual victims.

Question 6) In the case of freezing/confiscation of a company in a state of crisis, identify the measures provided for by national legislation to coordinate the application of the ablative measure with any insolvency procedures to which the company has been admitted.

BELGIUM.

COL14/2014 Joint circular of the Minister of Justice and the College of Prosecutors General of 11 February 2014 on various measures aimed at improving the recovery of pecuniary penalties and court costs in criminal matters; Law on COSC (Law containing the missions and composition of the Central Office for Seizure and Confiscation); and articles 464/37 and 464/38 of the Criminal Procedure Code set some specifics in such cases.

In general, a legal insolvency procedure consists of a bankruptcy, the judicial reorganization, and any other procedure, Belgian or foreign, which involves the realization of the assets and the distribution of the product of this realization between creditors, shareholders, partners or members. If the sentenced person or the third party in bad faith is the subject of insolvency procedure, any judgments are enforced by the FPS Finances through the exercise the rights granted by law to creditors in the context of proceedings of insolvency.

In case of a company bankruptcy, an administrator of bankruptcy is appointed by the judgment pronouncing the bankruptcy. As of the declaratory judgment of bankruptcy, the bankrupt is deprived of full right to the administration of all his property, all payments, operations and acts by the bankrupt being null and void. It is up to the administrator to realize the assets of the bankrupt and to distribute the product. The administrator can also become an injured party if there are criminal proceedings against the company or the company's manager. If the administrator does not have the time to make the declaration of an injured party before the confiscation, he or she can recourse to the procedure set up by the Royal Decree of 9 August 1991 regulating the time limit and the remedies for third parties claiming a right to a confiscated thing.

FRANCE.

Pursuant to article L622-21 of the French Commercial Code, "*The opening judgment interrupts or prohibits any legal action on the part of all creditors whose claim is not mentioned in I of article L. 622-17 and tending*

1. ordering the debtor to pay a sum of money;

2. rescinding a contract for non-payment of a sum of money."

Pursuant to article L632-1 of the French Commercial Code, "The following acts are null and void if they have taken place since the date of cessation of payments: (…) Any precautionary measure, unless the registration or

the act of seizure predates the date of cessation of payments".

However, special seizures are not affected by the opening of collective proceedings, whether for safeguard, reorganization or liquidation.

Indeed, the article 706-147 of the Code of Criminal procedure states that measures ordered are applicable even when ordered after the date of cessation of payments and notwithstanding the provisions of article L. 632-1 of the French Commercial Code.

In a decision of December 5, 2019 (n°17-23.576), the supreme French Court ruled that "*the pronouncement of a safeguard measure does not prohibit the penal seizure of a debt, nor does it limit the effects of such a seizure previously ordered*".

Likewise, the opening of collective proceedings against a convicted offender does not prevent the courts from confiscating his assets.

In another decision of June 24th 2020 (n°19-85.874), the supreme French Court ruled that "*the fact that the person being prosecuted has been put into judicial liquidation does not preclude him from being sentenced to a confiscation and a preliminary seizure measure intended to guarantee the execution of this measure, as confiscation cannot be analysed as an action for payment*".

This decision also specifies that the confiscation provided for in article 131-21 of the French Code of Criminal Procedure does not constitute a civil enforcement procedure, which excludes the application of article L 622-21 of the French Commercial Code.

French national legislation does not regulate alternative and/or supportive mechanisms to freezing and confiscation useful for the reconversion to legality of companies linked to organized crime.

GREECE.

There are no relevant provisions, which coordinate the application of ablative measures with any insolvency procedures.

ITALY[70]*.*

In procedural practice, companies subject to a seizure or confiscation order are often declared to be in a state of insolvency. In such cases, it is essential to ensure proper coordination between the proceedings in which the seizure order is applied and the bankruptcy proceedings to which the company has since been admitted. Once the seizure has been carried out, a seal of unavailability with an *erga omnes* value is placed on the previously seized assets, thus creating a contrast with any liquidation procedure that blocks the curator's activity. The effect of the criminal seizure and, subsequently, of the confiscation, even in cases where the progress of the bankruptcy proceedings is not affected, hinders the distribution of the bankruptcy assets to the creditors admitted to the liabilities, leading to the stalemate of the proceedings. Article 317 of Legislative Decree No. 14 of January 12, 2019, "New Business Crisis Code", generally establishes the principle of the primacy of real precautionary measures and the discipline of third party protection contained in Book I, Title IV of Legislative Decree No. 159/2011 on bankruptcy proceedings, limiting this primacy only to cases of preventive criminal seizure instrumental to the confiscation ordered pursuant to Art. 321, paragraph 2, of the Code of

[70] Drafted by G. Sodano, Ph.D. in criminal law, magistrate

Criminal Procedure (which includes seizures for tax offences and the liability of legal persons) and expressly excludes the “obstructive” preventive criminal seizure (art. 321, paragraph 1, of the Code of Criminal Procedure and the conservative criminal seizure (art. 316 of the Code of Criminal Procedure), in which the judge, at the request of the bankrupt, must revoke the seizure order and order the return of the property in his favour. The second paragraph of the provision stipulates that the actual precautionary measures referred to in the first paragraph are exclusively the seizure of the objects whose confiscation is permitted under article 321, paragraph 2, of the Code of Criminal Procedure, the application of which is governed by article 104-bis of the implementing, coordinating and transitional provisions of the Code of Criminal Procedure.

Derogations are provided for the so-called "impeditive" and conservative preventive seizure.

These articles stipulate that during the pendency of the judicial liquidation proceedings, the judicial authority may not order the preventive and conservative seizure of the property specified in Article 142 of the Code of Criminal Procedure in accordance with Article 321, paragraph 1 of the Code of Criminal Procedure.

The exception to this rule is when the production, use, storage, possession and alienation of the same does not constitute a crime and when their production, use, storage, possession and alienation may be permitted by administrative authorization.

If, on the other hand, the opening of the bankruptcy proceedings takes place after the pledge has been established, the court, at the request of the bankruptcy trustee, shall revoke the pledge and order the return of the goods in favour of the bankruptcy trustee.

The above provisions do not apply when the assets subject to preventive seizure are those referred to in art. 146 and those that cannot be liquidated, either by law or by decision of the judicial bodies.

Article 320, on the other hand, expressly provides for the right of the trustee to request review, appeal and cassation against the seizure decree and related orders.

As for the aforementioned discipline contained in Book I, Title IV of Legislative Decree No. 159/2011, it draws a clear dividing line between the hypothesis in which the declaration of judicial liquidation follows the already ordered seizure of some or all of the entrepreneur's assets (art. 63) and that, conversely, in which the opening of bankruptcy proceedings precedes the preventive seizure (art. 64).

Article 63 authorizes the liquidator, the creditors or the public prosecutor, on the recommendation of the liquidator who has established the state of insolvency, to apply to the court for the judicial liquidation of the entrepreneur whose assets have previously been seized or confiscated, even in part. In such a case, the assets subject to seizure or confiscation are *ex lege* excluded from the bankruptcy estate after the entrepreneur is admitted to the bankruptcy proceedings.

On the other hand, it is up to the judicial administrator to initiate the actions provided for in Articles 163 et seq. of the New Business Crisis Code, if they concern acts, payments or guarantees related to the seized assets. If they are successful, "the effects of the seizure and confiscation shall extend to the assets subject to the act declared null and void".

The bankruptcy judge, for his part, will be obliged to provide for the assessment of the liabilities, verifying the existence of the conditions referred to in paragraph 1 (b), (c) and (d) and paragraph 3 of Article 52, also with respect to the seized assets.

If the seizure takes place after the admission of the trader to the bankruptcy proceedings referred to in Article 64, the delegated judge, after hearing the trustee and the creditors' committee, shall order, by means of a non-appealable decision, the separation of these assets from the assets involved in the bankruptcy proceedings and their subsequent delivery to the liquidator.

If the seizure or confiscation takes place after the bankruptcy is closed, it is carried out on the assets remaining from the liquidation.

Although the Anti-Mafia Code itself contains provisions that largely overlap with those of the Business Crisis Code, the procedure for verifying third party claims and liquidating assets has some peculiarities.

The third party is protected as long as it is in a situation of substantial innocence.

Specifically, pursuant to Article 52 of Legislative Decree 159 of 2011, the provisional or final measure does not affect the credit rights of third parties only if they derive from instruments having a date certain prior to the seizure, as well as from "security rights in rem established at a time prior to the seizure, if the following conditions cumulatively occur".

(a) that the proposed party has no other property over which to exercise the security interest that would be adequate to satisfy the claim, except for claims based on lawful pre-emption of seized property;

(b) that the claim is not instrumental to the unlawful activity or to what is its fruit or reuse, provided that the creditor demonstrates good faith and reliance;

(c) in the case of a promise to pay or acknowledgment of debt, that the basic relationship is established;

(d) in the case of debentures, that the holder proves the fundamental relationship and that which legitimates its possession.

Question 7) Are there in any national law disqualification measures to prohibit companies polluted by organised crime? Can previously prohibited companies also be frozen or confiscated? How are the measures coordinated?

BELGIUM.

In the same way as a natural person, a legal entity (such as a company) can be convicted of an offence committed on its behalf by one of its organs or representatives.

The law of 4 May 1999 introduced criminal liability of legal entities in the Penal Code, which includes provisions in this area.

Article 7*bis* of the Penal Code entails a list of penalties applicable to offences committed by legal entities : fines, confiscation order, dissolution (may not be imposed on legal entities governed by public law) ; prohibition from carrying on any activity within the scope of the corporate object, with the exception of activities that fall within the scope of a public service mission; closure of one or more establishments, with the exception of establishments where activities falling within the scope of a public service mission are carried out; publication or distribution of the decision.

Following a conviction or as part of a bankruptcy, criminal judges or company court judges can impose a professional (management) ban on a person, for example a bankrupt entrepreneur who is alleged to have committed serious faults leading to the bankruptcy, or criminal offences related to his or her function.

Concerning confiscation measures, article 43*quater* of the Penal code provides that the assets of a criminal organization must be confiscated, without prejudice to the rights of *bona fide* third parties.

The Law of 4 May 2023 creates the Central Register of Professional Prohibitions. This Central Register will be put in place as of 1st august 2023 as an automated processing system maintained under the authority of the Minister of Justice. It will ensure the recording, storage and modification of data relating to decisions handed down concerning persons on whom a professional prohibition has been imposed.

The purpose of this Register is to make the data recorded available to enable public services and third parties to check that directors, managers, commissioners, delegates for day-to-day management, members of a management committee or board or a supervisory board or liquidators of a legal entity, representatives for branch activity or candidates for appointment to such functions are not disqualified from exercising these functions.

Limited public access is foreseen to prevent citizens from dealing with prohibited contractors without their knowledge. This restricted public access - based on a specific, registered search - displays only the name of the convicted individual or legal entity and the start and end dates of the prohibition.

The new law was published on 1st June 2023. It comes into force on August 1, 2023, except for article 10, which comes into force on the date set by the King, but no later than August 1, 2024.

In the context of the fight against organised crime, there is also a consistent approach of conducting financial investigations of companies associated with drug trafficking.

FRANCE.

French national legislation does not provide measures to prohibit companies polluted by organized crime. Yet civil society in France has mobilized to create in the Criminal Code an offence of Mafia association and a penalty of dissolution for Mafia infiltration.

GREECE.

In case a money laundering or a predicate offence was committed on behalf of or for the benefit of a company by a person who represents or acts on behalf of such company, an administrative fine ranging from €50,000 up to €10 million shall be imposed. Also, the following administrative sanctions may be ordered against the company: i) suspension of activities temporarily or permanently; ii) prohibition of certain activities to be performed by the company, or establishment of branches; and iii) a ban from public tenders, subsidies, etc. **(art. 45 L. 4557/2018).**

The law does not explicitly stipulate the freezing or confiscation of a company as a whole. However, its assets may be frozen and confiscated if they are deemed to be the proceeds of a criminal offence, provided that the person who has the powers to represent or control that company knew that these assets derive from an offence **(art. 68 par. 5 GCC)** or had knowledge of the predicate of money laundering offence at the time of acquisition such assets **(art. 40 par. 1 GCC).**

ITALY.

The instruments for restoring the legality of companies are regulated by Legislative Decree no. 159 of 2011, in articles 33, 34, 34-bis and 94-bis of the same decree. These are measures involving judicial control and judicial administration of assets.

These measures can be applied when the extent of the company's involvement with organized crime is limited to either occasional or stable facilitation. However, these measures can only be applied to companies that appear to be more or less recoverable. If the enterprise falls under the criteria of a so-called "mafia-type" enterprise, i.e. if it fulfils the conditions of complicity with the criminal group, the only measure that can be taken is confiscation.

The instruments of prohibition, on the other hand, are regulated by Article 82 and subsequent provisions of Legislative Decree No. 159/2011. They fall under the jurisdiction of the Prefectural Authority. Summarizing the complex regulatory framework contained in the aforementioned articles, the Prefectural Authority has the power to suspend any business activity, with significant consequences even for any ongoing contracts with the public administration. The conditions for this measure are based on "indicative" findings that indicate the risk of mafia infiltration in the company. This assessment is carried out by the prefectural authority, using the "more likely than not" standard of judgment.

IV – Relevant Case law concerning freezing and confiscation in the four countries

CONTEXT[71]

The analysis of national case law is indispensable for understanding the concrete operation of freezing and confiscation regimes. Legislative provisions, while establishing the normative framework, frequently fall short in capturing the intricacies of these measures when implemented in practice. Judicial decisions serve to clarify the scope of confiscation, test the balance between repression and protection of fundamental rights, and define the contours of compatibility with constitutional and supranational standards. Case law, therefore, provides a privileged vantage point from which to assess the effectiveness and legitimacy of asset recovery systems.

In this perspective, the project sought to investigate whether and how national courts in Belgium, France, Greece, and Italy have addressed key questions relating to the nature and limits of confiscation and freezing orders. A particular emphasis was placed on rulings in which courts were tasked with determining whether a particular measure should be classified as punitive, preventive, or administrative in nature. This classification bears direct consequences for the applicability of constitutional guarantees and for the standard of review. The jurisprudence of the European Court of Human Rights (ECtHR) has been instrumental in this regard, particularly through the development of the autonomous concept of materia penale, which precludes states from removing sanctions or measures from the purview of criminal guarantees by mere formal reclassification. Furthermore, the case law of the Court of Justice of the European Union (CJEU) has begun to exert increasing influence, especially on questions of proportionality, mutual recognition, and the interpretation of Regulation (EU) 2018/1805.

Consequently, the survey solicited reports from national partners on the following subjects:

- the existence of conflicting decisions within their legal systems on the nature, scope, or proportionality of confiscation and freezing measures, and the ways in which such divergences were resolved, is a subject of interest;
- constitutional challenges raised against confiscation regimes, and the reasoning adopted by constitutional or supreme courts in adjudicating them;

[71] Section drafted by A. Esposito, full professor of criminal law, scientific coordinator of the RINSE Project

- cases in which national provisions or practices were censured or scrutinized by the European Court of Human Rights (ECtHR) or the Court of Justice of the European Union (CJEU), with regard to the compatibility of confiscation with the principles of legality, proportionality, presumption of innocence, and the right to property under Article 1 of Protocol No. 1 ECHR;
- and, finally, whether unresolved tensions persist between domestic legal traditions and supranational obligations, generating uncertainty for legal practitioners and courts

Beyond the mapping of doctrinal and jurisprudential debates, the study also sought to capture the broader systemic implications of judicial decisions. In numerous instances, rulings on confiscation have not only resolved individual disputes but also catalyzed legislative reforms, prompted changes in prosecutorial or administrative practices, and shaped the political perception of asset recovery as a legitimate tool in the fight against organized crime and corruption. In this manner, case law functions not only as an interpretive instrument but also as a catalyst for legal and institutional transformation.

In light of the aforementioned context, the subsequent comparative observations present the predominant trends that emerged from the analysis of pertinent jurisprudence in Belgium, France, Greece, and Italy. This section illustrates how national courts have grappled with the dual imperative of ensuring the effectiveness of confiscation regimes while safeguarding fundamental rights. It also demonstrates how supranational judicial oversight has influenced and constrained domestic legal developments. Collectively, these materials provide a more nuanced understanding of the evolving role of the judiciary in delineating the boundaries of asset recovery in Europe.

COMPARATIVE NOTES[72]

The ensuing comparative observations underscore the way national and supranational courts have addressed the prevailing concerns surrounding freezing and confiscation measures, particularly in the context of European standards and fundamental rights. While Belgium exhibits a paucity of conflicting case law, the circumstances in Greece, France, and Italy appear to be more dynamic and complex. In these countries, national and European courts have addressed a range of legal issues, including the classification and proportionality of confiscation, the presumption of innocence, the scope of procedural safeguards, and the balance between efficiency and fundamental rights. The resulting legal landscape is characterized by a diversification of interpretations, with domestic judicial interpretations increasingly converging with supranational constraints and obligations.

As previously indicated, no pertinent conflicting case law has emerged in Belgium regarding the national implementation of the European standard on freezing and confiscation.

In Greece, however, a significant judgment of the European Court of Human Rights has highlighted potential conflicts between national confiscation and the presumption of innocence. In the case *Paraponiaris vs. Greece*[73], the European Court found a violation of Art. 6 (2) of the ECHR concerns a provision that imposes criminal sanctions despite the termination of the prosecution. Given that confiscation is regarded in Greek law as a punitive measure, there is a high risk that similar rulings may find such confiscations incompatible with Article 6(2) when they are imposed absent a criminal conviction. Further legal uncertainty has arisen in Greece concerning the interaction between administrative and judicial authorities, particularly in relation to the freezing powers of the Financial Intelligence Unit (FIU). National courts have

[72] Drafted by C. Scialla, post-doctoral researcher in criminal law, RINSE Project
[73] *Affaire Paraponiaris c. Grèce, 06/04/2009*

debated whether the President of the FIU may validly issue freezing orders in cases that are simultaneously the subject of criminal investigation.

In France, numerous legal issues have been raised before the French courts regarding national models of confiscation and their compatibility with fundamental rights. The most relevant themes in the context of judicial cooperation in criminal matters, include:

- Respect of the freezing orders and the presumption of innocence [Crim, May 12th, 2015, no. 14-81.590 and Crim, February 22nd, 2017, no. 16-83.242].
- Limitation of access to procedural documents in the preliminary investigation phase: [Cass. crim., June 13th, 2018, no. 17-83.238; Cass. crim., February 25th, 2015, no. 14-86.450; Cass. crim., May 3rd, 2018, no. 18-90.004; Cass. crim., October 9th, 2019, no. 19-82.172; Cass. crim., February 3rd, 2021, no. 20-84.966; Cass. crim., June 29th, 2021, no. 21-80.887) Cass. crim., June 13th, 2018, no. 17-83.893 and Cass. crim., October 21st, 2020, no. 19-87.071]
- Scope of judicial discretion in the seizure decisions: the decision to impose a seizure lies within the sovereign powers of the trial judges. However, it must comply with the principle of proportionality, meaning that the value of the seized assets cannot exceed the proceeds of the offence under investigation [Crim, July 11th, 2017, no. 16-83.773)]
- When ordering confiscation, the judge must evaluate the proportionality of the interference with the property rights of the person concerned, considering their personal circumstances and the actual seriousness of the offence. This proportionality assessment is not required when the property constitutes the direct proceeds of the offence [Crim, September 25th, 2019, no. 18-85.211 and Crim, December 9th, 2020, no. 20-81.907; Crim, June 27th, 2018, no. 19-87.321]
- With regard to creditors' rights, the Criminal Division has ruled that, where a creditor holds a real security interest (such as a pledge or mortgage) over property subject to confiscation, the amount of the secured claim must be deducted from the total value of the asset. This rule does not apply to personal guarantees that do not confer real rights over the property [Criminal Division no. 21-85.668]
- In cases where property acquired with illicit funds has been improved or renovated using the proceeds of the offence, the judge retains discretion either to limit confiscation to the illicit portion or to order confiscation of the entire asset [Court of Cassation, no. 21-85.668]
- Several provisions of the French Criminal Code have been challenged before the Constitutional Council.
    - Article 131-21 which governs the scope of criminal confiscation, was contested on three occasions: first, in relation to the respect of the proportionality principle in cases of automatic confiscation [decision no. 2016-66 of November 26, 2010], and in relation to the protection of bona fide owners [no. 2021-932 QPC of 23 September 2021, no. 2021-949/950 QPC of 24 November 2021].
    - Article 225-25 of the criminal code was challenged regarding the right of the owner to be heard before the court orders confiscation [no. 2021-899 QPC of 23 April 2021]
    - Articles 713-36 to 713-41 of the Code of Criminal Procedure, which set out the conditions for recognizing and enforcing in France a confiscation order issued by a foreign judicial authority, were contested on the grounds that they permit the criminal court to authorize enforcement without first hearing the person concerned [decision no. 2021-969 QPC of 11 February 2022]

- Finally, the European Court of Human Rights has examined the compatibility of French confiscation law with the right to respect for private and family life. In *Aboufadda* v. France (4 November 2014), the Court considered that the confiscation of the applicants' family home, which compelled them to relocate, could amount to interference with their rights under Article 8 ECHR. However, it upheld the domestic decision, noting that the French authorities had allowed the occupants a reasonable period to secure alternative accommodation.

Italy implements many freezing and confiscation measures.

- With regard to direct confiscation, governed by Art. 240 of the Italian Penal Code, and classified as a security measure, no significant issues have arisen before the European Court of Human Rights (ECtHR) or the Court of Justice of the European Union (CJEU). Nonetheless, interpretative questions have emerged before domestic courts, particularly in relation to the confiscation of money. The prevailing interpretation is that the confiscation of money constituting the proceeds of crime should be treated as direct confiscation. This classification considerably broadens the scope of application, allowing the measure to be imposed even where the suspect or offender proves the lawful origin of funds deposited in a bank account attributed to them. In such cases, the legal basis lies in Article 240 of the Penal Code, rather than in the specific provisions on confiscation by equivalent. As a security measure, direct confiscation is recognized as having a predominantly restorative function, unlike confiscation by equivalent, which has a punitive character. Consequently, the procedural guarantees typical of criminal punishment do not apply to direct confiscation. This interpretative approach has been confirmed by the Supreme Court of Cassation, which has thereby expanded the reach of traditional confiscation [Supreme Court of Cassation (February 23, 2023, no. 25275; Supreme Court of Cassation, May 27, 2021, no. 42415]
- Confiscation by equivalent, which depends on the specific offence committed, has been the subject of disputes concerning its legal nature. National courts have established that it constitutes a punitive measure falling within the scope of "criminal matters," with the resulting application of the principle of non-retroactivity in *malam* partem, pursuant to Article 25(2) of the Constitution and Article 7 ECHR. As a result, it may only be ordered following a criminal conviction [Court of Cassation, February 18, 2009, no. 13098; Constitutional Court order no. 97 of April 22, 2009; Court of Cassation, January 31, 2023, no. 4145]
- Preventive confiscation of assets suspected to have unlawful origins is regulated by Article 240-bis of the Penal Code and Article 24 of Legislative Decree No. 159/2011 (the Anti-Mafia Code). Extensive national and international case law has developed in this area. Before domestic courts, the so-called "chronological delimitation" principle has been established, requiring a temporal link between the dangerousness of the person concerned and the period during which they gained control over the property. Only assets for which the individual cannot prove lawful origin, which they directly or indirectly control, and which fall within the categories set out in Articles 20 (seizure) and 24 (confiscation) of Legislative Decree No. 159/2011, are subject to the measure. This principle was articulated by the Joint Sections of the Court of Cassation in the Spinelli judgment (Cass., Joint Sections, no. 4880/2015) and later reaffirmed by the Constitutional Court (Judgment no. 24 of 2019). The most debated issue remains the extent of procedural safeguards afforded to the person concerned, in particular the applicability of criminal guarantees to preventive confiscation, given its impact on property rights.
- The urban planning confiscation, provided for under Article 44 of Law n. 380/2001 (environmental law), is classified in domestic jurisprudence as an "administrative sanction". However, the ECtHR has consistently held that it constitutes a "penalty" within the meaning of Article 7 ECHR, meaning that the guarantees of this provision apply even in the absence of criminal proceedings under Article 6 ECHR. This was first established in

the so-called Punta Perotti judgments (30 August 2007 and 20 January 2009). Despite its punitive nature, domestic courts have continued to apply this measure even without a criminal conviction, including in cases of acquittal or when the offence is time-barred. In GIEM and Others v. Italy, the ECtHR confirmed the compatibility of urban confiscation with Article 7 ECHR when applied based on a substantive finding of criminal liability, even if not contained in a formal conviction, such as in cases where the offence has been declared time barred.

- With regard to offences against the public administration, Article 322-ter of the Italian Penal Code provides for confiscation as a measure applicable upon fulfilment of specific legal requirements. These include a conviction or a guilty plea for one of the listed crimes, the possession or availability, directly or indirectly, even through an intermediary, of money, goods, or other benefits whose value is disproportionate in relation to the individual's declared income for tax purposes or their economic activity, and the failure of the offender to justify the lawful origin of such assets. In addition to these statutory conditions, jurisprudence has developed the requirement of "temporal reasonableness" as a limiting principle for the measure's application. The Court of Cassation has clarified that this temporal element is necessary to ensure that confiscation is proportionate, aligning its scope with the standards set by Directive 2014/42/EU, Article 24 of the Italian Constitution, and Article 6 ECHR, thereby safeguarding the principle of proportionality [Court of Cassation, n. 10684/2023].
- Arms confiscation is regulated by Article 6 of Law No. 152/1975, which stipulates that the mandatory direct confiscation measure under Article 240(1) of the Penal Code applies to all offences involving weapons. The Constitutional Court was called upon to assess the legitimacy of this provision, given that it obliges the judge to order the confiscation of weapons even in cases where the offence is extinguished through *oblazione* thereby raising concerns over its punitive nature. The referring court argued that this automatic application conflicted with the principle of the presumption of innocence (Article 27 of the Constitution, Article 6 ECHR, and Article 48 of the EU Charter of Fundamental Rights) as well as with the fundamental right to property (Article 42 of the Constitution, Article 1 of Protocol No. 1 ECHR, and Article 17 of the EU Charter). The Constitutional Court, however, rejected these objections, holding them to be unfounded. It reaffirmed the preventive and non-punitive nature of the measure, confirming its legitimacy considering constitutional and Convention standards [Constitutional Court, 24 January 2023, n. 5]

NATIONAL ANSWERS

Question 1) Have national seizure and confiscation measures been the subject of conflicting case law? How have these contrasts been resolved by internal case law? Are there still critical applications? Have constitutional questions been raised before national Courts?

Have national seizure and confiscation measures been subject to censure by the European Court of Human Rights and the Court of Justice of the European Union? If so, what were the critical issues analysed by the Courts?

Specifically, regarding the contrast between the national ablative measures and the principles developed by the European and Conventional case law on criminal matters (*materia penale)* and fundamental guarantees, have there been any censures by European and Conventional Courts?

BELGIUM

With regard to this question, one public prosecutor's office reported the following case: a painting accompanied by certificates was put up for sale in a gallery in France. It was sold but the owner was not compensated. A complaint was lodged for fraud. The French investigation revealed that the painting and the accompanying documents had already been resold four times and that they could finally be located in Belgium.

►A freezing and confiscation order was issued and implemented.

►The investigation carried out with the Belgian owner shows that he obtained the painting in good faith.

►France considers that the painting should be returned to France. The Public Prosecutor and the Chambers of Bruges decide that the Belgian possessor acquired the painting in good faith and that he may remain in possession of it.

The decision was resigned in agreement with the General Prosecutor.

This conflict could not be resolved.

With regard to the second and the third questions, the practitioners interviewed were not informed of any court rulings in this area, as well as a lack of experience.

FRANCE

Numerous legal issues have been raised before the French courts. Here are the main ones:

- **No breach of the presumption of innocence**

The Criminal Division of the Court of Cassation ruled that "the seizure does not entail any final decision that the trial court would not have the power to make and therefore does not affect the presumption of innocence" (Crim, May 12th, 2015, no. 14-81.590 and Crim, February 22nd, 2017, no. 16-83.242)[74].

- **Access to procedural documents by suspects**

Suspects at the preliminary investigation stage and third parties throughout the proceedings cannot have access to the entire case file to assert their rights.

They can only have access to "*the only documents in the proceedings relating to the seizure*", at the stage of contesting a special criminal seizure, or only to "*the minutes relating to the seizure of the objects*" at the trial stage (Cass. crim., June 13th, 2018, no. 17-83.238). According to an author, Mathieu HY[75], these imprecise wordings required clarification by the Court of Cassation, which nevertheless consistently held that this limitation on access to the case file complied with conventional standards (Cass. crim., February 25th, 2015, no. 14-86.450) and did not merit submission to the Constitutional Council (Cass. crim., May 3rd, 2018, no. 18-90.004; Cass. crim., October 9th, 2019, no. 19-82.172; Cass. crim., February 3rd, 2021, no. 20-84.966; Cass. crim., June 29th, 2021, no. 21-80.887).

The prohibition on an investigating chamber relying on documents not communicated to the appellant had already been affirmed in a judgment of 12 May 2015.

[74] Source: Droit et pratique des saisies et confiscations pénales», Lionel Ascensi, Dalloz reference edition, 2022/2023.
[75] Source: «Droit des saisies pénales et confiscations: repères jurisprudentiels», Matthieu Hy, avocat au Barreau de Paris, September 22nd, 2021.

According to the author, Mathieu HY[76], the counterpart, consisting in prohibiting the investigating chamber from relying on documents that have not been communicated, is open to criticism on two counts. On the one hand, it assumes that the court, like the public prosecutor, was able to take knowledge of documents withheld from the appellant. In fact, the solution adopted is simply not to mention them in its decision. On the other hand, this prohibition prevents the appeal court from fulfilling its role and in particular from complying with the very requirements of the Cour de cassation. By way of illustration, when ruling on an appeal against an order for the seizure of property belonging to an accused person at the preliminary investigation stage, the investigating chamber must "ascertain, on its own grounds, whether there is evidence to suggest that the offences on the basis of which" the seizure was made have been committed.

Critically, the solution encourages the least precise reasons, which will not require any additional documents to be provided. This is a sort of bonus for imprecision.

Cass. crim., June 13th, 2018, no. 17-83.893 and Cass. crim., October 21st, 2020, no. 19-87.071)

- **No need to characterize a risk of dissipation of the property.**

The Criminal Division of the Court of Cassation confirmed that "article 706-141 of the Code of Criminal Procedure does not require that a risk of disappearance of the property be identified in order to order a seizure, nor does it require an investigation into whether, given the situation, the criminal seizure in question was necessary to guarantee a possible additional penalty of confiscation". The Criminal Division considers that the seizure decision falls within the sovereign power of the trial judges, who are only required to ensure that the proceeds of the seizure do not exceed the proceeds of the offence in question (Crim, July 11th, 2017, no. 16-83.773)[77].

- **No need to search for other assets**

The Criminal Division of the Court of Cassation has also ruled that judges hearing an appeal against a seizure order are not obliged to investigate whether the defendant owns other assets that may be seized. Nor are they obliged to demonstrate the need for the seizure in the light of other alternative measures likely to provide an equivalent guarantee (Crim, June 17th, 2015, no. 14-83.236)[78].

- **Indifference to the indictment**

When the seizure is ordered during the judicial investigation, the indictment of the person being prosecuted is not a prerequisite for the seizure of the assets belonging to that person (Crim, December 7th, 2016, no. 16-81.280)[79].

- **Legal control of proportionality**

In a decision dated 25 September 2019, the Court of Cassation ruled that "except where the seizure, whether in kind or in value, relates to property which, in its entirety, constitutes the object or proceeds of the offence, the judge, in authorizing or ordering such a measure, must assess the proportionality of the interference with the property rights of the person concerned, having regard to the latter's personal situation and the actual seriousness of the facts, where such a guarantee is invoked or ex officio, where the seizure concerns assets" (Crim, September 25th 2019, no. 18-85.211 and Crim, December 9th, 2020, no. 20-81.907)[80].

The French judge must therefore review the proportionality of the seizure, regardless of whether the

[76] Idem.
[77] Idem
[78] Source: Droit et pratique des saisies et confiscations pénales, Lionel Ascensi, Dalloz reference edition, 2022/2023.
[79] Idem
[80] Idem

property is confiscable or not. The only exception is when the seized property is the proceed of the criminal offence.

However, there are two exceptions to this principle. The first is in the case of co-perpetration or complicity, where the seized property belongs to the co-perpetrator or accomplice, but the case file does not provide proof that he or she benefited from the entire proceed of the offence. The second one is where the seized property was financed by the proceed of the offence and by licit funds. In both these cases, the judge must ensure that the seizure is proportionate (Crim, June 27th, 2018, no. 19-87.321).

The proportionality control must also be carried out regarding respect for private and family life, provided that an infringement of this right is invoked. In fact, this same control seems to apply to all the fundamental freedoms set out in the European Convention on Human Rights, provided that an infringement is invoked.

The same rules apply to confiscations.

- **Confiscation of a jointly owned asset**

In two rulings dated 30 March 2022, the Court of Cassation confirmed that in the event of the proposed confiscation of a joint asset, the court may confiscate the asset in its entirety, with the rights of the spouse acting in good faith being preserved in view of the right to a reward (this will be particularly the case where the proceeds are concerned) but may also confiscate part of the asset. The part of the property not confiscated is then returned to the conjugal community, thus creating an indivision between the State and the conjugal community (nos. 21.82-217 and 21.82-389).

- **Valuation of an encumbered asset**

In a ruling handed down on 23 November 2022, the Criminal Division was called upon to rule on the method for valuing an asset encumbered by a guarantee. The question raised was whether the capital owed to the creditor should be deducted from the value of the asset. The court ruled that the value of the claim must be deducted from the total value of the property - in this case a building - if the creditor has a right over the property (real guarantee: pledge, mortgage, etc.) enforceable against the State (published in the files: mortgage in the FIDJI2, pledge in the SIV, etc.). In principle, personal guarantees are excluded as they do not confer any rights over the property and cannot be set up against the State (no. 21-85.668).

- **Multiple authors**

In a decision dated 7 December 2022, the Cour de cassation clarified the concept of proceed. In this case, a property had been acquired with licit funds, then underwent work financed by the proceeds of the offence. The question was the following: should the confiscation be limited to the amount of the works alone? In keeping with this pragmatic approach, the supreme Court held that the trial judge could choose either to confine the confiscation to the lawful part or to confiscate the entire asset. In the latter case, the Court requires the judge to ensure that the confiscation measure is proportionate to the seriousness of the facts and the personal situation of the person concerned (x).

Constitutional questions have also been raised before Constitutional Council. Here are the main ones:

- **Article 131-21 of criminal code was contested three times before the French Constitutional Council**

In a decision no. 2016-66 of November 26, 2010, the French Constitutional Council decided that " the provisions of Article 131-21 of the Criminal Code, insofar as they stipulate that the confiscation of property that was used to commit the offence or that is the direct or indirect proceed of the offence is automatically incurred in the case of a felony or misdemeanour punishable by a prison sentence of more than one year, with the exception of press offences; that the confiscation of property whose origin the convicted person has not been able to prove is also incurred in the

case of a felony or misdemeanour that has procured a direct or indirect profit and is punishable by at least five years' imprisonment, and that the confiscation of dangerous or harmful objects or objects whose possession is prohibited by law does not infringe the principle of proportionality of penalties."

In a decision no. 2021-932 QPC of 23 September 2021, the Constitutional Council declared the third paragraph and the words "or, subject to the rights of the owner in good faith, of which he has free disposal" in the ninth paragraph of Article 131-21 of the Criminal Code, as amended by Act no. 2013-1117 of 6 December 2013 on combating tax fraud and serious economic and financial crime, to be unconstitutional. However, the repeal of these provisions has been postponed until 31 March 2022. Measures taken before this date in application of the provisions declared contrary to the Constitution may not be challenged on the grounds of unconstitutionality.

In a decision no. 2021-949/950 QPC of 24 November 2021, the Constitutional Council declared the second, fourth, fifth, sixth, eighth and the remainder of the ninth paragraphs of Article 131-21 of the Criminal Code, as amended by Law no. 2013-1117 of 6 December 2013 on combating tax fraud and serious economic and financial crime, to be unconstitutional. However, the repeal of these provisions has been postponed until 31 December 2022. Measures taken before this date in application of the provisions declared contrary to the Constitution may not be challenged on the grounds of unconstitutionality.

These provisions were amended on 4 March 2022 and have not been called into question since.

The validity of this article has also been challenged before the Cour de Cassation, which ruled as follows:

"*The questions raised, insofar as they challenge the constitutionality of the interpretation of Article 131-21, paragraph 9, of the Criminal Code, according to which there is no need for the criminal court to review the necessity and proportionality of the infringement of property rights by measures to confiscate the value of the direct or indirect proceeds of the offence, or to individualize this additional penalty, are not serious.*

On the one hand, when the court orders confiscation of the value of the direct or indirect proceeds of the offence, it must first ensure that the value of the property confiscated does not exceed the amount of the proceeds of the offence, so that the infringement of the convicted person's right of ownership cannot exceed the economic advantage derived from the criminal offence and which constitutes the financial consequence of its commission, as well as providing sufficient reasons, free of contradiction, and responding to the peremptory pleas in the parties' submissions, from which it can be deduced that neither the principle of the necessity of penalties, nor the principles that penalties should be individualized and should state the reasons on which they are based, have been disregarded.

On the other hand, if certain offences are liable to make their perpetrator liable, in addition to the confiscation in value of the direct or indirect proceeds of the offence, to the confiscation of all or part of his property as defined by Article 131-21, paragraph 6, of the Criminal Code, and if the criminal court which orders such a measure is required to review, if necessary of its own motion, the proportionality of the infringement of the convicted person's right to property, the option thus available does not infringe the principles of equality before the law and justice, since this difference in treatment is justified by the fact that the confiscation incurred on the basis of the aforementioned text, unlike that incurred on the basis of the text whose constitutionality is being challenged, is liable to relate, without limit, to all of the property making up the convicted person's assets".

- **Article 225-25 of criminal code was contested before the Constitutional Council**

Article 225-25 of the Criminal Code does not provide that natural or legal persons convicted of an offence involving trafficking in human beings or procuring may be sentenced to the additional penalty of confiscation of

all or part of the property they own, whatever its nature. Confiscation may also relate to property of which these persons only have free disposal, subject to the rights of owners acting in good faith.

In decision no. 2021-899 QPC of 23 April 2021, the Constitutional Council ruled that these provisions failed to comply with the requirements arising from article 16 of the 1789 Declaration of the Rights of Man and of the Citizen, insofar as there is no provision for the owner who is known or who has claimed this status to be given the opportunity to comment on the confiscation measure envisaged by the court.

Since this decision, Article 225-25 of the Criminal Code was amended on 31 December 2021. It now refers to Article 131-21 of the Criminal Code, which states: "*Except in the case mentioned in the seventh paragraph, when the confiscation penalty relates to property over which any person other than the convicted person has a right of ownership, it may not be pronounced if this person, whose title is known or who has claimed this status in the course of the proceedings, has not been given the opportunity to present his observations on the confiscation measure envisaged by the trial court for the purpose, in particular, of asserting the right he is claiming and his good faith*".

This provision has not been called into question since then.

- **Articles 713-36 to 713-41 of the Code of Criminal Procedure**

In a decision no. 2021-969 QPC of 11 February 2022, the Constitutional Council ruled that articles 713-36 to 713-41 of the Code of Criminal Procedure comply with French constitution.

Articles 713-36 to 713-41 of the Code of Criminal Procedure set out the conditions under which the competent French courts may authorize or refuse to enforce in France a confiscation order issued by a foreign judicial authority. Under the contested provisions, the criminal court may, at the request of the public prosecutor, authorize the enforcement of such an order without first having to hear the persons concerned. Firstly, the criminal court can only rule on the enforcement in France of a confiscation order issued by a foreign judicial authority that is final and enforceable under the law of the requesting State. It is therefore not for the court to rule on the merits of the confiscation order. Moreover, the contested provisions allow the criminal court to hear all the interested parties if it considers it appropriate to do so.

Secondly, it follows from the settled case law of the Cour de cassation, as set out in the decision to refer the priority question of constitutionality, that the persons concerned have a right of appeal, under the conditions of ordinary law, against the decision of the criminal court authorizing the enforcement of the foreign confiscation order. For the Counsel, the right to make such an appeal necessarily implies that they are notified of the decision. It follows from the foregoing that the complaint alleging infringement of Article 16 of the Declaration of 1789 must be dismissed.

2) The French confiscation system has been criticized by the ECHR as potentially infringing the right to respect for private and family life. In a judgment of 4 November 2014 (*Aboufadda v France*), the court ruled that the confiscation by the French repressive judge of a property constituting the applicants' family home, forcing them to move, could be analysed as interference by a public authority with the exercise of the right to respect for private and family life and their home. In this case, however, the court did not censure the decision, noting that the French authorities had given the occupants reasonable time to find alternative accommodation.

France was condemned by the European Court of Human Rights in the Bowler International Unit v France judgment of 23 July 2009, in a customs case in which the applicant's goods, which had been used to conceal the fraud of transporting drugs, had been confiscated. According to the Court, as the law stood, the goods could not be reclaimed by their bona fide owner. The

Court considered that the applicant had been deprived of the possibility of exercising an effective remedy to remedy this interference, even though the French courts had recognized his good faith.

GREECE

The Greek case law traditionally treats confiscation provisions as being in conformity with the Greek Constitution. On 25-9-2008 ECtHR has issued its decision in *Paraponiaris vs. Greece* which found that provisions that imposed criminal sanctions, despite the termination of the prosecution of the defendant, are in breach of art. 6 par. 2 ECHR. In such case, there is very high risk that the provisions of Greek non-conviction-based confiscation, which are considered to be of punitive nature as well, would be found in violation of art. 6 par. 2 ECHR.

Conflicting case law existed in relation to the freezing powers of the FIU and whether its President had the powers to order the freezing of assets in a case, when is being criminally investigated by the authorities. The Grand Chamber of the Supreme Court of Greece (*Areios* Pagos) with its decision 1/2022, ruled that the President of the FIU had such powers, irrespective of the progress of the case in criminal proceedings.

ITALY.

DIRECT CONFISCATION:

With regard to direct confiscation (art. 240 of the Italian Criminal Code), no relevant questions have been resolved by the European Court of Human Rights and the Court of Justice of the European Union, nor have there been any specific questions regarding its legal nature. Conflicts of interpretation have arisen in the national application of the measure.

The most significant jurisprudential contrast has concerned the interpretation of the confiscation of money, whether directly or by equivalent means, an issue arising from the fungible nature of the asset. Lastly, the Supreme Court of Cassation (February 23, 2023, no. 25275) stated that: “The confiscation of the money constituting the proceeds or the price of the crime, however it is found in the assets of the perpetrator of the crime and representing the actual monetary increase of the wealth obtained, must always be classified as direct and not by equivalent means, due to the fungible nature of the asset, with the consequence that the assertion or proof of the lawful origin of the specific sum of money subject to confiscation is not an obstacle to its acceptance”. This approach has broadened the scope of direct confiscation, allowing a wider application of the measure even in cases where proof of the lawful origin of the sum of money in the bank account attributed to the suspect or offender is provided (Supreme Court of Cassation, May 27, 2021, no. 42415). As a result, the confiscation of money, even in the case of crimes that do not increase the individual's wealth but result in cost savings (as in the case of non-payment of a tax debt), finds its direct legitimation in Article 240 of the Criminal Code and not in the specific legal provision for confiscation by equivalent. The legal nature of the former is that of a security measure and, consequently, it is recognized as having a predominantly restorative function rather than a punitive one, as in the case of confiscation by equivalent means. Therefore, the legal guarantees typical of criminal cases do not apply to it. A further contrast concerns the motivation for optional confiscation (art. 240, para. 1 of the Criminal Code): the justification for the measure cannot be based solely on the relevance of the property to the crime, but must also include the circumstance that the offender, in

accordance with the *id quod plerumque accidit* principle, would repeat the crime if he remained in possession of the property. This is because the measure in question is a security measure aimed at neutralizing the dangerousness of the property in the offender's possession.

CONFISCATION BY EQUIVALENT:

Equivalent confiscation, having a criminal nature, always requires a conviction in order to be executed.

Initially, the national jurisprudence supported the submission of confiscation for equivalent to the discipline in the matter of security measures, in particular to that contained in art. 200 of the Criminal Code.

According to the case-law, in particular the decisions of the Court of Cassation of 2015, confiscation by equivalent constitutes a punitive measure falling within the protective framework of "criminal law", where the principle of non-retroactivity in *malam partem* prevails.

According to the Court of Cassation (February 18, 2009, no. 13098) and the Constitutional Court (order no. 97 of April 22, 2009), "the lack of dangerousness of the assets subject to equivalent confiscation, combined with the absence of a 'nexus' (understood as a direct, present and instrumental link) between the crime and said assets, gives the indicated confiscation a predominantly punitive character, attributing to it a 'distinctly' punitive nature, which prevents the applicability of the general principle of Article 200 of the Criminal Code, according to which security measures are governed by the law in force at the time of their application and can therefore be retroactive", referring instead to Article 25, paragraph 2 of the Constitution and Article 7 of the European Convention.

Further clarifications on the matter have come from the Court of Cassation, January 31, 2023, no. 4145, tasked with resolving the question of "whether the provision of Article 578-*bis* of the Code of Criminal Procedure is applicable, in cases of confiscation by equivalent, to acts committed before its entry into force or, for crimes falling within the scope of Article 322-*ter* of the Criminal Code, before the entry into force of Article 1, paragraph 4, letter f), Law of January 9, 2019, no. 3, which inserted in Article 578-*bis* the words *or the confiscation provided for in Article 322-ter of the Criminal Code*".

The Court of Cassation has given a negative answer to this question, since, in view of the punitive nature of the confiscation of value, the principle of non-retroactivity of criminal law, in accordance with article 25, paragraph 2, of the Constitution and article 7 of the ECHR, should be applied. As a result, the confiscation in question cannot have any effect in relation to events that took place prior to the entry into force of the provision authorizing its execution.

In conclusion, it is only since the entry into force of the law amending art. 578-*bis* of the Code of Criminal Procedure that it has been possible to maintain the confiscation by equivalent in cases where the offence, pending appeal, has lapsed because of statute of limitations or amnesty. This provision cannot have retroactive effect.

EVIDENTIARY SEIZURE; ONSERVATIVE AND PREVENTIVE SEIZURE; URBANISTIC CONFISCATION; ARMS CONFISATION:

Refer to the answer to Question No. 2 in the first part.

CONFISCATION OF ASSETS WITH SUSPECTED UNLAWFUL ORIGINS:

There is a wide range of case-law, both in national and international courts, about confiscation based on excessive assets in relation to preventive confiscation. One of the most notable decisions is that of the Joint Sections, No. 4880 of June 26, 2014, which dealt with various aspects of preventive confiscation, as already mentioned in the answer to question No. 2). The issue of the temporal delimitation of seizable assets and their identification is of particular importance. Regarding safeguards, it's important to highlight the judgment issued by the Grand Chamber of the European Court of Human Rights (ECHR) in De Tommaso v. Italy. Among

the key issues addressed by the decision is the application of criminal law guarantees to preventative measures. The violation of the right to a fair trial under Article 6 of the European Convention on Human Rights (ECHR) in its criminal aspect is particularly emphasized. With reference to the criteria developed in Strasbourg based on the Engel *criteria*, the applicant argues for the essentially criminal nature of preventive measures, particularly the measure of special surveillance for the purposes of public security. However, most of the ECtHR rejects this perspective, stating (as it had already stated in the Guzzardi case) that these measures are not comparable to criminal sanctions, since the procedure leading to their application does not involve the assessment of a criminal charge. However, the Court does not disregard the fact that they are nevertheless punitive measures, to which several safeguards must be applied, including that they be specific, precise and foreseeable. These characteristics appear to be lacking, at least in part, in the Italian system.

It's important to stress that, although this judgment may seem to have a sectoral impact on personal preventive measures, its systematic nature is evident in its aim to exclude compatibility between the entire system of preventive measures (both personal and property-related) and the system of criminal law safeguards. The systematic nature of the ruling is demonstrated by its adoption by the Constitutional Court, which applies its principles to both the system of personal preventive measures and that of property-related measures. However, the application of the reasoning of the ECtHR in the De Tommaso case to patrimonial measures (similarly to what was done for personal measures) could lead to a more thorough analysis of the legal bases for the adoption of measures restricting the right to property.

Indeed, the judgment of the ECHR led the Constitutional Court to declare, on the one hand, the constitutional invalidity of Article 4, paragraph 1, letter c), of Legislative Decree no. 159 of 2011, insofar as it establishes that the measures provided for in Chapter II are also applicable to the persons referred to in Article 1, letter a); and, on the other hand, the constitutional invalidity of Article 16 of Legislative Decree no. 159 of 2011, to the extent that it establishes that the preventive measures of seizure and confiscation provided for by articles 20 and 24 are also applicable to the subjects referred to in article 1, paragraph 1, letter a). Therefore, in this judgment, the lack of specificity of the legal provision, both regarding the recipients of the personal preventive measures and regarding the property preventive measures, takes the opportunity to reaffirm the classification of the preventive confiscation within the tertium genus of the restorative confiscations, with a non-punitive nature.

Despite the stability of the provisions just described the debate on the applicability of criminal law safeguards to the field of prevention is still ongoing in Strasbourg, this time with direct implications for preventive confiscation. Indeed, the ECtHR has accepted the application of the Cavallotti brothers (ECtHR, July 28, 2023, Application No. 29614/16, Cavallotti v. Italy), in which the institution of preventive confiscation under Article 24 of Legislative Decree No. 159/2011 is subjected to Convention scrutiny.

THE URBAN CONFISCATION:

The Urban confiscation under Article 44 T.U., qualified by national case-law as an administrative sanction, has been subject to strict scrutiny by the European Court of Human Rights. According to the Strasbourg Court, the qualification of a punitive measure as a penalty or a mere administrative sanction must be carried out taking into account a number of specific parameters (the so-called “Engel criteria”), among which, in particular, the nature and purpose of the measure, the *nomen iuris* attributed to it by domestic law, it’s possible imposition following a conviction for a crime, the procedures provided for its execution and its seriousness are relevant. As regards the nature of urban confiscation, the Court noted, first, that, under domestic law, Article 44 T.U. is entitled “criminal

sanctions", which implies that the legislator intended urban confiscation to constitute a criminal sanction. This is also demonstrated by the particularly distressing nature of the measure, which is basically punitive in nature. It lacks the reintegrative/restorative purpose inherent in administrative sanctions. The subjective scope of the measure is in fact unlimited, since it is capable of indifferently encompassing built and unbuilt areas, or areas belonging to third parties. On the other hand, the measure is applied regardless of actual damage to land and even without assessing the offender's guilt. From a procedural point of view, the circumstances under which urban confiscation is adopted by a criminal court are relevant. In the light of these considerations, European case-law (judgments of August 30, 2007 and January 20, 2009 on the "Punta Perotti" case) has held that the confiscation in question constitutes a "penalty" within the meaning of Article 7 of the ECHR, with the consequence that this provision is applicable to it even in the absence of criminal proceedings under Article 6 of the ECHR. The European Courts clear position in favour of the criminal nature of the institution has led domestic jurisprudence to doubt the legitimacy of the practice of applying it in the absence of a finding of criminal liability of the accused. In fact, it has been seen how article 44 of the Consolidated Law is applied even in the face of an acquittal, unless it is found that the fact does not exist, as well as that the crime is time-barred. Regarding the latter hypothesis, the Constitutional Court, in its Ruling No. 239 of 2009, declared inadmissible, in the first instance, the question of legitimacy brought before it, stressing the full legitimacy of the urban confiscation ordered by a judgment of acquittal, which, as in the hypothesis in which the crime is statute-barred, "while not applying a penalty, entails in various forms and gradations a substantial recognition of the responsibility of the accused". In a diametrically opposite direction is a later decision of the European Court of Human Rights (case "Varvara v. Italy"), where the Strasbourg judges clearly excluded the applicability of confiscation after the intervening declaration of the statute of limitations of the crime as being in contradiction with article 7 of the ECHR. In fact, the established criminal nature of the institution requires a full and formal determination of the responsibility of the subject, a mere incidental assessment is not sufficient. Nevertheless, the Italian Constitutional Court, in judgment No. 49 of 2015, did not consider the guidance provided by the European Court to be binding, as it was considered to be an expression of a non-established orientation and therefore not binding on national jurisprudence. Moreover, the Varvara ruling was not considered sufficiently clear in confirming the indispensability of a formal conviction as a necessary condition for adopting the ablative measure. The latter conclusion was later reaffirmed in Judgment No. 187 of July 23, 2015.

Another important development in this matter is the decision of the Edu Court in the case of GIEM and others v. Italy. Departing in part from what was affirmed in the previous "Varvara" judgment, the judges declare the compatibility with Article 7 ECHR of urban confiscation applied against the mere substantive finding of criminal liability of the accused, even if not contained in a formal judgment of conviction, as in the case where the crime has been declared time barred. Confiscation may be applied, according to the Strasbourg Court, provided that all the elements of the crime of illegal allotment are verified by the court, even if the lapse of time has resulted in the extinction of the crime. The Joint Sections of the Supreme Court of Cassation later clarified that "the confiscation referred to in Article 44 of Presidential Decree no. 380 of 2001 may be ordered even in the presence of a cause of extinction determined by the statute of limitations of the crime, provided that the existence of the illegal allotment has been established from an objective and subjective point of view, in the context of a judgment that has ensured cross-examination and the widest participation of the interested parties, with the understanding that, once said cause has intervened, the judgment cannot be revoked, in application of art. 129,

paragraph 1, of the Code of Criminal Procedure, for the sole purpose of making the aforementioned finding. In the event that, at the end of the appeal judgment, it is declared that the crime of unlawful allotment has been extinguished by the statute of limitations, the Court of Appeal and the Court of Cassation are obliged, in application of article 578-*bis* of the Code of Criminal Procedure, to rule on the appeal against the effects of confiscation referred to in article 44 of Presidential Decree no. 380 of 2001".

SECTION III

I - Management and Reuse of Confiscated and Seized Assets

CONTEXT[81]

The consolidation of asset recovery regimes across Europe has not only expanded the powers of states to confiscate assets linked to criminal activity, but has also brought critical questions regarding the governance, allocation, and ultimate social function of those assets once seized or confiscated to the fore. As efforts to strengthen both the preventive and punitive dimensions of asset recovery intensify, increasing attention is being directed to the post-confiscation phase. In particular, the destination and management of confiscated property have emerged as central determinants of whether these regimes serve merely as instruments of repression or also as tools of restorative justice, social policy, and community resilience.

This emerging focus has led to a growing divergence in national approaches. While certain member states have adopted the social reuse of confiscated assets as a fundamental component of their anti-crime strategy, others persist in regarding confiscation primarily as a financial measure, with minimal reintegration of seized resources into the public domain. A comparative assessment of national frameworks reveals notable disparities in both normative design and institutional development. Italy and France, for instance, have established robust, dedicated agencies that oversee the strategic allocation and transparent management of confiscated assets, often prioritizing social reuse as an explicit objective of their asset recovery policies. Conversely, in Belgium and Greece, the frameworks for post-confiscation management remain relatively underdeveloped, with limited or episodic use of assets for social purposes and weaker institutional support structures.

These divergences are indicative of profound structural and normative tensions inherent within the European confiscation landscape. On the one hand, a discernible shift—most recently reflected in Directive (EU) 2024/1260—is evident towards the establishment of a shared European standard. This standard requires Member States to establish comprehensive asset management structures and to encourage the attainment of socially valuable outcomes. Conversely, national legal systems exhibit significant variations in their levels of legal clarity, administrative capacity, and procedural safeguards. These discrepancies give rise to inquiries regarding policy coherence and effectiveness, as well as broader issues of constitutional and human rights significance. These issues are particularly salient in relation to the principles of the rule of law, non-discrimination, and public accountability.

While the jurisprudence of the European Court of Human Rights has traditionally focused on the legitimacy and proportionality of seizure and confiscation measures, it is increasingly invoked to assess the wider implications of asset recovery for third-party rights and for the use of confiscated property itself. In particular, the ECtHR's case law has underscored that principles such as legal certainty, proportionality, and procedural fairness persist beyond the initial dispossession of assets, thereby influencing the expectations of both individuals and communities affected by such measures. Recent advancements in EU law have led to the reinforcement of the obligation placed upon member states to ensure that confiscated assets are not only preserved but also utilized in a manner consistent with the public interest and fundamental rights.

In this context, the governance of confiscated assets—namely, the identity of the managing authorities, the procedures employed, and the purposes pursued—has emerged as a pivotal issue in evaluating the legitimacy and long-term

[81] Section drafted by A. Esposito, full professor of criminal law, scientific coordinator of the RINSE Project

effectiveness of asset recovery policies. The establishment of Asset Recovery Offices (AROs) and Asset Management Offices (AMOs), the statutory rules for allocation, the legal status of confiscated property, and the role (or exclusion) of local communities in reuse processes are all key components of a regulatory puzzle that is still far from uniformly resolved. These decisions do not merely concern matters of administrative efficiency; they express the values that underpin national legal systems. The question of whether asset recovery should reinforce central authority or promote local empowerment, whether it should prioritize restitution and public benefit or maximize state revenue, and whether it can foster trust in democratic institutions or risk deepening public cynicism are all salient questions.

The administration of confiscated assets, therefore, represents both a pivotal and particularly sensitive aspect of modern confiscation regimes. Once assets are seized or confiscated, the problem does not end with their removal from the offender's control. Conversely, the subsequent administration and potential reuse of such assets give rise to intricate legal, economic, and social challenges, which are addressed in disparate ways across Europe. From a comparative perspective, the regulatory frameworks adopted by Member States reflect not only different legal traditions and institutional capacities, but also distinct policy priorities.

In certain legal systems, the administration of these assets is entrusted to specialized public agencies endowed with both administrative and technical expertise. These agencies are charged with the preservation of the value of confiscated assets and the prevention of their deterioration. In other cases, courts or prosecutorial authorities assume direct responsibility, often resulting in a strong judicial character but with limited capacity for proactive or strategic use. Conversely, alternative systems prioritize the involvement of civil society and nonprofit organizations in the reuse phase, particularly for social purposes. This approach effectively transforms confiscation into a catalyst for community development and restorative justice.

The objectives pursued through these mechanisms also differ considerably. In certain systems, the primary objective is to safeguard value to facilitate future liquidation and fiscal absorption. In other cases, particularly where social reuse has been institutionalized, confiscated property is repurposed for public benefit. For instance, real estate may be assigned to municipalities, nonprofit entities, or law enforcement bodies. In such contexts, confiscation fulfils two distinct roles: it serves as a punitive measure against criminal networks and as an affirmative strategy to restore social cohesion and redistribute illicitly acquired wealth.

However, these varied national approaches also reveal unresolved tensions that have not been fully addressed by existing harmonization instruments. The following issues are of particular importance: first, the selection criteria for managing authorities; second, the procedural rights of third parties; third, the standards of transparency and accountability; and fourth, the mechanisms of oversight. Furthermore, the presence of discrepancies in domestic practices has the potential to impede effective cross-border cooperation, as mutual trust in confiscation matters is contingent not only on the acknowledgement of judicial decisions but also on the establishment of shared expectations regarding the management of assets in practice. These assets must be managed lawfully, efficiently, and in accordance with common values.

In response, the European Union has gradually sought to establish minimum standards. The adoption of Directive 2014/42/EU marked a significant milestone, mandating that Member States implement comprehensive asset management mechanisms. This was followed by Directive (EU) 2024/1260, which significantly strengthens the legal framework by mandating the establishment of both Asset Recovery and Asset Management Offices, and by clarifying their roles and operational requirements. The Directive underscores the necessity for specialized structures that are autonomous, adequately resourced, and capable of ensuring the preservation and, when appropriate, the productive reuse of confiscated assets. The text also addresses novel challenges, such as the management of crypto-assets, which give rise to distinctive inquiries regarding volatility, traceability, and legal qualification.

Notwithstanding these advancements, substantial uncertainties persist. The appropriate balance between centralization and decentralization, the scope of civil society participation, and the safeguards needed to prevent corruption, inefficiency, or politicization of asset reuse remain contentious. In several Member States, the allocation of assets for social purposes continues to depend more on political will or administrative discretion than on clear legal criteria.

The comparative research conducted in this project substantiates both encouraging innovations and persistent shortcomings. In Italy, the pervasive and methodical practice of social reuse exemplifies how confiscation can evolve into a pivotal component of a comprehensive anti-mafia culture and a catalyst for democratic revitalization. Conversely, the absence of structured frameworks or transparent procedures in certain jurisdictions poses a threat to the legitimacy and public trust necessary to maintain confiscation regimes. It is precisely at this intersection—where law, economics, and social policy converge—that the long-term credibility and effectiveness of Europe's asset recovery system will be tested.

COMPARATIVE NOTES[82]

The four jurisdictions under examination demonstrate markedly different levels of development regarding the regulation of the destination and management of seized and confiscated assets. Their approaches range from minimal frameworks limited to exceptional uses, to highly articulated systems that assign a central role to asset reuse as a policy tool against organized crime. In Belgium and Greece, the possibility of using confiscated assets for social purposes, even if theoretically provided for, remains largely unused in practice. By contrast, in France there are already some positive examples of social reuse, whereas in Italy social reuse is the norm and sale is considered only as a residual option

The legal bases governing the destination of seized and confiscated assets vary significantly in scope and level of detail.

In Italy, the most comprehensive framework is codified in Law 109/1996 and into the aw Legislative Decree No. 159/2011 (Anti-Mafia Code), complemented by provisions of the Civil Code. This corpus articulates an explicit priority for institutional and social use, reinforced by detailed regulations on assignment, management, and reinvestment of proceeds.

France grounds institutional use in Article L.2222-9 of the General Code of Public Property and Article 131-21 of the Penal Code, while social use was formally introduced by Law No. 2021-401 and further regulated through Decree No. 2021-1428. This combination offers a structured normative basis.

Greece has enacted multiple laws acknowledging the possibility of social reuse (Art. 68 GCC, L.4557/2018), but historically these provisions remained largely inactive. Only recently, Law 5042/2023 has established a clearer statutory basis for asset management.

Belgium stands out for the absence of a comprehensive statutory framework for social reuse. Instead, it relies on dispersed provisions (e.g., Article 17 of the Law on COSC) that permit isolated uses, such as operational deployment of vehicles and educational use of seized drugs.

All four countries designate specialized stakeholders, though the degree of institutionalization varies.

Italy relies on the National Agency for the Administration and Disposal of Seized and Confiscated Assets (ANBSC), which plays a central and hierarchical role from the second-degree confiscation onward.

In France, the AGRASC is the dedicated public agency under the joint authority of the Minister of Justice and the Minister for the Budget, with a clear mandate over management and allocation.

[82] Section drafted by C. Scialla, post-doctoral researcher in criminal law, RINSE Project

Greece has more recently assigned the General Directorate of the SDOE as the Asset Management Office, empowered to manage frozen and confiscated assets.

Belgium has the COSC (Central Office for Seizure and Confiscation), but its mandate mainly focuses on operational and procedural aspects, rather than structured social reuse.

Italy and France have thus institutionalized their asset management around dedicated agencies with substantial operational autonomy and resources, while Belgium and Greece still display more limited institutional development in this domain.

The function of stakeholders ranges from purely administrative management to active promotion of social reuse.

Italy's ANBSC exercises not only administrative control but also strategic functions: property assignment, oversight of local authorities, monitoring compliance, and promoting social reuse.

AGRASC in France coordinates allocation to institutional bodies and carries out competitive procedures for social reuse, including publication of calls, evaluation of applications, and conclusion of contracts.

Greece's SDOE primarily manages preservation of asset value, with limited proactive functions in promoting reuse.

Belgium's COSC focuses on facilitating interim uses (e.g., vehicle deployment) and managing seizures but does not develop social reuse strategies.

This reflects a continuum: Italy and France position their agencies as central actors with a mission to convert confiscated assets into instruments of public benefit, while Belgium and Greece assign stakeholders more circumscribed procedural or administrative roles.

Procedural frameworks are arguably the most divergent aspect among the four countries.

In Italy, procedures are highly articulated and multilayered. Judicial authorities oversee the seizure phase; ANBSC progressively assumes responsibility upon non-definitive and definitive confiscation. Detailed processes exist for eviction, leasing, assignment to public or private bodies, and sale. Every step requires compliance with transparency, public advertising, and the reinvestment of proceeds for social purposes.

France also has robust procedural safeguards: before final confiscation, departments must notify central authorities to anticipate allocation. Once confiscation is confirmed, AGRASC coordinates advertising, application review, and board approval, with decisions subject to ministerial endorsement. This reflects a commitment to due process and accountability.

Greece has established basic rules regarding notification and management measures under Law 5042/2023. However, it lacks the granular procedures regulating transparent social allocation, competition, and periodic reporting.

In Belgium, there is no standardized procedure for systematically assigning assets to social purposes; measures are ad hoc and often confined to operational use.

Legal status is a key determinant of how assets may be used and protected.

Italy provides that definitively confiscated assets become "unavailable property," part of the public patrimony, subject to constraints on alienation and endowed with public law protections (e.g., inalienability, revocation if assets revert to criminal control). This status is legally distinct from mere state ownership.

France similarly establishes that confiscated assets vest in the State under Article 131-21 of the Penal Code and Article L.1124-1 of the Public Property Code, unless specifically allocated or destroyed. While ownership transfers to the State, France does not always classify assets as "public domain," but rather as public assets subject to assignment rules.

Greece treats seizure as establishing unavailability (prohibiting any disposal) without transferring ownership until confiscation is final. Although legal status upon confiscation is recognized, implementation and clarity regarding the public law regime remain less developed.

Belgium vests confiscated assets in the State but does not define a special legal regime comparable to Italy's unavailable property, and the assets are generally treated as state-owned property without specific public domain protections.

Italy and France have adopted the most advanced and operationalized systems, integrating social reuse as a core component of confiscation policy and creating dedicated agencies with clear procedures and transparent governance. Greece has recently moved towards more structured regulation, but practical implementation remains at an early stage. Belgium has focused predominantly on facilitating operational use in criminal investigations, without yet evolving a coherent social reuse strategy.

It is particularly interesting to look at how each country regulates the use of confiscated assets to compensate victims of crime. In Belgium, the law does provide that the criminal judge has the authority to allocate confiscated assets directly to the victim of the crime. This possibility exists on a case-by-case basis but is not embedded in a broader policy or procedural framework that ensures consistent application. France has developed a much clearer mechanism to protect victims' interests. Article 706-164 of the French Code of Criminal Procedure explicitly allows victims to request that sums owed to them be paid directly out of the funds or liquidated value of confiscated assets. AGRASC is tasked with executing this payment upon request. This provision ensures that the proceeds of confiscation can be used as a direct means of satisfying victims' claims before any assets are assigned for institutional or social purposes. In Greece, the legal framework recognizes the possibility of using confiscated property to benefit victims. Article 68 paragraph 6 of the Greek Criminal Code and Article 40 paragraph 5 of Law 4557/2018 both stipulate that, once confiscation has been ordered, the court has the discretion to decide whether the assets should be used to compensate the victim, destroyed, or reused for social or public interest purposes. In Italy, the Anti-Mafia Code establish that confiscated sums of money are partly earmarked for compensating victims of mafia-related crimes. Additionally, the proceeds generated from the leasing, sale, or liquidation of confiscated assets are explicitly allocated to special funds, such as the fund for victims of extortion and the solidarity fund for victims of mafia crimes. It can indeed be observed that, unlike France, Greece, and Belgium, where the provisions on victim compensation are generally applicable to any victim of the underlying offense, the Italian system predominantly focuses on selected categories of victims, particularly those affected by mafia-related crimes or, more broadly, organized crime.

Summary Table of Italian Procedures by Type of Confiscated Asset

TYPE OF ASSET	SEIZURE PHASE	DEFINITIVE CONFISCATION	PROCEEDS / LEGAL STATUS
Movable Property	• Entrusted to judicial custody (police, fire services, ANBSC, public bodies) • Sale if preservation is impossible • Destruction if worthless	• Used by ANBSC or state/local authorities • Assigned to non-profit/public-interest entities • Priority for equipment useful for public services • Sale if no other use is possible (with exclusion of previous owners)- Destruction as last resort	Proceeds allocated to solidarity funds for victims, public security, maintenance of confiscated assets, and justice funding- After final confiscation: become unavailable public property

TYPE OF ASSET	SEIZURE PHASE	DEFINITIVE CONFISCATION	PROCEEDS / LEGAL STATUS
Immovable Property	• Eviction ordered (exceptions for family residence) • Lease or free loan pending final confiscation • Maintenance authorized by judge	• Transferred to municipalities, provinces, or regions for social/institutional/economic purposes (with reinvestment obligation) • Assigned directly by ANBSC to eligible entities • Retained by State for public uses • Sale only if no public/social destination is possible (strict rules on eligibility and pre-emption rights) • Prohibition on resale for 5 years	Definitive confiscation turns them into unavailable public property protected by public law
Companies / Corporate Interests	• Judicial administrator continues or suspends business • Temporary lease or assignment to cooperatives or entrepreneurs • Maintenance and safeguarding- Viability plan required for continuation	• Leasing to public/private enterprises • Free concession to workers' cooperatives (strict eligibility) • Sale or liquidation if no continuity feasible • Priority to solutions preserving employment • Pre-emption rights and restrictions on buyers linked to former owners	Proceeds allocated to solidarity funds and public purposes. Assets become unavailable public property
Sums of Money / Credits	/	• Managed by ANBSC • Used for management of confiscated assets, victim compensation (especially mafia-related crimes), funding the Single Justice Fund, scholarships	Strict allocation to specified public and social purposes

Regarding the administration of seized and confiscated assets, the authority responsible for the identification and tracing of assets is designated as the Asset Recovery Office (ARO), while the authority responsible for managing these assets to prevent their deterioration before allocation or sale is referred to as the Asset Management Office (AMO). These functions may be carried out directly by a national agency or delegated to another public or private body.

It is worth noting that Directive (EU) 2024/1260 on asset recovery and confiscation explicitly requires Member States to establish both an Asset Recovery Office and an Asset Management Office as mandatory structures (see Articles 5 and 22 of the Directive).

In Belgium, the national authority responsible for asset management and recovery is the Central Office for Seizure and Confiscation (COSC), established in 2003 within the judiciary (Ministère Public). COSC acts both as the Asset Management Office (AMO) and the Asset Recovery Office (ARO). It is a member of the CARIN network and the EU ARO Platform. The organization and mandate of the COSC are defined by Circular No. 09/2018 of the College of Prosecutors General, which implements the Law of 4 February 2018 setting out its missions and composition. During the seizure phase, COSC manages the assets, but once confiscation is definitive, responsibility shifts to the Ministry of Finance. If assets are of low value, the courts themselves manage them directly without COSC involvement. COSC may sell assets, but only with the authorization of the investigative judge or the public prosecutor. The main stakeholders in the asset recovery process are the Public Prosecutor's Office, the Ministry of Finance, and the Federal Police.

In France, the *Agence de gestion et de recouvrement des avoirs saisis et confisqués* (AGRASC) was established in 2010 under the joint authority of the Ministries of Justice and the Budget. AGRASC serves both as the AMO and as the designated ARO. Its structure and functions are set out in two circulars issued by the Ministry of Justice: the circular of December 22, 2010 (covering the Law of July 9, 2010), and the circular of February 3, 2011 (specifically dedicated to AGRASC). The agency is tasked with assisting, advising, and guiding magistrates in matters of seizure and confiscation, managing assets during criminal proceedings, and taking measures to preserve their value. AGRASC ensures centralized management of all seized funds and conducts pre-trial sales of seized movable property when authorized by magistrates—particularly if the assets are likely to depreciate and are no longer needed as evidence. If the owner is acquitted or the property is not ultimately confiscated, the proceeds are returned. The agency is also responsible for publishing confiscation decisions in property and mortgage registries. Since February 25, 2011, AGRASC has been officially designated as France's ARO. It is headed by a magistrate, governed by a board chaired by another magistrate, and staffed by personnel from the Ministries of Justice, the Interior, and the Budget.

In Greece, there is no dedicated national agency; instead, an office performs the functions of an AMO as defined by Law 5042/2023. The management of assets and decisions regarding their sale depend on whether the value of the assets can be reliably determined. For example, monetary assets are transferred to a deposit account at the Consignment Deposits and Loans Fund (CDLF) and managed exclusively by the Asset Management Office. Assets whose value can be accurately assessed, such as gold, foreign currency, or other items listed by the Bank of Greece, are first deposited in the CDLF, after which the AMO oversees their liquidation through the Bank of Greece. When assets cannot be reliably valued, their immediate transfer is also ordered to the CDLF in favour of the AMO. For other movable property, the AMO may be notified of their existence upon issuance of the freezing order, but disposal generally requires a confiscation order. Only in exceptional cases—specifically, when freezing exceeds six months and the cost of management is disproportionate—can the AMO decide on disposal prior to confiscation.

In Italy, the National Agency for the Administration and Destination of Assets Seized and Confiscated from Organized Crime (ANBSC) acts as the AMO but is not designated as the ARO. The Asset Recovery Office function is instead entrusted to the National Office for Asset Recovery, established within the Ministry of the Interior, under the Central Directorate of Criminal Police (D.C.P.C.) and the Service for International Police Cooperation (S.C.I.P.). ANBSC only assumes administrative responsibility for assets after a second-degree (or final) confiscation. Before that point, assets are managed by court-appointed judicial administrators, who may receive support and assistance from the agency as needed.

Ensuring accessibility and transparency in the management of seized and confiscated assets is essential to build public trust, prevent misuse, and promote accountability in the administration of resources derived from criminal activities. In this context, it is important to describe the tools used to ensure that data related to the management of assets subject to a freezing or confiscation order are made accessible and transparent to all relevant stakeholders.

In Belgium, transparency relies mainly on institutional controls and selective publication. While the COSC produces an annual report, this document is not directly accessible to the general public. Instead, only a summary is published online, and full reports are provided to the Minister of Justice and the Council of General Prosecutors. Parliamentary oversight can be exercised through formal information requests by Members of Parliament, and the Court of Auditors conducts in-depth administrative and budgetary reviews, issuing public recommendations. Furthermore, the High Council of Justice may perform general audits of judicial bodies and make reports available to the public. Overall, while these tools enable oversight, the system does not guarantee systematic public disclosure of detailed asset data, and access often depends on institutional channels or official requests.

In France, the approach is somewhat more proactive and centralized. AGRASC regularly publishes annual activity reports, calls for expressions of interest, and other materials on its website and social media. These instruments are intended to provide a consistent flow of information to the public about the management, allocation, and disposal of seized and confiscated assets.

In Italy, the framework is the most structured and binding in terms of transparency obligations. Italian law requires not only the National Agency (ANBSC) but also all territorial entities that receive confiscated property to publish detailed, regularly updated lists of the assets they manage. These lists must include information about the composition, disposal, utilisation, and, in the case of assignments to third parties, the identity of concessionaires as well as the purpose and duration of concessions. Publication is required on the websites of both ANBSC and the relevant local entities. Failure to publish triggers managerial liability and can lead to the revocation of the disposal measure, nevertheless, this rule is not consistently implemented in practice.

None of the countries examined provide a role for local authorities in the processes of managing or disposing of seized and confiscated assets, with the sole exception of Italy, where both legislation and Constitutional Court case law have consistently affirmed that the very purpose of social reuse lies in returning assets to the communities from which criminal organizations have extracted wealth. While the law does not automatically prioritize this transfer over retention in state ownership, the Italian Constitutional Court (notably in judgments No. 34/2012 and No. 234/2012) has underscored that the restitution of illicit assets to the territories most affected by organized crime is a fundamental tool to weaken criminal organizations' social roots and to foster public trust in institutions. This approach recognizes that social reuse is not merely an administrative measure, but a strategic policy aimed at returning resources to the communities from which they were stolen, thereby strengthening local resilience and promoting legality.

In Belgium, local authorities are not involved at any stage. Once an asset is definitively confiscated, Fin Shop, the sales division of the General Administration for Patrimonial Documentation, decides whether to sell, donate, transfer, recycle, or destroy it.

In France, local authorities are explicitly excluded from the asset management system. AGRASC retains exclusive competence for the administration and disposal of assets, regardless of their nature or value.

In Greece, local authorities have no role in the process. The management and disposal of assets fall under the centralized responsibility of the designated Asset Management Office, which makes decisions based on the value and characteristics of the property.

NATIONAL ANSWERS

Question 1) Is there any national legislation governing the institutional and social use of a seized/confiscated asset? If so, provide the detailed description of the procedure, highlight the following points:

a) **Legal source;**

b) **Stakeholders;**

c) **Function of stakeholders;**

d) **Procedure of destination and management;**

e) **Legal status of the seized and confiscated immovable property (for example, in Italy the asset belongs to the heritage of the local authority and is subject to a restriction of unavailability).**

BELGIUM

a) Seized assets

Belgium has not yet developed a comprehensive system of social reuse. Some alone standing measures can be considered to be part of a "social reuse policy":

- Pre-trial, the Police can use temporarily seized assets, subject to a final decision of interlocutory sale, – especially cars – for the purpose of combatting serious and organized crime (article 17 Law on COSC).

- Seized real estate can be temporarily used pre-trial to shelter victims of the offence "slum lords" i.e. the financial exploitation of rental houses in bad shape (articles 433quaterdecies and 433quinquiesdecies of the Penal Code).

- Seized drugs can be used for the training of police personnel or police dogs for the sole purpose of detecting these illegal substances (article 28novies, § 9 of the Criminal Procedure Code).

- Seized drugs can be used by scientific institutions for educational purposes or the study and research of criminality (article 28novies, § 9 of the Criminal Procedure Code).

b) Confiscated assets

Belgium has not yet developed a comprehensive system of social reuse. In general, confiscated assets are property of the State. However, a criminal judge can allocate confiscated assets to the victim of a crime.

Protocols with police services and state secret services do allow the use of certain confiscated assets (mainly cars) by these services.

FRANCE

Institutional use:

Legal source: pursuant article L. 2222-9 of the French General Code of Public Property "Movable property, the ownership of which has been transferred to the State in the course of criminal proceedings following a final judicial decision, may be assigned free of charge, under the conditions determined by interministerial order, to judicial services or to police services, gendarmerie units, customs administration services or services of the French Biodiversity Office when these services or units carry out judicial police missions".

Stakeholders: the *Agence de gestion et de recouvrement des avoirs saisis et confisqués* - AGRASC (Agency for the management and recovery of seized and confiscated assets). AGRASC is a public administrative body under the joint authority of the Minister of Justice and the Minister for the Budget.

Function of stakeholders: AGRASC essentially has an administrative role in the allocation of these assets. It cooperates with the courts to anticipate the final confiscation decision.

Procedure of destination and management: As long as the confiscation order has not been issued, it is the responsibility of the departments to send a request to the central administration as soon as any property liable to confiscation has been seized, in order to obtain the allocation of this property. The administration must consult the other departments concerned, and then a decision on allocation is made by the Director General of the department concerned. This decision is then forwarded to the territorially competent prefect, who informs the public prosecutor of the court hearing the case, pending a final seizure decision. Once the court decision has become final, the court registry sends a copy of the decision to AGRASC, along with the assignment decision, if applicable. AGRASC then informs the department that made the request, which has fifteen days to confirm its request. If the department confirms its request, AGRASC will send it a handover report stating that the property has been assigned free of charge. The report is countersigned by the representative of the beneficiary department, which may then take possession of the asset. Storage costs incurred prior to the signing of the protocol are borne by the Ministry of Justice, while subsequent costs are borne by the beneficiary department.

Social use:

Legal source: Law no. 2021-401 of April 8, 2021, improving the effectiveness of community justice and the penal response provides for the social reuse of confiscated assets (*loi n° 2021-401 du 8 avril 2021 améliorant l'efficacité de la justice de proximité et de la réponse pénale*)

Stakeholders: the *Agence de gestion et de recouvrement des avoirs saisis et confisqués* - AGRASC (Agency for the management and recovery of seized and confiscated assets).

Function of stakeholders: the Article 706-160 of French Code of Criminal procedure stipulates that "*The agency may make available, free of charge where appropriate, a property whose management is entrusted to it in application of 1° of the present article for the benefit of associations whose activities as a whole fall within the scope of b of 1 of Article 200 of the French General Tax Code, as well as associations, foundations recognized as being of public utility and organizations benefiting from the approval provided for in Article L. 365-2 of the French Construction and Housing Code.*

The terms and conditions of this provision are defined by regulation".

Procedure of destination and management: the Article 706-160 of French Code of Criminal procedure also stipulates that *"The terms and conditions of this provision are defined by regulation*". The Decree no. 2021-1428 of November 2, 2021, implementing the ninth paragraph of article 706-160 of the Code of Criminal Procedure on the social allocation of confiscated real estate assets contains several provisions.

Firstly, the properties concerned are those that are free of occupants.

Secondly, the text provides for a list of goods excluded from the scheme:

1. Real estate encumbered by a real security measure prior to the seizure decision taken in application of article 706-150 of the Code of Criminal Procedure or, in the absence of prior seizure, to the confiscation decision. This exclusion does not apply, however, to contracts of disposal in which the beneficiary legal entity undertakes, at its own expense, to pay off the creditors holding the securities;

2. Real estate subject to a decree of insalubrity or peril. However, this exclusion does not apply to contracts for the provision of real estate where the beneficiary legal entity undertakes, at its own expense, to rehabilitate the real estate;

3. The real estate assets mentioned in Article 2, XI of Law no. 2021-1031 of August 4, 2021, on solidarity-based development and the fight against global inequalities;

4. Real estate whose disposal is necessary for the implementation of article 706-164 of the French Code of Criminal Procedure. This article stipulates the possibility for the victim of a criminal offense to request that the AGRASC pay these sums by deduction from the funds or liquidated value of the debtor's assets, the confiscation of which has been decided by a final decision and of which the agency is the custodian pursuant to articles 706-160 or 707-1.

Thirdly, the text stipulates that legal entities whose bulletin no. 2 of the criminal record or that of their directors includes one or more convictions incompatible with the requirements of good character and good repute may not benefit from the provision of real estate.

Fourthly, the decree sets out the procedure to be followed by AGRASC. In fact, the provision is made after advertising and competition.

The Director of AGRASC is required to organize a procedure that includes advertising measures to enable potential candidates to express themselves within a timeframe that he or she determines.

The criteria for assessing and selecting applications include the use to be made of the property and its contribution to the public interest, the ability to manage and operate the property, and, where applicable, the link between the offence for which the confiscation was ordered, the corporate purpose of the beneficiary legal entity and the use it wishes to make of the property.

Applications are sent to the Director of the AGRASC. They shall contain in particular:

1. A description of the use to be made of the property and its contribution to the public interest;

2. Information enabling an assessment of the applicant's ability to manage and operate the property, and its financial and technical capacities;

3. A certificate of corporate status and a certificate of tax status for the legal entity.

The Director of the Agency for the Management and Recovery of Seized and Confiscated Assets examines and selects applications. To this end, he may call on any person whose opinion he deems useful.

The text then sets a deadline. The agency's Director General submits to the Board of Directors the draft contract of availability that he proposes to conclude, within a period that may not exceed one year from receipt of the confiscation decision by AGRASC. Board

of Directors' composition, competence and operation are governed by articles R 54-1 to R54-3 of the French Code of Criminal Procedure.

In addition to the draft contract and the application file, the Board is sent the following information:

1. Information relating to the property proposed for disposal, in particular a statement of the security measures attached to the property;

2. The final confiscation order;

3. Information concerning the beneficiary of the disposal;

4. An estimate of the costs borne by the State, including in particular:

a) The cost resulting from any difference between the rent paid by the assignee and the market rent;

b) The cost of immobilizing the asset, defined as the product of the estimated value of the asset prevent concerned multiplied by the interest rate on Treasury bonds or bills with the same maturity as the term of the contract or, failing that, the closest maturity;

c) The management cost borne by the agency;

5. A reasoned opinion justifying the conclusion of the provision contract, in particular with regard to its contribution to the general interest.

The AGRASC's Director is authorized to enter the contract by a resolution of the Board.

Decisions taken in application of this article are subject to the express joint approval of the Minister of Justice and the Minister for the Budget.

The contract may be concluded free of charge or against payment. In all cases, the costs of running and maintaining the property are borne exclusively by the beneficiary, as are all taxes and contributions relating to the property.

When the agreement is concluded against payment, the amount of the sums due by the beneficiary legal entity may consider the management costs incurred by the Agency for the Management and Recovery of Seized and Confiscated Assets.

The contract may take the following forms:

1. A precarious occupation agreement for private property;

2. a lease.

The provision contract sets out the conditions under which non-compliance with the commitments made will result in the contract being terminated.

Its duration may not exceed three years, renewable for the same period under the conditions laid down in articles 8 and 9 of this decree. This time limit does not apply to construction, emphyteutic or rehabilitation lease agreements entered with an organization mentioned in article L. 365-2 of the French Construction and Housing Code.

The provisions on advertising and competition do not apply in the event of renewal of the lease. However, if the contract has already been renewed, each additional renewal is subject to advertising and competition.

Each year, the beneficiaries of the lease provide AGRASC with an account of the use they have made of the property. They shall provide the Agency with all the information required to verify the proper execution of the agreement and to maintain the property in good condition. AGRASC may also request such information at any time and carry out any on-site checks it deems necessary.

It is important to note that the agency's budgetary resources are set out in article 706-163 of the French Code of Criminal Procedure. They are made up of subsidies, advances and other public contributions, tax revenues earmarked by law, part of the confiscated sums managed by the agency, as well as the proceeds from the sale of confiscated assets when the agency is involved in their management or sale, the proceeds from the investment of sums seized or acquired through the management of seized assets and paid into its account, and the proceeds from donations and legacies.

To finish, it is important to underline the remarkable evolution of this Agency, that has opened branches in the specialized inter-regional jurisdictions of Marseille, Lyon, Lille and Rennes.

Seizure

Generally speaking, seizure does not result in any transfer of ownership to the State, but only in unavailability. The unavailability of the property is legal and therefore entails the nullity of all acts of disposal taken in violation of the seizure. The owner can therefore neither sell, give away nor destroy the property. However, the owner retains usus and fructus and can therefore rent the property and collect the rent.

In exceptional cases, the seizure may result in the property becoming unavailable. This is the case when an owner fails to fulfil his duty to maintain and preserve the property. In this case, the property may be entrusted to AGRASC for maintenance.

Confiscation

In principle, confiscated property devolves to the state. In fact, article 131-21 of the Code of Criminal Procedure states that "*confiscated property is, unless there is a specific provision for its destruction or allocation, vested in the State*".

Similarly, article L. 1124-1 of the *Code général de la propriété des personnes publiques* stipulates that "movable or immovable property confiscated by a court order shall, unless there is a specific provision for its destruction or allocation, devolve to the State".

In principle, therefore, the criminal court cannot assign confiscated property to anyone other than the state. It may be pointed out that, when the court orders the seizure of an asset pursuant to articles 373-1 or 484-1 of the Code of Criminal Procedure, it may authorize the surrender of the asset to the AGRASC for disposal when the asset is no longer necessary for the determination of the truth and its retention would diminish its value.

For certain movable property, French law does provide for exceptions to the principle of vesting confiscated assets in the state.

The first exception concerns the confiscation of animals. It is up to the criminal judge who orders the confiscation of an animal to stipulate that the animal is to be handed over to a foundation or an animal protection association recognized as being of public utility or declared. If the court does not specify the identity of this foundation or association, it is up to the public prosecutor to determine the legal entity to which the animal will be entrusted. The criminal judge may also order the euthanasia of confiscated animals if they are dangerous. French law does not specify what constitutes a dangerous animal, so it is up to the judge to assess the animal's dangerousness on a case-by-case basis.

The second exception concerns the confiscation of intellectual property rights. Articles L. 335-6 and 335-8 of the French Intellectual Property Code stipulate that in the event of a conviction for one of the offences provided for in articles L. 335-2 to L 335-4-2, the criminal court may order "the return to the injured party of the objects or things withdrawn from commercial channels or confiscated, without prejudice to any damages and interest".

The same mechanism applies to trademarks, designs, patents and plant varieties.

GREECE

Greek Regulations:

Art. 68 par. 6 GCC and art. 40 par. 5 L. 4557/2018 stipulate that following the decision of confiscation the Court decides whether the confiscated assets shall be used for the compensation of the victim, destroyed, or reused for the general interest or social purposes. However, these provisions regarding the social reuse of confiscated assets remain inactive.

As per **art. 88 L. 3842/2010** provisions, which transposed Framework Decision 2007/845/JHA

concerning cooperation between Asset Recovery Offices of the Member States, the D' Division of SDOE is established with powers -amongst others- to collect, analyse and evaluates information in relation to offences that generate proceeds, such as corruption offences, money laundering and economic crimes, transmit information and reports to local SDOE divisions to investigate the commission of said offences, cooperate with the AROs of other member states and collaborate with the Carin network. Statistical data regarding its operation is not publicly available.

On 6-4-2023 the Greek Parliament voted **L. 5042/2023**, which regulates the management of frozen and confiscated assets originating from an offence. According to said law the General Directorate of SDOE is assigned to be the designated public authority for the management of frozen and confiscated assets (henceforth: Asset Management Office), with the powers to manage or dispose assets that have been previously frozen or confiscated by the authorities, in order to prevent deterioration of their value.

L. 5042/2023 stipulates that the owner of the frozen property is notified on any decision taken regarding its management (i.e., depositing the money to a dedicated bank account, leasing any frozen real estate property e.tc.).

ITALY[83]

The Italian law provides for the priority disposal of confiscated property for institutional and social use. Economic use is also envisaged, but with reinvestment of the proceeds for social or institutional purposes. As a residual option, the possibility of sale is allowed, but always with the proceeds earmarked for social or institutional purposes**.**

Legal source. The regulations are primarily contained in Legislative Decree of September 6, 2011, No. 159, known as the 'Anti-Mafia Code', specifically in articles 41 to 48. Also relevant are articles 822 to 830 of the Civil Code, concerning the general regulations on public goods.

To illustrate the legal framework, it is necessary to make some distinctions. It is evident that a distinction must be made between seized and confiscated property (within the latter, a further distinction must be made between definitively confiscated and not definitively confiscated property). Another intertwined distinction is that between movable property, immovable property, and companies.

Subjects involved and related functions.

Seizure

In general terms, the administration of seized property involves judicial bodies, the judicial administrator, potential assistants, as well as the National Agency for the Administration and Disposal of Property Seized and Confiscated from Organized Crime (ANBSC), which can provide assistance and support to the designated judge in issuing general management directives for property.

In particular, the judicial bodies involved may be:

– in the context of preventive measures adopted outside the criminal process, the Court, which delegates some of its powers to an individual judge;

– in the context of criminal proceedings, the authority that imposes the measure (and remains competent throughout subsequent procedural phases and levels of appeal) includes:

- the Preliminary Investigations Judge (GIP/GUP);
- the Court;
- the Court of Appeal.

[83] Drafted by A. de Chiara, professor of administrative law, University Vanvitelli

Within criminal proceedings, in all cases where the involved body is a collegiate one (Court or Court of Appeal), the competencies of the Panel must be distinguished from those of the judge it delegates to. In cases where the involved judicial body is a single judge (GIP/GUP), all competencies are under the jurisdiction of the same judge.

More specifically, the Court (or the GIP/GUP or the Court of Appeal) has the authority to:

- order, upon the proposal of the designated judge (if existing), the eviction of immovable properties or, with regard to a property owned by the person subject to seizure, the deferment of execution (until the definitive confiscation decree) and the permission for the subject and their family to reside;

- entrust movable property, including those registered in public registries, to judicial custody;

- dispose for sale of that movable property that cannot be administered without the risk of deterioration or significant inefficiencies;

- order the destruction or demolition of property without value, unproductive, objectively unusable, and non-transferable;

- decide on the continuation or resumption of the operations of seized companies and, if approved, issue directives for the management of the business, or order its liquidation;

- in cases where the seizure pertains to company ownership stakes:

• if the stakes secure the majorities required by Article 2359 of the Civil Code, issue directives on potential revocations and appointments of the company's administrator, or, if the assumption of the role of company administrator is not envisaged, determine the modalities of control and exercise of powers by the judicial administrator;

• if the stakes do not secure the majorities required by Article 2359 of the Civil Code, issue appropriate directives to the judicial administrator.

The designated judge (or the GIP/GUP):

- issues general directives on the management of property;

- can specify (taking into account the economic activity carried out by the business, the workforce it employs, its production capacity, and its reference market) the value threshold beyond which administrative acts are considered ordinary administration and fall within the competencies of the judicial administrator;

- authorizes:

• the performance, by the judicial administrator, of acts of extraordinary administration (such as, for example, litigating or defending in a lawsuit, contracting mortgages, concluding settlements, arbitrations or surety bonds, granting mortgages, or selling immovable property);

• the lease or gratuitous loan of immovable property, until the definitive confiscation ruling;

• the performance of necessary acts to achieve the natural expiration of any ongoing lease or loan contract for immovable property as of the seizure date, based on a certified date prior to the same;

• the request by the judicial administrator to the competent civil judge to be appointed administrator of the undivided joint ownership of seized property with such a condition;

• the assignment, by the judicial administrator, to a professional in order to attest the truthfulness of the company data and the feasibility of the plan in the event of a proposal for the continuation or resumption of the activity by the seized companies;

• the assignment by the judicial administrator of maintenance, whether ordinary or extraordinary, of immovable property and business assets;

• the rental of the confiscated business or part thereof until the definitive confiscation;

• the use of technical support, at no cost, from professionals active in the same sector or related sectors.

Ordinary administration falls under the jurisdiction of the judicial administrator, particularly in relation to

those actions that support the economic activity of the companies, possibly within the value limit defined by the designated judge (or the GIP/GUP).

Finally, in the management of companies, the judicial administrator, as well as assistants, may seek technical support from:

- entrepreneurs active in the same sector or sectors related to those in which the seized business operates, on a pro bono basis;

- Chambers of Commerce, Industry, Crafts, and Agriculture (CCIAA) to facilitate the connection of the seized or confiscated business to clusters and business networks.

Non-definitive confiscation

The judicial authorities continue to exercise (until the definitive confiscation) the authorizing competencies that were already within their jurisdiction during the seizure.

The judicial administrator also continues to perform the same role as exercised during the seizure, but only until the second-degree (including non-definitive) confiscation.

The ANBSC takes over from the judicial administrator, starting from the second-degree (including non-definitive) confiscation, assuming its management and exercising powers of ordinary administration, and with the approval of the designated judge (or the GIP/GUP), those of extraordinary administration.

Definitive confiscation

After the definitive confiscation, the judicial authority remains competent for the division of undivided confiscated property.

The main actor is the ANBSC, responsible for the disposal of property and oversight over the disposed property.

Once the disposal has been determined, possible recipients of immovable and movable property (for which the respective administration and management are transferred) include:

- State administrations, which can be entrusted with property for purposes of justice, public order, civil protection, or other governmental or public uses related to the performance of their institutional activities;

- State universities;

- public Entities;

- culturally significant institutions;

- the same ANBSC (which, with prior authorization from the Minister of the Interior, can use them for economic purposes);

- Municipalities, Provinces, Metropolitan Cities, and Regions, which can directly administer them for institutional, social, or economic purposes (with the condition of reinvesting the proceeds for social purposes), or can, in turn, assign them in concession, free of charge, to other entities, with an elaborate list stipulated by law, the categorization of which as exhaustive or illustrative is not definitive:

- communities, including youth communities;
- organizations;
- associations most representative of local authorities;
- non-profit organizations;
- social cooperatives;
- therapeutic communities, and recovery centres for drug addicts;
- environmental protection associations;
- other types of cooperatives, provided that they have a prevalent mutual purpose, while the non-profit requirement remains;
- social agriculture operators recognized according to current regulations;
- national and regional park authorities.

Regarding companies, the recipients can be:

- leased, for a fee, to public or private companies;

- granted in concession, free of charge, and without burdens for the State:

- worker cooperatives of the confiscated enterprise’s employees;

- the same subjects listed above as possible concessionaires of immovable and movable property in concession[84].

Management and disposal regulation.

Seized movable property:

Movable property, including those registered in public registries, can be temporarily entrusted to judicial custody:

- to police authorities upon their request, for use in institutional activities or for judicial police needs;

- to police authorities and the National Fire Corps upon their request, for use in institutional activities;

- to the ANBSC;

- for purposes of justice, public rescue, civil protection, or environmental conservation:

- to other State authorities;
- to non-economic public entities;
- to territorial entities;

to the same entities to which they may be granted in concession after definitive confiscation[85].

If they cannot be administered without risk of deterioration or significant inefficiencies, upon the request of the judicial administrator or the Agency, and after thirty days from the submission of the report that the judicial administrator must present to the designated judge (within thirty days of their appointment), property can be disposed for sale by the Court (or the GIP/GUP or the Court of Appeal)[86].

Within the same timeframe, if it is property without value, unproductive, objectively unusable, and non-transferable, the Court (or the GIP/GUP or the Court of Appeal) may order their destruction or demolition.

Seized immovable property

After the seizure, the Court (or the GIP/GUP or the Court of Appeal) orders the eviction of immovable properties, upon the proposal of the designated judge (if existing). With regard to the property owned by the person subject to the measure, this happens unless the execution is deferred (until the definitive confiscation decree) granting it to the subject and his family to the extent necessary for their residence, and if they lack means of subsistence. The judicial authority itself retains the possibility to determine a compensation that must be paid (in addition to charges and expenses related to the property unit, for which they must provide, in any case, at their own expense).

The evicted properties are primarily leased or granted in free loan, until the definitive confiscation ruling, to the same entities indicated by the law as possible concessionaires of confiscated property[87].

In cases where valid lease or loan contracts exist at the time of the seizure, based on a certified date, the judicial administrator, with the authorization of the designated judge (or the GIP/GUP), takes the necessary steps to achieve natural expiration.

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[84] The possible assignees of immovable property as indicated by Article 48, paragraph 3, letter c) of Legislative Decree No. 159/2011, as listed immediately above in the text, are: communities, including youth communities; institutions; associations most representative of local authorities; third sector organizations, social cooperatives; therapeutic communities and recovery and treatment centers for drug addicts; environmental protection associations; other types of cooperatives, provided that mutuality is prevalent, subject to the requirement of nonprofit purpose; operators of social agriculture recognized in accordance with the applicable provisions; national and regional park authorities.

[85] The possible assignees of immovable property as indicated by Article 48, paragraph 3, letter c), already listed previously in the text and in preceding footnote.

[86] Pursuant to Article 40, paragraph 5-quater and 5-quinquies, Legislative Decree No. 159/2011, the proceeds derived from the sale are received, net of incurred expenses, by the Unified Justice Fund (FUG) to be deposited into the appropriate revenue chapter of the State budget and reallocated. Fifty percent (50%) is allocated to the budget estimate of the Ministry of the Interior for the needs of the ANBSC, which allocates them «*primarily for social and productive purposes*» The restitution of proceeds, along with accrued interests, from the sale of assets for which the Court does not provide for confiscation remains unaffected and is returned to the rightful beneficiaries.

[87] The possible assignees of immovable property as indicated by Article 48, paragraph 3, letter c) of Legislative Decree No. 159/2011, already listed earlier in the text and in footnote 1.

Ordinary and/or extraordinary maintenance of property is conferred by the judicial administrator, with the authorization of the designated judge, preferably to suppliers of labour, goods, and services that have already been seized or confiscated.

For property under joint indivisible ownership, the judicial administrator, with the authorization of the designated judge (or the GIP/GUP), requests the competent civil judge to be appointed administrator of the joint ownership.

Seized companies

Within thirty days from taking possession, the judicial administrator is authorized by the designated judge (or the GIP/GUP) to continue or suspend the business operations, with a reservation to reevaluate these decisions after the submission of the semi-annual report as required by law. If the judge authorizes continuation, existing permits, concessions, and licenses necessary for the operation of the business, previously issued to the owners of the enterprises, temporarily retain their validity, and dissolution due to reduction or loss of share capital does not apply.

Based on a detailed analysis that takes into account the nature of the business, its characteristics in relation to the person subject to the measure and his family members, the nature of the activity, the methods and environment in which it is conducted, the workforce employed and that necessary for the regular operation of the enterprise, as well as production capacity, market reference, and the costs associated with the business's legalization process, the judicial administrator can propose the continuation or resumption of business activities. This proposal must be supported by a program containing an analytical description of the methods and deadlines for fulfilling the proposal. Similar proposals can also be made by trade unions existing within the company at the time of seizure.

The seized business or a branch thereof can be leased or granted in free loan to entities, associations, and other subjects indicated by the law as possible concessionaires of confiscated property[88], to worker cooperatives of the confiscated enterprise (except if any of its members are related, married, affiliated, or cohabiting with the seizure subject, or if any of the penal measures indicated in Article 15, paragraphs 1 and 2, of Law 55/1990 have been adopted against them[89]), or to entrepreneurs active in the same sector or related sectors. Such leases of the business or its branch are explicitly designated by law as a "priority" mode of management.

The actual and effective engagement of entrepreneurs actively operating in the same sector or related sectors to that of the seized business, as evidenced by the report of the judicial administrator, for a period of not less than twelve months, grants these entrepreneurs a pre-emption right to be exercised, under equal conditions, at the time of leasing the business.

The maintenance, both ordinary and extraordinary, of business assets (similarly to immovable property), is conferred by the judicial administrator, with the authorization of the designated judge (or the GIP/GUP), preferably to suppliers of labour, goods, and services that have already been seized or confiscated.

If there are no concrete possibilities for the continuation or resumption of business operations, the Court (or the GIP/GUP or the Court of Appeal), after obtaining the opinions of the public prosecutor, the advocates of the parties, and the judicial administrator, orders the liquidation of the enterprise.

In the case of the seizure of corporate interests, the judicial administrator exercises the powers vested in the partner within the limits of the seized share, and if necessary and with the authorization of the designated judge (or the GIP/GUP), convenes a meeting for the replacement of administrators, challenges resolutions on the company's transfer of registered office and

[88] The possible assignees of immovable property as indicated by Article 48, paragraph 3, letter c) of Legislative Decree No. 159/2011, already listed earlier in the text and in footnote 1.

[89] See below, footnote 23.

transformation, merger, incorporation, or dissolution, and approves any other statutory amendment necessary for pursuing the objectives of the seized enterprise.

If the shares secure the majorities provided for by Article 2359 of the Civil Code, based on the directives issued by the Court (or the GIP/GUP or the Court of Appeal), the administrator of the company can be revoked and replaced by the judicial administrator. If the assumption of the role of company administrator is not envisaged, the Court (or the GIP/GUP or the Court of Appeal) determines the modalities of control and exercise of powers by the judicial administrator.

Not definitively confiscated movable property, immovable property and companies

For the administration of property subject to non-definitive confiscation, the same criteria and methods of managing seized property apply, except for the substitution of the ANBSC for the judicial administrator following second-degree confiscation.

It's important to note that in cases where the restitution of confiscated property is required, the possibility of proceeding with a monetary equivalent is provided[90] if this property has been allocated for institutional or social purposes, for the sake of justice or public order, or for civil protection[91], and if the restitution could harm public interest, or if the asset has been sold in the meantime[92].

It's worth mentioning that in the management of companies, the ANBSC (like the judicial administrator during the seizure) can also avail itself of technical support:

- free of charge, from entrepreneurs active in the same sector or in related sectors to those in which the seized business operates; from the Chambers of Commerce, Industry, Handicrafts, and Agriculture (CCIAA) to facilitate the connection of the seized or confiscated business within consortia and business networks.

Movable property found in confiscated immovable property

Movable property belonging to third parties found in confiscated properties, if not claimed by the owner within thirty days from the notification of the retrieval invitation by the Agency, are allocated free of charge to state administrations or territorial entities identified by the law as possible recipients of confiscated property[93], provided they make a request within 10 days from the publication on the Agency's website; unclaimed property is sold, and the proceeds are allocated as follows: to the Solidarity Fund for Victims of Extortion Requests; to the Revolving Fund for Solidarity of Victims of Mafia-related Crimes; to the Ministry of the Interior for public security and public assistance protection; to the Ministry of Justice to ensure the functioning and enhancement of judicial offices and other institutional services; the remaining portion goes to the State budget. After the second unsuccessful attempt of the selling procedure, the Agency can proceed with allocating property free of charge to possible concessionaires and assignees of confiscated immovable

[90] According to Article 46, paragraph 1, Legislative Decree No. 159/2011, «*In this case, the party against whom the right to restitution of the property is declared for any reason is entitled to receive an amount equivalent to the value of the confiscated property as shown in the management statement, net of improvements, adjusted based on the annual inflation rate. In the case of immovable assets, any revaluation of cadastral incomes is taken into account*».

[91] More specifically, in accordance with Articles 46, paragraph 1, and 40, paragraph 3, letters a), b), and c), Legislative Decree No. 159/2011, in cases where they have been allocated for «*judicial, public order, and civil protection purposes*», or for «*other governmental or public uses related to the performance of institutional activities of State Administrations, Tax Agencies, State Universities, public Entities, and cultural institutions of significant interest*», or they are «*used by the Agency for economic purposes*», or, finally, they have been allocated «*for institutional, social, or economic purposes, with the obligation to reuse the proceeds for social purposes, as a priority, for the unavailable assets of the municipality where the property is located, or for the unavailable property of the province, metropolitan city, or region*».

[92] According to Article 46, paragraph 3, the payment of the monetary equivalent, in cases where the asset has been sold, is borne by the Unified Justice Fund; in all other cases, it is borne by the administering authority assigned the asset.

[93] The State administrations and the territorial Entities referred to in Article 48, Legislative Decree No. 159/2011, as listed earlier in the text.

property specified by law [94], or as a last resort, to their destruction.

Definitively confiscated sums

The confiscated sums of money are used by the Agency for:

- the management of other confiscated property;

- compensating victims of mafia-related crimes;

- contributing to the Single Justice Fund (Fondo Unico Giustizia - FUG);

- sums derived from the sale of confiscated movable property, including securities and company shares, are also contributed to the FUG (except those used for compensating victims of mafia-related crimes from the proceeds of the sale specifically intended for that purpose);

- sums recovered from personal credits are also contributed to the FUG.

3% of the total sums are contributed by the Agency to a state supplementary fund for providing scholarships to capable, deserving, and financially disadvantaged students.

The above disposals do not apply to sums of money and proceeds deriving from or otherwise connected to confiscated business assets.

Definitively confiscated movable property

After the finalization of the confiscation, movable property, including those registered in public records, can be used by the Agency for institutional activities or allocated to other state entities, territorial bodies, or to individuals indicated by law as possible concessionaires or assignees of immovable property[95].

Priority is given to allocating trucks, operating vehicles, machinery, forklifts, and any other specialized equipment functional to public assistance needs, to the National Fire Corps.

Property for which disposal is not possible can be sold, with a prohibition on further transfer for a period of no less than one year, to the highest bidder, excluding the proposer or the person who was the owner at the time of the adoption of the criminal or preventive measure, if different from the proposer, as well as individuals convicted, even in the first instance, or subject to investigations related to the crime of mafia association or that referred to in Article 416-bis.1 of the penal code, as well as their spouses or civil union partners, relatives and in-laws up to the third degree, and persons cohabiting with them.

Property for which disposal or sale is not possible is destroyed.

Definitively confiscated immovable property

Even after the finality of the confiscation, the Agency can defer the execution of the eviction or removal of property already granted in loan for use to potential concessionaires[96], or if it deems it appropriate in view of the disposal measures to be adopted. The deferment can be revoked at any time.

As for the disposal of immovable property, it is:

- sold, if necessary, for the purpose of compensating victims of mafia-type crimes;

- transferred primarily to the unavailable property of the Local Government or the Region where the property is located, if confiscated for the crime of association aimed at illicit drug trafficking, in cases where they are requested to be used for treatment and recovery centres for drug addicts, as well as to create work centres and houses for rehabilitated individuals[97];

[94] The possible assignees of immovable property as indicated by Article 48, paragraph 3, letter c) of Legislative Decree No. 159/2011, already listed earlier in the text and in footnote 1.
[95] The possible assignees of immovable property as indicated by Article 48, paragraph 3, letter c) of Legislative Decree No. 159/2011, already listed earlier in the text and in footnote 1.
[96] The potential assignees of immovable property indicated by Article 48, paragraph 3, letter c), Legislative Decree No. 159/2011 (listed earlier in the text and in footnote 1), who have already been provisionally assigned the property in loan for use under Article 40, paragraph 3-ter.
[97] Article 48, paragraph 3, letter d) of Legislative Decree No. 159/2011 states that «*If within one year the intended territorial*

- retained in the State's assets:

• for purposes of justice, public order, and civil protection.

• if suitable, for other governmental or public uses connected to the performance of institutional activities of:

▪ State administrations;

▪ Tax Agencies

▪ State Universities;

▪ public Entities;

▪ culturally relevant institutions;

• with prior authorization from the Minister of the Interior, used by the Agency for economic purposes, with the proceeds utilized to enhance the Agency's operations and, through incentives to staff, its effectiveness and efficiency;

- transferred for institutional[98], social, or economic purposes, with a priority obligation to reinvest proceeds for social purposes, to the unavailable property of the Municipality where the property is located, or of the Province, Metropolitan City, or Region. These bodies, also by joining or through associations, can:

• directly manage the property;

• or, based on a specific agreement[99], lease it, free of charge and in compliance with principles of transparency, adequate publicity, and equal treatment, to the aforementioned potential lessees[100];

- assigned, free of charge, directly by the Agency to the same potential lessees designated by territorial bodies, based on a specific agreement, respecting principles of transparency, adequate publicity, and equal treatment, provided their social destination is evident according to criteria set by the Agency's Board of Directors.

With regard to property transferred to territorial bodies for the purpose of granting to third parties, it is provided that property not assigned following public tender procedures can be used by territorial bodies for profit, and the proceeds must be exclusively reinvested for social purposes or for covering extraordinary maintenance expenses related to confiscated property used for the same purposes. Furthermore, if the territorial entity does not allocate or use the asset within two years, the Agency can revoke the transfer or appoint a commissioner with substitution powers.

For the disposal of undivided property, the Agency or the participant in the joint ownership initiates an execution incident under the code of criminal procedure to obtain a division of the asset from the Court. If the asset is found to be indivisible, participants acting in good faith can request the disposal of the property subject to division, subject to payment of the due balance in favour of the rightful owners, in accordance with the value determined by the expert appointed by the court. When disposal is requested by multiple participants in the joint ownership, it is granted to the participant holding the largest share or to multiple participants if they request it jointly. If disposal is not requested, the Agency arranges for the sale, or alternatively, for the full acquisition of the property into the State's assets, and the other participants in the joint ownership have the right to receive an equivalent sum to the value determined by the expert appointed by the court (subject to the rights of registered creditors and assignees), borne by the Unified Justice Fund. If a participant in the joint ownership fails to demonstrate their good faith, their respective share is acquired gratuitously into the State's assets.

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entity has not provided for the allocation of the property, the Agency shall arrange for the revocation of the transfer or the appointment of a commissioner with substitutive powers».

[98] Article 48, paragraph 4-bis of Legislative Decree No. 159/2011 expressly stipulates that within the scope of institutional purposes, the use of properties includes employing them, through public notice procedures, to increase the supply of housing units for lease to individuals in particularly disadvantaged economic and social conditions, even if the territorial entity entrusts their management to the designated public entity.

[99] The law expressly provides that «*The agreement regulates the duration, the use of the property, the methods of monitoring its use, the grounds for termination of the relationship, and the renewal procedures*».

[100] The potential assignees of immovable property indicated by Article 48, paragraph 3, letter c) of Legislative Decree No. 159/2011, already listed earlier in the text and in footnote 1.

Definitively confiscated immovable property forming part of the company's assets

For the disposal of confiscated immovable property that was already part of the corporate assets of companies whose equity holdings have been confiscated entirely or are otherwise structured to ensure control of the company, the criteria and procedures provided in general for the disposal of confiscated immovable properties apply, except where the Agency declares their corporate nature.

The same immovable properties can be transferred to the assets of territorial entities that request them, provided they are properties that the same territorial entities already use for any purpose for institutional objectives[101].

Real estate assets owned by real estate companies, where this does not prejudice the continuation of business activities or the rights of the company's creditors, can also be transferred, as a priority, to the assets of the municipality where the property is located, or to the assets of the Province or Region, for the same institutional, social, or economic purposes, with a commitment to reinvest proceeds for social purposes. This applies to cases in which the confiscated real estate assets can be transferred to the same territorial entities, as well as to allocate them for treatment and recovery centres for drug addicts or to create work centres and homes for rehabilitated individuals[102].

Definitively confiscated immovable property not usefully used for purposes of public interest

Immovable property for which disposal or transfer for the aforementioned public interest purposes is not possible is disposed for sale by a provision of the Agency. It is sold to the highest bidder, observing, as applicable, the provisions of the Code of Civil Procedure, with a notice of sale published on the website of ANBSC and a notice on the website of the Demain Agency. For properties valued at more than €400,000, the sale follows the procedures established by State accounting regulations.

The sale is carried out for a consideration not less than that determined by the estimate formulated by the judicial administrator or by the subsequent estimate made by the Agency. If, within ninety days from the date of publication of the notice of sale, no purchase proposals are received for the specified consideration, the minimum sale price cannot be set lower than 80% of the appraised value.

The purchase by the proposed party or by the individual who owned the property at the time of the adoption of the penal or preventive measure, if different from the proposed party, is excluded. This applies to individuals convicted, even in the first degree, or subject to investigations related to the crime of mafia association or the crime specified in Article 416-bis.1 of the Penal Code, as well as their spouses or civil union partners, relatives, and relatives up to the third degree, as well as individuals cohabitating with them. If it is found that the confiscated property has returned to the possession or control of such individuals, even through an intermediary, the sale may be revoked.

The right of pre-emption to purchase can be exercised by[103]:

- housing cooperatives formed by personnel from the Armed Forces or the Police Forces;

[101] The exact scope of application of the provision, Article 48, paragraph 15-bis, Legislative Decree No. 159/2011, is indeed unclear. It explicitly refers to the «*same assets*» but it's not clear which assets it is precisely referring to, as the preceding paragraph governs the fate of confiscated assets that «*after assignment or allocation have returned, even through an intermediary, into the possession or control of the subject subjected to the confiscation order*». The final sentence of the provision, according to which «*The resolution of the Executive Council is adopted without prejudice to the rights of the creditors of the confiscated company*», suggests that the legislator may be referring to corporate assets.

[102] The purposes indicated by Article 48, paragraph 3, letters c) and d), Legislative Decree No. 159/2011, already listed previously in the text.

[103] The right of pre-emption must be exercised, under penalty of forfeiture, within the terms established by the public notice, except for withdrawal if the best offer received is not considered of interest by the pre-emptive party.

- public Entities with among their institutional objectives also the investment in the real estate sector;

- category associations that ensure greater guarantees and benefits for pursuing public interest in the specific project;

- banking foundations;

- territorial Entities.

If the property meets the conditions for the issuance of a regularization building permit, the buyer must submit the relevant application within one hundred and twenty days from the completion of the sales agreement.

The purchased properties cannot be alienated, even partially, for five years from the date of registration of the sales contract, and properties other than buildings are subject to the same obligation as buildings to communicate to the public security authority the transfer of ownership, possession, or any other title.

The proceeds from the sale of the properties are allocated to the Ministry of the Interior for public security and emergency assistance, to the Ministry of Justice to ensure the functioning and enhancement of judicial offices and other institutional services, to the Agency to ensure the development of its institutional activities, and to the Ministry of the Interior for the ordinary and extraordinary maintenance expenses of the confiscated immovable property.

Properties that remain unsold, after three years from the start of the relevant procedure, are retained in the State's assets, and their management is entrusted to the Demain Agency.

Definitively confiscated companies

Even after the confiscation is definitive, the Agency can defer the execution of eviction or removal of properties that have been temporarily leased or loaned[104], or if it deems it appropriate in view of the disposal measures to be adopted. The deferral is revocable at any time.

Companies are retained within the State's assets and allocated as follows:

- if there is a greater benefit for public interest or if they are aimed at compensating victims of mafia-related crimes:

• for sale, to parties who have made a request, for a price not less than the value estimated by the Agency;
• alternatively, for liquidation, following the same procedures as for a sale;

- when there are sound prospects for the continuation or resumption of productive activity:

• for lease to companies and public or private enterprises;
• on loan, without charges to the State, to cooperatives of employees of the confiscated business;

- if there is a predominant public interest, also with regard to the opportunity of continuing the activity, properties may be transferred for institutional purposes to territorial entities or associations identified as possible assignees in the lease of confiscated immovable property, following the procedures established for such properties[105].

In the selection of lessees or borrowers, solutions that guarantee the maintenance of employment levels are favoured. Lease or loan to cooperatives of employees of the confiscated business is not possible if any of the related partners are related by kinship, marriage, affinity, or cohabitation with the recipient of the confiscation, or if, for specific cases indicated by law, definitive judgments of conviction or definitive measures of prevention have been issued against them[106].

[104] According to Article 41, paragraph 2-ter, Legislative Decree No. 159/2011, to entities, associations, potential assignees of immovable property indicated by Article 48, paragraph 3, letter c), listed earlier in the text and in footnote 1, as well as to worker cooperatives of the confiscated enterprise.

[105] The potential assignees of immovable property indicated by Article 48, paragraph 3, letter c) of Legislative Decree No. 159/2011, already listed earlier in the text and in footnote 1.

[106] Article 48, paragraph 8, letter a) of Legislative Decree No. 159/2011, which references «*any of the measures indicated in Article 15, paragraphs 1 and 2, of Law No. 55 of March 19, 1990*» specifically: «*final conviction for the offense provided*

In selecting the buyer or lessee, the Agency proceeds through private bidding, or if reasons of necessity or convenience, specifically indicated and motivated, require it, through private negotiation.

The same provisions for the sale of immovable property apply to sales.

In the case of a sale ordered at the expiration of the lease contract for the properties, the lessee can exercise the pre-emption right within thirty days from the communication of the property's sale by the Agency.

Finally, the sale of majority or total shareholdings is allowed only if the company does not have assets constituting a business according to the Civil Code or immovable property, and in any case, after taking the determinations provided in the following paragraphs. In any case, the sale of shareholdings is carried out in a manner that guarantees the protection of pre-existing employment levels.

The proceeds derived from leasing, sale, or liquidation are allocated to: the fund for the victims of extortion requests; the rotation fund for the solidarity of victims of mafia-related crimes; the Ministry of the Interior for public security and emergency assistance; the Ministry of Justice to ensure the functioning and enhancement of judicial offices and other institutional services; and the remaining portion to the State's budget.

Legal status of seized and confiscated property.

The seized property does not change their nature or assume a distinct legal status, except for the constraints arising from the seizure itself.

Only following final confiscation, property is acquired, free from charges and encumbrances (except for the rights of third parties guaranteed in the forms and limits provided by law), by the State's assets, becoming part of the category of public goods, distinguished in the Italian legal system from the available proprietary assets (that is private property) of the State and public entities.

With final confiscation, the legal status of the property changes from privately owned property to public good, characterized by a disposal constraint and a public nature in various aspects of its legal regime. This involves granting the public entity holding the asset certain privileges to protect the underlying public interest.

In the Italian legal system, while acknowledging considerable variability based on specific legal provisions, the legal regime for various types of public goods can be broadly classified into two categories: "demanial property" and "unavailable property". Regarding the confiscated property in question, both the disposal constraint (characterizing the legal regime of "unavailable property"), and the explicit legislative provision that states that, in case of transfer to municipalities, provinces, metropolitan cities, or regions, confiscated property becomes part of their "unavailable property" (Article 48, para. 3, letter c,

for in Article 416-bis of the Penal Code or for the offense of association aimed at illicit trafficking of narcotic or psychotropic substances under Article 74 of the Consolidated Act approved by Presidential Decree No. 309 of October 9, 1990, or for an offense under Article 73 of the same Consolidated Act, concerning the production or trafficking of said substances, or for an offense concerning the manufacture, import, export, sale, or transfer, and in cases where a penalty of imprisonment of not less than one year is imposed, for the possession, transportation, and possession of weapons, ammunition, or explosive materials, or for the offense of personal or actual aiding and abetting in relation to any of the aforementioned offenses»; «*final conviction for offenses under Articles 314 (embezzlement), 316 (embezzlement by taking advantage of another's mistake), 316-bis (misappropriation to the detriment of the State), 317 (extortion), 318 (corruption in the exercise of office), 319 (corruption for an act contrary to official duties), 319-ter (corruption in judicial acts), 320 (corruption of a person entrusted with a public service) of the Penal Code*»; «*convicted by final judgment to an aggregate term of imprisonment exceeding six months for one or more offenses committed with abuse of powers or in violation of duties related to a public function or a public service*»; «*convicted by final judgment to a penalty of not less than two years of imprisonment for a non-negligent offense*»; «*those against whom the court has applied, by definitive order, a preventive measure, as suspected of belonging to one of the associations referred to in Article 1 of Law No. 575 of May 31, 1965*».

Legislative Decree 159/2011), indeed point towards classification as "unavailable property".

For the latter category, as a general rule, the change in the nature of property and the application of the consequent public law regime only follow their actual disposal, not just through the adoption of the relevant provision. Particularly concerning confiscated property, however, the law expressly states that «even before the adoption of the disposal measure, the second paragraph of Article 823 of the Civil Code applies to the protection of confiscated property» (which governs the public law protection of public goods through the exercise of authoritative powers by the administration)[107].

Among other privileges provided to protect the public goods and the underlying public interest, the law stipulates that if it becomes evident that, after assignment or disposal, they have come back under the control or ownership of the entity subject to the confiscation measure, the revocation of the assignment or disposal can be ordered by the same authority that issued the corresponding provision. In case of revocation of the disposal, the asset returns to the Agency's possession, which reallocates it or, if not possible, retains it as part of the State's assets. The management is entrusted to the Agency of Demain (Agency of Public Property), which may, if necessary, undertake urban regularization, as well as re-functionalization and enhancement, including subsequent allocation, free of charge, to the entities and individuals indicated by law as possible assignees and concessionaires[108].

Question 2) Have Member States established *Asset Recovery Offices*? If the answer is yes, indicate how these offices operate; whether they are sufficiently resourced. Where available, provide statistical data on the operation of *AROs*.

BELGIUM

Belgium has established an ARO in 2003 within the Judiciary (Ministère Public), called the Central Office for Seizure and Confiscation (COSC).

The COSC is a multidisciplinary body, the main stakeholders of the asset recovery cycle (Office of the Prosecutor, Ministry of Finance and Federal Police) are represented in its activities.

The COSC is also recognized as the national Asset Management Office (AMO).

The COSC is a founding member of the CARIN network and the EU ARO platform.

FRANCE

Created by Act no. 2010-768 of July 9, 2010, the *Agence de gestion et de recouvrement des avoirs saisis et confisqués* - AGRASC (Agency for the management and recovery of seized and confiscated assets) is the public administrative body, under the dual authority of the

[107] Jurisprudence holds that «*property acquired by the State through confiscation assumes a strictly public-law character, which does not allow it to be temporarily diverted from the purpose and public objectives that establish the assimilation of the legal regime of the confiscated property to that of assets forming part of the unavailable patrimony*» (Cassation Court, Civil Section, judgment No. 15085/2018; State Council, Third Section, judgment No. 3169/2014).

[108] The potential assignees of immovable property indicated by Article 48, paragraph 3, letter c) of Legislative Decree No. 159/2011, already listed earlier in the text and in footnote 1.

Ministries of Justice and Budget, designed to facilitate seizure and confiscation in criminal cases.

This law inserted articles 706-159 to 706-164 on the AGRASC into the Code of Criminal Procedure, with the entry into force of these texts subject, under article 706-165, to the enactment of a decree by the Council of State, which was published on February 3, 2011 (and whose provisions can be found in articles R. 54-1 et seq. of the Code of Criminal Procedure).

The organization and missions of the agency are set out in two circulars issued by the Ministry of Justice: the circular of **December 22, 2010**, covering the entire law of July 9, 2010, and the **circular of February 3, 2011**[109], specific to AGRASC.

In addition to its general role of assisting, advising and guiding magistrates in matters of seizure and confiscation (article 706-161 paragraph 1 of the Code of Criminal Procedure), AGRASC's main mission is to improve the judicial handling of seizures and confiscations in criminal cases:

- Manage all assets, whatever their nature, seized, confiscated or subject to a protective measure during criminal proceedings, which are entrusted to it, and which require administrative acts for their preservation or enhancement;
- ensure centralized management, on an account it has opened at the Caisse des *Dépôts* et Consignations, of all sums seized (i.e. apprehended pending final judgment, with a view to possible confiscation) during criminal proceedings in France (article 706-160 2° of the Code of Criminal Procedure);
- to carry out all pre-trial sales of seized movable property, as decided by magistrates when such movable property is no longer useful for ascertaining the truth and is likely to depreciate.

In such cases, the proceeds of the sale are deposited in the agency's CDC account and are returned to the owner of the property if he or she is acquitted or acquitted of the charges, or if the property is not confiscated (articles 41-5, 99-2 and 706-160 4° of the Code of Criminal Procedure).

Since the law of March 14, 2011 (known as LOPPSI II), the agency has also been responsible for disposing of or destroying vehicles confiscated after being immobilized and impounded under article L. 325-1-1 of the Highway Code;

- to carry out all publications at mortgage registry offices of criminal property seizures (article 706-151 of the French Code of Criminal Procedure). Under article 707-1 of the Code of Criminal Procedure, the agency is also responsible for publishing confiscations of property ordered by the courts;
- managing, by court order, all complex assets entrusted to it, i.e. all assets requiring administrative action for their preservation or enhancement (article 706-160 1° of the Code of Criminal Procedure).

Where it has managed such assets, the agency is responsible for their disposal or destruction once they have been confiscated (article 706-160 3° of the Code of Criminal Procedure);

- managing seized assets, selling them and distributing the proceeds in compliance with any request for international assistance or cooperation from a foreign judicial authority (article 706-160 4° of the French Code of Criminal Procedure).

As such, on February 25, 2011, the Agency was designated by France as an Asset Recovery Office within the meaning of Council of the European Union Decision 2007/845/JHA of December 6, 2007;

[109] Circulaire du 3 février 2011 relative à la présentation de l'Agence de gestion et de recouvrement des avoirs saisis et confisqués (AGRASC) et de ses missions - NOR : JUSD1103707C - http://www.textes.justice.gouv.fr/art_pix/JUSD1103707C.pdf.

- to ensure, where applicable, that creditors (public creditors or victims) are informed in advance of the execution of any judicial restitution order (article 706-161 paragraph 4 of the Code of Criminal Procedure), and that civil parties receive priority compensation for assets confiscated from the convicted person (article 706-164).

The agency centralizes a large number of seizures (of cash, bank accounts, real estate, etc.) and ensures that the seizures are carried out in accordance with the law.

The scope of the agency's intervention is not limited to the management of assets seized under the law of July 9, 2010, but extends to all seized and confiscated assets.

In the case of convictions for drug offences, the proceeds are paid into the "Narcotics" fund managed by the Interministerial Mission for the Fight against Drugs and Drug Addiction (MILDT).

Headed by a magistrate from the judiciary, with a board of directors also chaired by a magistrate from the judiciary, it is staffed by 11 agents from the Ministries of Justice, the Interior and the Budget.

Since its creation, the Agency has handled over 18,252 cases involving the management of 34,000 assets of all kinds (cash, bank accounts, vehicles, boats, real estate, etc.), valued at half a billion euros.

Every day, on average, 20 new cases are referred to it, and it publishes a criminal property referral.

GREECE

N/A

ITALY[110]

The ARO Network in Italy has been identified within the National Office for Asset Recovery, established within the Ministry of the Interior - Central Directorate of Criminal Police (D.C.P.C.), under the Service for International Police Cooperation (S.C.I.P.). This institution was established by a specific decree signed by the Director General of Public Security, issued on May 18, 2011. Any requests for activation of the European network for asset recovery must be directed to this organization, following the procedures established by each individual Police Administration.

Question 3) Which authority administers the seized/confiscated asset to avoid deterioration before allocation or sale? Has the *Asset Management Office (AMOs)* established in the Member State? Which authority administers the seized asset? Is the function performed by the National Agency or by another public or private authority?

BELGIUM

Seized assets:

As a rule, seized small movable assets and evidence are managed by courts (registry).

The investigating judge or prosecutor is the competent authority for what is called “constant value management”.

[110] Drafted by Caterina Scialla, post-doctoral researcher in criminal law, RINSE Project

Belgium has established a nationwide AMO in 2003 within the Judiciary, the Central Office for Seizure and Confiscation. Judicial bodies (investigating judge or prosecutor) can authorize the COSC to sell seized assets pre-trial. As the designated AMO, the COSC can sell movable assets and real state under certain conditions.

Confiscated assets:

After a final conviction, confiscated assets are managed by the Ministry of Finance.

FRANCE

The AGRASC is the French national agency, established in Paris, in charge of managing all assets, whatever their nature, seized, confiscated or subject to a protective measure during criminal proceedings, which are entrusted to it, and which require administrative acts for their preservation or enhancement.

AGRASC now has several branches throughout France, in Marseille, Lyon, Lille and Rennes.

GREECE

Seized, or frozen ***money*** are transferred to a numbered and fixed interest deposit account, which is opened in the Consignment Deposits and Loans Fund (CDLF) and is solely managed by the Asset Management Office (art. 11 L. 5042/2023).

In case of ***assets that their value can be accurately assessed*** (such as gold, foreign currency, as well as any other type of asset is included in the Bank of Greece's exchange rate sheet) they are first deposited to the CDLF. The Asset Management Office pays out the set-up deposit in its entirety and supervises the liquidation of its contents through the Bank of Greece. Subsequently, it immediately transfers the money received from the liquidation to a fixed interest deposit account opened at the CDLF (art. 12 L. 5042/2023).

When the seizure or freezing is imposed on ***assets that their value cannot be accurately assessed***, which are assets that do not directly yield a financial result (such as intellectual property, tobacco, drugs e.tc.), their immediate transfer is ordered to the CDLF in favour of the Asset Management Office (art. 13 L. 5042/2023).

When seizure or freezing is imposed on ***other movable assets*** (such as car, aircrafts, ships, e.tc.) the authority that orders the above measures notifies the Asset Management Office about the existence of the freezing order. Disposal of said assets is only allowed after a court orders their confiscation. In exceptional circumstances, when the length of the freezing is more than 6 months and the costs of their management are high or when there is high risk of depreciation of their value, the Asset Management Office may decide their disposal. The price of their sale is deposited in the account held at the CDLF.

ITALY[111]

As previously explained, the administration of property to prevent their deterioration before their disposal (or eventual sale) falls under the responsibility of the National Agency for the Administration and Disposal of Property Seized and Confiscated from Organized Crime (established as the National Asset Management Office), only after the second-degree confiscation (even if not yet final). Until then, it remains the task of the judicial

[111] Section drafted by C. Scialla, post-doctoral researcher in criminal law, RINSE Project

administrator, with the possible support of the National Agency, under the supervision of the judicial authority.

As also mentioned, in the management of businesses, the judicial administrator and the National Agency can benefit from technical support:

- on a complimentary basis, from entrepreneurs active in the same sector or related sectors to those in which the seized company operates;

- from the Chambers of Commerce, Industry, Crafts, and Agriculture (CCIAA) to facilitate the connection of the seized or confiscated company within groups and business networks.

Specific financial measures are provided that can be accessed for the management and enhancement of seized and confiscated businesses. These measures can be accessed by the judicial administrator, with prior authorization from the designated judge (if existing, or the GIP/GUP), or by the Agency, after the adoption of measures to continue or resume the business activity.

Question 4) What are the tools used to ensure transparency and accessibility of data related to the management of assets subject to a freezing or confiscation order?

BELGIUM

The COSC publishes an annual report, not accessible to the general public. A copy of this report is sent to the minister of Justice and the Council of general prosecutors. A summary is published on a website accessible to the general public (www.om-mp.be).

Members of parliament can exercise political oversight of the policy developed by the minister of justice and implemented by the justice department. The minister of justice can provide information and data relating to asset management, as officially requested by a MP.

The Court of Auditors exercises an in-depth administrative and budgetary control of the asset recovery cycle. The Court of Auditors can make policy recommendations in official reports, accessible to the general public.

The High Council of Justice can conduct a general audit of judicial bodies. These reports and recommendations on good practices are available to the general public.

FRANCE

The instruments for public access to data related to the management of assets subject to a freezing or confiscation order are mainly AGRASC's annual activity reports, the reports of the Ministry of Justice, AGRASC's calls for expressions of interest and AGRASC's various publications on its website and social networks.

GREECE

N/A

ITALY

The disposal, assignment and utilization of property transferred to Territorial Entities, as well as the reassignment for social purposes of the proceeds derived from their economic use, are subject to disclosure on the

websites of the National Agency for the Administration and Disposal of Property Seized and Confiscated from Organized Crime (ANBSC) and of the utilizing or assigning Entity, in accordance with national regulations on administrative transparency[112]. The Agency revokes the asset's disposal if the recipient Entity or assignee fails to provide the required data.

Territorial Entities must publish a specific list of confiscated properties transferred to them, updated monthly, containing information about their composition, disposal, and utilization. In case of assignment to third parties, the list must also include the identifying data of the concessionaire, as well as details about the act of concession, such as its purpose and duration. Failure to publish this information entails managerial responsibility [113].

Question 5) According to national legislation, how are confiscated movable assets (bank accounts, shares in companies, automobiles, business assets, etc.) managed?

BELGIUM

The court orders the confiscation of movable and/or immovable property.

Property benefits obtained by the convicted person by committing an offence may also be confiscated.

Consequently, there are two types of criminal confiscation (article 42 of the Criminal Code):

a) confiscation of an object: ownership of the object is transferred to the State. The confiscated object is sold and the proceeds paid to the Treasury or a third party. A sum of money may also be confiscated (e.g. a bank account);

b) value confiscation or confiscation by equivalent (by equivalent, this means that the convicted person must pay a sum of money equal to the confiscated assets that are no longer part of his assets).

The General Administration for Patrimonial Documentation under the Belgian Federal Public Service Finance (Ministry of Finance) is responsible for putting seized and confiscated tangible assets up for sale.

The General Administration for Collection and Recovery under the Belgian Federal Public Service Finance (Ministry of Finance) executes any confiscation of sums (whether by virtue of confiscation of an object or confiscation in value or by equivalent).

FRANCE

With regard to bank accounts, AGRASC has the mandatory task of managing all seized sums of money (Article 706-160 of the Code of criminal procedure). Because of this rule, the judge's order the banks to transfer the sums of money to an account at the Caisse des *Dépôts* et Consignations, specifying the account reference, the court that gave judgment, the date of the judgment, the case number, and the name of the account holder.

The same rules apply to the confiscation of a credit arising from a life insurance policy.

[112] Legislative Decree No. 33/2013.

[113] According to Article 46 of Legislative Decree No. 33/2013.

The seizure of a shares relates solely to the share capital that it represents, without the law having extended its effects to the voting rights associated with it. There is no provision stating that the seizure entails the freezing of this right or that it is possible to order its transfer to an ad hoc administrator. The owner of the shares therefore retains the right to exercise all the attributes of the voting right, subject to the obligations imposed on him by law. At the confiscation stage, the shares are transferred to the State and managed by AGRASC. However, this is a rare occurrence: in 2022, only one confiscation of shares led to the shares being managed by AGRASC.

Regarding other assets, AGRASC has the optional task of managing the assets requiring maintenance or conservation. It also has the task to manage all assets in the event of the owner's default or unavailability.

Because it has been given the task of carrying out the publication formalities required for the confiscation of real estate and businesses, AGRASC manages almost all these assets.

Apart from cases where AGRASC has a monopoly, public prosecutors entrust AGRASC with complex assets, i.e. all assets requiring expertise for their preservation or administration.

GREECE

N/A

ITALY

See above the answer to the first question of this session.

Question 6) Do local authorities (including regions, provinces, municipalities, etc.) have a role in the procurement process?

BELGIUM

No. Confiscated assets are put up for sale by FIN SHOP, the sales service of the General Administration for Patrimonial Documentation on behalf of the Federal State.

Fin Shop mostly will decide to sell the confiscated assets but can just as well take other decisions:

- Making a transfer to the benefit of other Belgian Federal Public Service like Federal Police or Justice (according to article 117 of the Accounting Legislation of 26-5-2003)
- Donating for instance to NGO's (according to the amendment of 27-6-2021 of article 117 Accounting Legislation)
- Recycling if necessary
- Destroying if there are no other options

Please note that Fin Shop may take the decision of transferring and giving only in the event of confiscated items (Belgian State is owner) not for seized items.

FRANCE

No, local authorities are excluded from the French mechanism.

GREECE

Local authorities (including regions, provinces, municipalities, etc.) do not have a role in the procurement process.

ITALY[114]

As mentioned earlier, Territorial Entities are among the potential temporary assignees of seized property and assignees of confiscated one.

It should be noted that although legislative provisions do not explicitly prioritize the transfer of confiscated property to Territorial Entities over retaining them in the State's ownership, the Constitutional Court (judgment No. 34/2012) has deemed that «The restitution of resources acquired illegally by criminal organizations to the territorial communities – which bear the highest cost of the "mafia emergency" – represents [...] a fundamental tool to counteract their activities, aiming to weaken the social roots of such organizations and to promote broader public consensus for the State's repressive intervention in restoring legality». This also underpins the legislative authority's grounding in the «exclusive competence reserved to the State by Article 117, second paragraph, letter h), of the Constitution, in matters of public order and security». The Court further asserts (judgment No. 234/2012) that while «no preferential criterion can be inferred regarding whether to retain confiscated property with the State or transfer it to the Region or Local Government» disposition remains an «applicative profile, unaffected on the normative level, and shall be subject to the National Agency's case-by-case assessment». Nevertheless, «such an assessment cannot disregard the guiding principle on the disposal of confiscated property, recognized by this Court, according to which "the restitution of resources acquired illegally by criminal organizations to the territorial communities – which bear the highest cost of the 'mafia emergency' – represents (…) a fundamental tool to counteract their activities, aiming to weaken the social roots of such organizations and to favour a broader public consensus for the State's repressive intervention in restoring legality."».

Question 7) Is there a national agency that has jurisdiction over confiscated assets?

BELGIUM

The Central Office for Seizure and Confiscation (COSC). http://www.confiscaid.be. The Central Office for Seizure and Confiscation (COSC) is an organ of the Public Prosecutor's Office. The COSC collects, manages and processes all data relating to the categories of seized and confiscated assets that are useful and necessary for the performance of its legal duties (article 7, §§ 1 and 2, and sections 2 and 3 of chapter 3 of the law of 4 February 2018 containing the tasks and composition of the Central Office for Seizure and Confiscation (referred to as the "COSC law"). The OCSC coordinates the enforcement of judgments and rulings that provide for the confiscation of assets. Recovery will be carried out on behalf of the Public Prosecutor by the competent official of the FPS Finance, in accordance with the instructions of the director of the COSC (see article 197 bis of the Code of Criminal Procedure).

The COSC may, at the request of the Public Prosecutor's Office or the FPS Finance, to assess the feasibility of effectively enforcing confiscation, investigate the solvency of a convicted person.

[114] Alberto de Chiara, professor of administrative law, University Vanvitelli

The COSC facilitates international cooperation in matters of seizure and confiscation and the establishment and maintenance of relations with equivalent foreign institutions (article 7, § 5 and section 6 of chapter 3 of the COSC law).

As a rule, confiscated assets are sold publicly. Local authorities do not play any specific role in this process. Confiscated assets become the property of the Belgian State. Within the State, the Ministry of Finance is responsible for the management and disposal of confiscated assets.

FRANCE.

Yes, AGRASC is the national agency in charge of managing confiscated assets. Its website can be accessed at this URL : https://lannuaire.service-public.fr/gouvernement/05b02f3e-ff94-4cb9-969c-b09d66f6b318

GREECE.

A ministerial decree is expected to be issued to establish a national agency that has jurisdiction over confiscated assets.

ITALY. Yes, the National Agency for Seized and Confiscated Assets.

Question 8) Please suggest as case studies virtuous examples of organizations with institutional and social purposes that have effectively managed confiscated assets.

BELGIUM.

No significant examples of managed confiscated assets are available by lack of a comprehensive social re-use legal framework.

FRANCE.

There is yet no feedback data on the social re-use of confiscated goods due to the recent adoption of this system.

About institutional re-use, since January 1st, 2021, AGRASC can now allocate confiscated assets to investigative or judicial services. In 2021, the movable Department has therefore worked alongside the Directorate of Judicial Services to build a system that will enable French courts to benefit from the allocation of seized or confiscated assets, while guaranteeing a strict separation between the "allocating court" and the "benefiting court".

Inspired by the existing system for investigative services, this system is based on the particularity that a Court within which the seizure or confiscation of property is ordered cannot allocate the property to itself to avoid any criticism relating to objective impartiality. It can nevertheless be allocated for the benefit of a court

within the court of appeal or a neighboring Court of appeal.

The system was first tested with screens and sound bars, seized from an investigative file at the Marseille JIRS and allocated at the end of 2021 to more than 10 courts within the jurisdiction of the Aix-en-Provence and Lyon appeal courts. This first project was made possible thanks to the ongoing support of AGRASC agents in Marseille, both for the investigating magistrate and for the Lyon and Marseille appeal courts for all administrative aspects of the case.

GREECE.

ITALY. In Italy, there are numerous examples of organizations that have successfully managed confiscated assets. The reports published by Libera contain a wealth of documented case studies highlighting these experiences. "Let's tell the Good"

II – Statistical data collection

CONTEXT[115]

The effectiveness and legitimacy of asset recovery systems depend on two factors. First, the legal tools available for the identification, freezing, and confiscation of illicit assets must be sufficient. Second, the capacity of public authorities to collect, process, and disseminate reliable and comprehensive statistical data must be adequate. Absent comprehensive data collection mechanisms, assessing the performance of asset recovery regimes, identifying systemic inefficiencies or gaps, and ensuring that measures adopted are proportionate, transparent, and accountable becomes an arduous task. Accurate and comparable statistics play a fundamental role in allowing national authorities and EU institutions to monitor the implementation of confiscation regimes, evaluate their impact on organized crime, and inform evidence-based policy reforms. Furthermore, data collection is imperative for maintaining public trust in asset recovery mechanisms and for demonstrating that confiscated assets are being managed and reused in a socially responsible manner.

This section offers a comparative analysis of data collection practices in Belgium, France, Greece, and Italy. The assessment evaluates the degree of alignment with EU legal obligations, the operational capacity of national authorities to manage and disseminate data, and the extent to which statistical transparency is integrated into the broader governance of asset recovery. A particular emphasis is placed on the accessibility of information regarding the type, value, destination, and reuse of confiscated assets. Additionally, emphasis is placed on the collection of cross-border enforcement data and indicators on victim compensation. The analysis also considers the role of Next Generation EU funds, particularly through national recovery and resilience plans, in improving statistical infrastructure or enhancing the strategic use of confiscated assets. In this section, the focus is twofold: to underscore the emergence of beneficial practices and to identify persistent deficiencies that could potentially compromise the coherence and efficacy of the EU's asset recovery framework.

[115] Section drafted by A. Esposito, full professor of criminal law, scientific coordinator of the RINSE Project

COMPARATIVE NOTES[116]

The collection of comprehensive statistical data on seized and confiscated assets is an essential element for ensuring transparency, accountability, and the effective evaluation of asset recovery policies. Reliable and comparable statistics allow national authorities and EU institutions to monitor the efficiency of freezing and confiscation measures, assess their actual impact on organized crime and illicit assets, and identify gaps or inconsistencies in their application. They also serve as a basis for developing evidence-based policy reforms and best practices, both at the domestic and European level. At EU level, the obligation to collect such data is expressly set out in Article 35 of Regulation (EU) 2018/1805, which requires Member States to periodically gather and maintain comprehensive statistical information from the competent authorities and to transmit it annually to the European Commission. Additionally, Article 11 of Directive 2014/42/EU identifies the key categories of data that should be collected in relation to the identification, tracing, freezing, management, and confiscation of criminal assets. It would be appropriate, in the interest of maximum transparency and accountability, for Member States to collect and make available detailed information on the number and value of freezing and confiscation orders issued and executed; the types of assets concerned (movable, immovable, corporate, and other); their destination, and use; and, where assets are assigned to third parties, the identity of the beneficiary and the terms of the contract. Further required data could include the number of cross-border requests for recognition and enforcement both granted and refused, the underlying offences to which the measures relate, the number of cases where victims have been compensated or had assets returned, the proportion of assets reused for social or institutional purposes, and the average duration of execution procedures.

In Belgium, the COSC plays a central role in the registration and management of data on seized and confiscated assets. A dedicated database exists, with access granted to a wide range of institutional actors, not to the public and under strict legal rules, ensuring a controlled flow of information for investigative and judicial purposes. However, comprehensive statistical information, particularly on the categories listed in Article 11 of Directive 2014/42/EU, is not yet available. The data that is published shows significant activity in the pre-trial sale of movable assets, especially vehicles, and in the restitution of funds to victims, but the overall picture remains fragmented, with notable gaps regarding other asset categories and the long-term monitoring of reallocated goods.

France presents a more consolidated and operational model, with AGRASC acting as the national focal point for the management, sale, and reallocation of confiscated assets. While there is no single, publicly accessible database, AGRASC's annual reports offer a wealth of detailed data across asset types (movable, immovable, corporate, and other categories), including destination, use, and, since 2021, social reallocation projects. Social reuse, introduced by law in 2021, has already led to the launch of several pilot projects, but it is too early to fully assess their impact. The French model also faces operational bottlenecks, such as delays in property sale procedures, and legal shortcomings, notably the need to adapt governance rules for confiscated corporate shares to the realities of judicial confiscation.

In Greece, the legal framework imposes a general obligation on all authorities with freezing and confiscation powers to collect and transmit statistical data to a central body (currently the SDOE, and from 2024 the Asset Management Office). While this points towards a move to centralised management, the data is not publicly available, and the detailed content and scope of the statistics remain to be defined by a forthcoming ministerial decree. This means that, for now, the system is still under development and lacks transparency, preventing public scrutiny and comparative analysis.

[116] Section drafted by C. Scialla, post-doctoral researcher in criminal law, RINSE Project

Italy's framework for statistical reporting on confiscated assets remains incomplete, with data collection still in progress. The information currently available is predominantly quantitative and limited in scope, focusing mainly on the number and type of requests transmitted or received under cross-border cooperation procedures. The National Agency (ANBSC) manages a dedicated platform that collects and updates data on confiscated assets. This database includes information on the type, location, and status of assets, as well as their allocation for institutional or social purposes. The platform is accessible to competent authorities and serves as a tool to monitor the lifecycle of confiscated property, from seizure to destination, enhancing transparency and facilitating the reuse of assets for public benefit.

Italy stands out for the significant allocation under its National Recovery and Resilience Plan (PNRR), €300 million, earmarked for the social reuse of confiscated real estate, particularly in the southern regions, with a focus on projects delivering social benefits, such as shelters, childcare facilities, and community spaces. Based on the information collected for the other Member States, there is no evidence of the PNRR funds specifically allocated to the enhancement or reuse of confiscated assets.

Overall, the section highlights three main critical issues. First, there is a lack of comprehensive, harmonised data across Member States, both in terms of content and format. Second, most countries do not maintain a publicly accessible, unified database that contains complete information on the composition, destination, and use of confiscated assets, nor on the identity of third-party assignees or the terms of assignment. Third, transparency and real-time data updates remain limited.

NATIONAL ANSWERS

Question 1) Is there a national organization responsible for collecting data on confiscated assets? Is there a database that contains data on confiscated assets?

What data is collected on the platform referred to in the previous question? For instance, does it include the specification of the composition, destination, and use of each asset, as well as, in the event of assignment to third parties, the identifying data of the concessionaire and the particulars, object, and duration of the concession agreement?

Please provide statistical data on the types of confiscated assets and the existence of strategies for their institutional and social reuse, including:

Mobile assets (such as cars, motorcycles, boats, money, and bank accounts);

Immovable assets (including apartments, villas, lands, buildings, garages, and warehouses);

Corporate assets (such as companies, corporate shares, and stakes);

Other assets.

Please provide statistical data on the quantity of seized and confiscated assets subject to assignment and/or management:

Assets redeveloped for social use;

Assets redeveloped for institutional use;

Assets not redeveloped;

Assets sold;

Assets returned to the victim;

Frozen/confiscated assets not assigned.

Please also provide information on the data collection, dissemination and communication modalities among national statistical data operators, as well as on the existence of a national database or multiple local databases.

Pursuant to Article 35 of the Regulation, Member States periodically collect comprehensive statistical data from the competent authorities. They maintain such data and send it to the Commission every year. Regarding this statistical activity, please provide the following information: a) If such data collection activity has been carried out; b) if data related to the provisions set out in Article 11 of Directive 2014/42/EU are available; c) The number of freezing and confiscation orders that a Member State has received from other Member States, which have been subject to recognition and enforcement, or whose recognition and enforcement have been refused; d) The type of crime to which the confiscation order, for which mutual recognition is requested, was linked; e) The number of cases in which the victim has obtained compensation or restitution of assets following the execution of the confiscation order in accordance with the Regulation (if such data are available); f) The average duration of the execution of freezing and confiscation orders in accordance with the Regulation (if such data are available); g) Provide statistics on the types of crimes that are subject to freezing and confiscation measures, as well as quantitative data on seizure/confiscation proceedings, duration of the procedures, and other relevant information.

BELGIUM

The COSC collects, manages and processes all data relating to categories of seized and confiscated assets.

These data are recorded in a database. Access to the information in the database is governed by article 18, §3 of the COSC law. The Public Prosecutor's Office and the examining magistrate, the police services, the registries of the courts and tribunals, the secretariats of the public prosecutor's offices and the labour auditor's offices, the competent officials of the Federal Public Service Justice and the Federal Public Service Finance, etc. have access to the data, insofar as these data are necessary for the performance of their duties (based on national or international law). The prior authorisation of the magistrate of the Public Prosecutor's Office or the examining magistrate is required when these communications are likely to have an influence on current legal cases.

Institutional and social (since 27-6-2021) reuse are possible but the law is too recent to have available statistics.

In 2022 68 seized cars were transferred to the police for interim use.

Source: Annual Report COSC 2022

Number of seized cars that were sold pre-trial: 782

Total amount of all pre-trial sales (done by FinShops-State auction houses : 4.679.176,40 euro

a. Assets returned to victims: partial data: Total amount in euro of amounts confiscated with attribution to a victim: 662.971, 49 euro (in 2022)

b. Not assigned

Source: Annual Report 2022

Total amount seized: 114.957.136,45 €

Total amount destituted: 24.886.089,84 €

Total amount confiscations :17.647.972,54€

Institutional and social (since 27-6-2021) reuse are possible but the law is too recent to have available statistics.

a. No comprehensive data set of all the data mentioned in art. 11 is available.

b : number of freezing orders executed (on a national level) : indicative: number of new cases opened in 2022 at COSC: 9410; The estimated value of property seized is available for certain categories (e.g. cash) but not for all types of assets.

c-g no comprehensive data available

FRANCE

AGRASC is responsible for collecting data on confiscated assets. There is no proper available data base on confiscated assets, but AGRASC publishes annual activity reports available on internet. The 2021 report is available on https://www.economie.gouv.fr/files/files/2022/Rapport-activité-agrasc.pdf?v=1659358560.

The platform doesn't exist but in the annual activity reports, some important data is made available to public. It includes reports on the activities of the immovable department, the movable department and the legal and financial department. The data published concerns the number of cases handled, the number of confiscations executed, and the number of terminations pronounced.

In addition, details of certain auctions are given, and social assignments are explained, with the name of the beneficiary, the expected use of the property and the duration of the lease.

Mobile assets (such as cars, motorcycles, boats, money, and bank accounts): According to AGRASC, the income from the Caisse des Dépôts et Consignations account is a very good indicator (excluding property seizures, which by definition are not accounted for) of the seizure activity of the courts, as it is essentially made up of receipts from the courts, the share of income made up of proceeds paid to AGRASC by CDC and the estates being residual and representing very small amounts compared with the income from the courts. In 2011, the sums confiscated amounted to €109 226 320, compared with €484 474 461 in 2021.

Of these sums, despite a very significant increase in the volume of refunds in 2021 (€83 million), the ratio of seizures to refunds remains stable at 17.1%. The following data do not include exceptional income (which means income due to an extraordinary operation, such as the repatriation in 2019 in the same file of 3 life insurance policies worth €88 million).

When exceptional income is included, payments to the State or restitutions to victims (payments to the general State budget, payments to the MILDECA (Interministerial Mission for the Fight against Drugs and Addictive Behaviours), to victims of procuring, compensation to other victims) are even higher.

In 2022, the AGRASC paid 17 113 828,82 € to MILDECA and 795 945,98 € to the Fund for the prevention of prostitution.

Immovable assets (including apartments, villas, lands, buildings, garages, and warehouses):

Residual in the first years of the AGRASC, property confiscations are now routinely ordered by the courts.

Property confiscations increased by 44% between 2011 and 2021.

AGRASC has signed an agreement with the Conseil Supérieur du *Notariat* (CSN) and 1,000 notaries are listed throughout France: once the confiscation has become final, a sales mandate is given to a notary who

takes care of visiting the property, identifying any occupants, carrying out the mandatory diagnostics, drawing up the specifications, then carrying out the advertising operations and the sale by auction. The release of the sale price brings the procedure to a close for the notary, while its payment to any victims, the BGE or the MILDECA completes the file for AGRASC.

Property sales have increased by 35% between 2011 and 2021.

The average time taken to sell a property is currently 24 months (2018). The sometimes excessively long time taken by public prosecutors to forward decisions to AGRASC or for notaries to complete sales is conducive to certain situations becoming entrenched (occupation without title, continued rental of the property by convicted offenders, etc.) and gives rise to difficulties that could in many cases be avoided, in particular the increase in operating, maintenance and tax costs, which put a greater strain on the value of the property every day.

Corporate assets (such as companies, corporate shares, and stakes):

As explained, ablative measures on shares relate solely to the share capital that it represents, without the law having extended its effects to the voting rights associated with it.

However, AGRASC is responsible, on behalf of the State, for valuing confiscated assets and therefore for selling the shares handed over to it following a final confiscation order. It is not intended to participate in the management of commercial companies.

The 2014 Ordinance, insofar as it provides that the sale of shares held by the State requires the adoption of a decree (in certain cases after having been authorised by law) after receiving the assent of the Commission des Participations et des Transferts, is clearly not adapted to the confiscation of shares and was probably not intended for this situation.

AGRASC therefore recommends that judicial confiscations of company shares be excluded from the scope of the order of 20 august 2014 relating to the governance of and transactions in the capital of companies with public shareholdings.

Other assets.

Movable property sales have increased by 61% between 2011 and 2021. The most confiscated goods are cars, computer equipment (telephone, hi-fi, video), clothes and leather goods, jewellery and watches, boats, clothes and wine, and sometimes gold and precious metals.

Mention should also be made of the crypto assets for which the AGRASC carried out the first sale in February 2022. While the French public authorities are not the first in the world to have sold seized or confiscated crypto-currencies, the amount of assets sold - over €25 million - is unprecedented.

When appropriate, AGRASC has done a great deal of work to reuse confiscated assets, with a 73% increase in movable assets processed in 2021 through sale or allocation to services.

This mainly concerns the investigative and judicial services, enabling them to be equipped free of charge, as well as a reduction in legal costs, particularly for car storage.

Since 1 January 2021, AGRASC has been the contact point for the investigating authorities for procedures to assign movable property free of charge; it draws up the assignment reports before and after judgment in place of the estate auctioneers, who until then had jurisdiction in this area.

a. Assets redeveloped for social use: the social allocation of properties confiscated in France is the result of the law of 8 April 2021. At this stage, it is difficult to assess these essential processes. Calls for expressions of interest from eligible organizations are now published by AGRASC on the www.associations.gouv.fr website. To date, four calls for expressions of interest have been published by AGRASC.

The first call, published in February 2022, concerned the reuse of a villa in Guadeloupe for "humanitarian"

purposes (accommodation, shelter, reception of vulnerable groups). This property has been dedicated to the treatment of perpetrators of domestic violence.

The second call, published in March 2022, concerned a building for renovation in the city of Dunkerque, confiscated for offences relating to substandard housing. A rehabilitation lease was signed on 23 January 2023 with the NGO Habitat & Humanism for 75 years.

The third call, published in April 2022, concerned a studio apartment in the town of Grande-Motte (Hérault) to give disadvantaged people access to leisure activities. A civil lease was signed in November 2022. The property is made available free of charge to the NGO ADAGES – "La *maison* du *logement*", initially to accommodate displaced persons from Ukraine.

The fourth call, published in October 2022, concerned a home in Marseille and was part of a project to combat crime, prevent repeat offending and/or care for victims of criminal offences.

b. Assets redeveloped for institutional use: the nature of the goods affected differs slightly from that of the goods sold. First, computer/hifi/video/telephony equipment is assigned (39% of assets), followed by vehicles (32% of assets), then miscellaneous assets consisting of tools and drones, and finally the assignment of 5 boats to the maritime gendarmerie, the gendarmerie services in French Guiana and the public security police in the Var department. In 2022, 3.046 assets were redeveloped.

c. Assets not redeveloped: no data.

d. Assets sold: In 2021, AGRASC's property department sold 127 properties, compared with 94 in 2020. The agency's movables department sold €13.2 million worth of a wide range of goods, from a herd of cows to a luxury watch or a bar of palladium, again an unprecedented amount and representing a 60% increase on sales in both 2019 (€8.3 million) and 2020 (€8.2 million). In 2022, the movables department sold 4 300 goods amounting €15,93 million.

e. Assets returned to the victim: the French restitution system was adopted by the Act of 4 August 2021 and provides that the product from the sale of confiscated assets are to be allocated to the "official development assistance" budget and used to finance cooperation and development initiatives in the countries concerned, as close as possible to the people concerned. No data was available at the time of writing this report.

f. Frozen/confiscated assets not assigned: no data. However, AGRASC publishes another data. On 31 December 2022, 510 cases were still being processed (compared with 470 on 31 December 2021).

Given the results achieved by this agency, it would seem appropriate to consider providing it with more human and financial resources.

Please also provide information on the data collection, dissemination and communication modalities among national statistical data operators, as well as on the existence of a national database or multiple local databases.

The main data available to the public comes from the activity reports published each year by AGRASC.

As part of the preliminary investigations opened by the National Financial Prosecutor's Office (PNF) and based on asset investigations carried out beforehand by the investigating departments, 135 criminal seizures were ordered between 1 January 2017 and 31 December 2020 by the liberties and detention judge, at the request of the PNF, for a total amount of 328.4 million euros[117].

The breakdown of these seizures by type of offence is as follows: 69 for offences against probity, 61 for offences against public finances and 5 for stock market offences, i.e. 51.1%, 45.2% and 3.7% respectively.

Most of the assets seized were buildings (houses, flats, land, etc.) for an estimated value of €180.8m. This was

[117] La pratique des saisies pénales aux fins de confiscation au PNF, Corentin LATIMIER.

followed by sums credited to bank accounts totalling €94.1m, claims on sums of money totalling €48.3m, movable property with an estimated value of around €2.7m, claims credited to life insurance policies totalling €1.7m and securities accounts totalling €0.3m.

In 2021, 47 seizures were ordered by the liberty and custody judge, at the request of the PNF, for a total amount of 81.2 million euros. Most of the seizures concerned real estate, sums credited to bank accounts and receivables.

No public data was fund on the duration of the procedures.

GREECE

As of today, by virtue of Ministerial Decree 242//2018 (YA 24296, published on Government Gazette B 1302/2018) all authorities, which are responsible for freezing and confiscating assets, have the obligation to collect statistical data. All such data is then forwarded to SDOE. This data is not publicly available.

From 1-1-2024, all authorities with power to freeze and confiscate assets will have the obligation to notify the Asset Management Office about their decisions. The Asset Management Office will then be responsible for keeping, collecting, and transmitting the relevant statistical data **(art. 26 L. 5042/2023).** The details of data that will be collected remain to be determined by the ministerial decree that will be issued, which will regulate all relevant matter **(art. 24, 26 L. 5042/2023).**

ITALY[118]

At present, complete statistical data are not available. The Ministry of Justice is working to complete the collection of data as soon as possible. From January 1, 2022, to June 19, 2023, Italy, as the issuing authority, has transmitted 85 active cases (including 8 related to preventive measures).

Among the main types of requests, there are preventive seizures, either direct or equivalent, of funds held in bank accounts related to crimes such as fraud, money laundering, misappropriation of public funds, extortion, and fiscal offenses. As an executing State, Italy received 61 requests, including 12 from France, 10 from Germany and 5 from Belgium.

Question 2) Has the national strategy for increasing the value of confiscated property in the Member State been improved because of the Next Generation EU funding?

BELGIUM

N/A

FRANCE

It has not been possible, based on publicly available documents, to determine whether Next Generation EU funding was used to strengthen the French asset confiscation system. That said, the priorities announced

[118] Section drafted by Francesca Mele, Ph.D. candidate in Criminal Law

in the "National Recovery and Resilience Plan" do not include the policy of confiscating assets.

GREECE

N/A

ITALY[119]

Under the National Recovery and Resilience Plan (PNRR), an allocation of 250 million euros has been earmarked for project proposals aimed at rehabilitating and enhancing assets confiscated from criminal organizations for the benefit of the community and future generations. Among the priority criteria for receiving funding are objectives related to anti-violence centres for women and children, safe houses, daycare centres or early childhood education facilities. The PNRR is organized into 6 missions. Mission 5 - Inclusion and Cohesion - Component 3 - Special Interventions for Territorial Cohesion, Investment 2 - Enhancement of Assets Confiscated from Criminal Organizations, is allocated 300 million euros for the implementation of 200 projects in the 8 southern regions (Abruzzo, Basilicata, Calabria, Campania, Molise, Puglia, Sardinia and Sicilia).

The Ministry of the South and Territorial Cohesion announced on April 26, 2022, that there were 605 applications for access to the funds made available by the PNRR for the recovery of assets confiscated from the Mafia in the South of Italy. The objective agreed with the European Commission is to recover 200 assets by June 2026. In the call for proposals, 242 projects were approved for funding out of 528 submitted, with a total value of 249.5 million euros, while 165 were considered eligible. Meanwhile, of the 60 projects submitted through the negotiated procedure (of which 45 were also submitted through the call for proposals), 12 have been approved for funding, with a total value of 50.2 million euros.

[119] Section drafted by C. Scialla, post-doctoral researcher in criminal law, RINSE Project

ANNEX 1 – ONLINE DATABASE[120]

Belgium

Reference Regulatory Framework

The Belgian legal system has implemented Directive 2014/42/EU by amending the Criminal Code and the Code of Criminal Procedure.

1) **Article 16 of the law of March 18, 2018**, amended Article 524bis, § 1, stipulating that: *"This special investigation into financial benefits is, however, only possible if the public prosecutor demonstrates, based on serious and concrete evidence, that the convicted person has obtained financial benefits of any kind, either from the offense for which they were convicted, or from other offenses that could lead, directly or indirectly, to an economic advantage, provided they are listed in Article 43quater, § 1 of the Penal Code."*

2) **Additionally, Article 21 of the law of March 18, 2018**, amending Article 43quater, extended the scope of confiscation to other cases, specifically providing that: "Without prejudice to the provisions of Articles 43bis, paragraphs 3 and 4, the financial benefits referred to in paragraph 2, the assets and values that have replaced them, and the income derived from the invested benefits found in the assets or possession of a person may, upon request by the public prosecutor, be confiscated, or the person may be ordered to pay an amount that the judge considers to correspond to the value of these items, if they have been found guilty of several offenses.

The legislation on seizures.

1) **Article 35** of the Code of Criminal Procedure provides for the seizure of items forming the object of the offence and those that served or were intended to commit it when ownership belongs to the convicted person ; - the things that were produced by the offence ; - the patrimonial benefits derived directly from the offence, to the goods and values that were substituted for them and to the income from these invested benefits - additional pecuniary benefits when there are serious and concrete indications that these derive from the offence for which he was convicted and which serve to manifest the truth.

2) **Article 35 bis** of the Code of Criminal Procedure, on the other hand, provides for the seizure of immovable property that appears to constitute a patrimonial advantage derived from an offense. The seizure is classified as a preventive measure and is valid for 5 years, with the possibility of renewal.

3) **Article 35 *ter*** regulates the seizure for equivalent value and the seizure against third parties in bad faith. The seizable assets include patrimonial benefits derived directly from the offence, goods and values that were substituted for them, and income from these invested benefits or additional pecuniary benefits when there are serious and concrete indications that these derive from the offence for which the suspect was convicted. The

[120] Section edited by E. Battista (for Belgium and Greece) and G. Cirioli (France and Italy)

items representing this pecuniary advantage cannot or can no longer be found as such in the assets of the suspect in Belgium or are mixed with legal items.

The legislation on confiscation.

1) **Articles 42 - 43bis Penal Code** provides a Special confiscation of the patrimonial benefits derived directly from the offence. It's classified **as a penalty** and may concern a) the things forming the object of the offence and those that served or were intended to commit it when ownership belongs to the convicted person; b) the things that were produced by the offence ; c) the patrimonial benefits derived directly from the offence, to the goods and values that were substituted for them and to the income from these invested benefits.

2) **Article 43 bis, paragraph 2 Penal Code** provides the criminal sanction confiscation by equivalent. It is a condemnation to the payment of a sum of money, executable on the patrimony of the convicted person, which replaces the direct confiscation of the patrimonial advantages or the replacement goods which have been placed beyond the reach of justice.

3) **Article 43 quarter, paragraph 2 Penal Code** regulates extended confiscation for a series of offenses provided for in Article 5.2 of Directive 2014/42

Best practices

Belgium is the country that, according to the data, has most widely disseminated among operators' documents/guidelines regarding the implementation of Regulation (EU) 2018/1805 and Directive 2014/42/EU with a dissemination rate of 30%.

France

General overview of the national legislation

Freezing orders

The French Code of Criminal Procedure establishes various rules regarding seizure during the investigation phase of identity checks (*Des enquêtes et des contrôles d'identité - Articles 53 à 78-7*)

Article 56 of the Code of Criminal procedure (Articles 53 à 74-2 – *Des crimes et des délits flagrants*)

If the nature of the crime is such that evidence can be obtained by seizing papers, documents, computer data, or other objects in the possession of individuals who appear to have participated in the crime or hold pieces, information, or objects related to the alleged facts, the judicial police officer proceeds without delay to the residence of these individuals to carry out a search, for which he draws up a report. The judicial police officer may also go to any location where property likely to be confiscated under Article 131-21 of the Penal Code may be found, to conduct a search for the purpose of seizing this property. If the search is conducted solely to seek and seize property for which confiscation is provided for in the sixth and seventh paragraphs of the same article, it must be authorized in advance by the public prosecutor. When the investigation concerns violent offenses, the judicial police officer may, on his own initiative or at the request of the

public prosecutor, seize weapons held by the suspect or that the suspect has free access to, regardless of where these weapons are located.

Article 76 of the Code of Criminal procedure (*Articles 75 à 78 – De l'enquête préliminaire*)

Searches, home visits, and the seizure of evidence or property subject to confiscation under Article 131-21 of the Penal Code require the explicit consent of the individual involved, documented through a written declaration or noted in the minutes if the individual is unable to write.

In cases involving offenses punishable by custodial sentences of at least three years, the judge of liberties and detention may authorize such actions without consent, at the request of the public prosecutor, through a written and reasoned decision. This decision must indicate the classification of the offense and the location of the operation, and the actions must be conducted under the judge's supervision.

The competence for such decisions lies with the judge of the judicial court where the public prosecutor is directing the investigation, regardless of the territorial jurisdiction of the search. The prosecutor may also contact another competent judge in the territory where the search is to take place.

Article 97 of the Code of Criminal procedure (*Des juridictions d'instruction, Chapitre Ier: Du juge d'instruction: juridiction d'instruction du premier degré – Section 3: Des transports, des perquisitions, des saisies et des interceptions de correspondances émises par la voie des télécommunications – Sous-section 1: Des transports, des perquisitions et des saisies*) - *(Articles 79 à 230)*

During the investigation, when it is necessary to search for documents or computer data, the investigating judge or the delegated judicial police officer has the right to examine them before seizure. All objects and data seized must be inventoried and sealed; if there are difficulties in inventorying, the procedure outlined in Article 56 is followed.

The seizure of computer data can occur through the physical medium or a copy made in the presence of assisting individuals. The judge may order the deletion of illegal data on the non-seized medium.

With the judge's agreement, only the seizure of items useful for the investigation is retained. The seals may only be opened in the presence of the accused and their lawyer, unless the judge decides otherwise. Interested parties may request copies of the seized documents at their own expense.

In the case of the seizure of money or assets, the judge may authorize the deposit in financial institutions. For banknotes or coins suspected of counterfeiting, it is mandatory to send samples to the national analysis centre for identification. The analysis must be documented in a report submitted to the clerk of the competent jurisdiction. The same rules do not apply if only one specimen is suspected of counterfeiting.

The French Code of Criminal Procedure also includes specific provisions aimed solely at the application of confiscation (*Livre IV: De quelques procédures particulières – Titre XXIX: Des saisies spéciales, Articles 706-141 à 706-158*). Article 706-141 states that "*this title applies, in order to ensure the enforcement of the complementary penalty of confiscation according to the conditions defined in Article 131-21 of the Penal Code, to seizures carried out under this code that concern all or part of the assets of a person, a real estate asset, an incorporeal movable asset or right, or a credit, as well as to seizures that do not entail the deprivation of the asset*"

Articles 706-148 and 706-149

These provisions regulate the seizure of assets subject to confiscation under the sixth and seventh paragraphs of Article 131-21 of the Penal Code, when the law that penalizes the crime or offense provides for it, or when the origin of these assets cannot be established.

Articles 706-150 to 706-1572

These provisions deal with real estate seizures for which confiscation is provided for under Article 131-21 of the Penal Code.

Articles 706-153 to 706-157

These provisions concern seizures related to specific assets or incorporeal movable rights for which confiscation is provided under Article 131-21 of the Penal Code.

Article 706-158

This provision establishes a special case of seizure without dispossession (*saisie sans dépossession*)

Confiscation orders

Confiscation as an additional penalty to imprisonment

The French Penal Code provides for numerous specific cases where an individual may be punished not only with the main penalties but also with the confiscation of an object or an animal as an additional penalty.

Furthermore, the Penal Code, when regulating the penalties applicable to individuals, dedicates a specific section to the content and the modalities of application of certain penalties (*Subsection 5 – On the content and modalities of application of certain penalties – Articles 131-19 to 131-36*). In this section, Article 131-21 states that the additional penalty of confiscation, provided for in the cases established by law or regulation, is also applicable by right for crimes and offenses punishable by a custodial sentence of more than one year, except for press offenses.

Confiscation as an alternative penalty (*peines correctionnelles*) to custodial and monetary penalties (for *délits*)

Pursuant to Article 131-6 of the Penal Code, when an offense is punishable by a custodial or monetary penalty (in the form of a fine, under Article 131-7 of the Penal Code), the court may impose a penalty depriving rights as an alternative to detention. Among these figures is confiscation in three specific forms:

Confiscation of one or more vehicles belonging to the convicted individual.

Confiscation of one or more weapons possessed by or freely accessible to the convicted individual.

Confiscation of the object used or intended to be used to commit the offense, or the object that constitutes the product of the offense. However, such confiscation cannot be pronounced in cases of press offenses.

Pursuant to Article 131-14 of the Penal Code, for all fifth-class contraventions, whether against natural or legal persons, one or more penalties may be imposed that consist of the deprivation or restriction of certain rights. Among these penalties are two forms of confiscation:

Confiscation of one or more weapons possessed by or freely accessible to the convicted individual (n. 3).

Confiscation of the object used or intended to be used to commit the offense or the object that constitutes the product of the offense. However, such confiscation cannot be ordered for press offenses (n. 6).

Extended confiscation

Art. 131-21, par. 5

In this case, the link between the asset and the crime is legally presumed. The provision states that in the case of a crime or offense punishable by at least five years of imprisonment that results in direct or indirect profit, confiscation may include movable or immovable property of any nature, whether divided or undivided, belonging to the convicted individual or, subject to the rights of the bona fide owner, over which the convicted individual has exclusive control, provided that neither the convicted individual nor the owner, having had the opportunity to justify the asset subject to potential confiscation, can account for its origin.

Art. 131-21, par. 6

When the law governing the crime or offense provides for it, confiscation may include all or part of the assets belonging to the convicted individual or, subject to the rights of the bona fide owner, over which the convicted individual has exclusive control, regardless of their nature, whether movable or immovable, divided or undivided."

This penalty is applicable to the more serious offenses expressly listed by law.

CASE STUDIES

The judgments on Article 131-21 of the Criminal Code

Décision n° 2010-66 QPC du 26 novembre 2010

The Constitutional Council nonetheless declared Article 131-21 of the Penal Code to be compliant with the Constitution: first, it recalled its case law that the existence of an additional penalty applicable to certain crimes, offenses, or contraventions does not, by itself, violate the principle of necessity of penalties. Regarding contraventions, this does not exempt the regulatory authority from respecting the principle of necessity of penalties; second, it ruled that the cases established by law for the penalty of confiscation of assets used in the commission of an offense are not disproportionate. This is particularly true for the mandatory confiscation of objects classified as dangerous or harmful by law.

5 mai 2021, Cour de cassation, Pourvoi n° 20-86.529

The questions raised, in so far as they challenge the constitutionality of the interpretation of Article 131-21, paragraph 9, of the Penal Code, according to which the repressive judge is not required to control the necessity and proportionality of the impact on the right of property by the confiscation measures concerning the value of the direct or indirect proceeds of the offense, nor to individualize this additional penalty, are, however, not serious.

Indeed, on one hand, when the judge orders a confiscation measure concerning the value of the direct or indirect proceeds of the offense, he is required to first ensure that the value of the confiscated asset does not exceed the amount of the proceeds of the offense, so that the impact on the property right of the convicted individual cannot exceed the economic advantage derived from the criminal offense, which constitutes the patrimonial consequence of its commission, and to justify this with sufficient reasons, free from contradictions, and responding to the compelling arguments of the parties'

conclusions. This implies that neither the principle of necessity of penalties nor the principles of individualization and motivation of penalties are violated.

On the other hand, if certain offenses are likely to expose their author to, in addition to the confiscation concerning the value of the direct or indirect proceeds of the offense, the confiscation of all or part of their assets defined by Article 131-21, paragraph 6, of the Penal Code, and if the repressive judge ordering such a measure is required to control, if necessary ex officio, the proportionality of the impact on the property right of the convicted individual, this option does not violate the principles of equality before the law and justice, as this difference in treatment is justified by the fact that the confiscation incurred on the basis of the aforementioned text, unlike that which is based on the text whose constitutionality is contested, is likely to affect, without limitation, all assets constituting the convicted individual's estate.

ECHR, Case of *Aboufadda* v. France (application no. 28457/10)

In its decision in the case of *Aboufadda* v. France (application no. 28457/10), the European Court of Human Rights has, by a majority, declared the application inadmissible. The decision is final.

The case concerned the confiscation of a building that belonged to the applicants and in which they lived, with the courts having determined that most of their assets had been obtained through the proceeds of drug trafficking engaged in by their son.

Pointing out that States have room for manoeuvre ("wide margin of appreciation") in controlling the use of property in accordance with the general interest, the Court interpreted the French courts' decision to confiscate the applicants' residence as demonstrating a legitimate wish to punish severely offences that were akin to concealing illegally-obtained assets, and which, in addition, had occurred in the context of large-scale drug trafficking at the local level.

Given the ravages caused by drugs, the Court understood that the authorities of the member States should wish to treat those who contributed to the propagation of this scourge with great firmness. It also reiterated that the confiscation of assets obtained from the proceeds of crime had assumed a significant role both in the legal systems of several member States of the Council of Europe and internationally.

BEST PRACTICES

France has developed guidelines to support the French authorities in the drafting and transmission of freezing certificates.

Implementation of the positive impact of legislative changes on mutual judicial cooperation.

Eurojust facilitates the asset recovery process by providing legal and practical support to judicial authorities throughout the different stages of asset recovery, by helping practitioners to resolve issues and answer questions, and by facilitating effective cooperation and communication between the involved States.

France is also involved in international initiatives to promote best practices and facilitate international cooperation, including the STAR (Stolen Asset Recovery Initiative), the CARIN Network (Camden Asset Recovery Interagency Network), and the Global Focal Point Network on Anti-Corruption and Asset Recovery.

Greece

Reference Regulatory Framework

The regulations implementing the Directive 2014/42/EU, as well as Council Framework Decisions 2003/577/JHA, 2006/783/JHA and 2005/212/JHA can be found in

the new Criminal Code (GCC) and Code of Criminal Procedure (GCCP) adopted in 2019,

as well as in Law 4557/2018 against money laundering.

The legislation on confiscation.

Confiscation as a criminal sanction:

Article 68 par. 1 GCC stipulates that following conviction, objects or assets, which i) derive from an offence (felony or misdemeanour committed with intent), as well as their value or any assets acquired directly or indirectly through them, or ii) were used or intended to be used, in any manner, as a whole or in part, to commit such an offence, are subject to confiscation, provided that they belong to the perpetrator or to any of the participants.

Articles 68 par. 3 GCC, 40 par. 2 L. 4557/2018 regulate the value confiscation. In case the objects or assets, which should be confiscated following the conviction of the defendant, no longer exist, have not been found or are impossible to confiscate, the court may decide to confiscate assets of equal value belonging to the convicted defendant.

Articles 68 par. 5 GCC, 40 par. 1 L. 4557/2018 regulate the confiscation towards third parties who, at the time of purchasing the asset, were aware that the asset originated from a crime committed with intent, and that the purpose of the transfer was to obstruct the confiscation

Non-conviction-based confiscation

Articles 311 par. 3 and 373 par. 5 GCCP, 40 par. 3 L. 4557/2018 provide that in cases where prosecution is terminated due to prescription of the offence, death of the defendant, withdrawal of the criminal complaint or lack thereof, granting of amnesty, ne bis idem, the judicial council (article 311 par. 3 GCCP) or the court (article 315 par. 5 GCCP) may order the confiscation of the proceeds.

Confiscation as a security measure

Article 76 par. 1 GCC stipulates that confiscation of objects, which derive from an offence (felony or misdemeanour committed with intent) or were used or intended to be used, in any manner, as a whole or in part, to commit such an offence, are subject to confiscation, even if the defendant is not convicted of the offence, if they pose a risk to public order due to their nature.

The legislation on freezing measures

Freezing of assets during the preliminary investigation (art. 36 par. 2-3 GCCP)

Freezing of assets during the main investigation (art. 261-262 GCCP)

Freezing of assets during the investigation of the Financial Intelligence Unit-FIU (art. 42 par. 7 L. 4557/2018). Even before the opening of a criminal investigation, the President of the FIU, when conducting its own investigation, may order

the freezing of assets for which there are reasonable suspicions that they relate to money laundering activities and there is real danger that they may dissipate. The freezing order may extend to any type of asset.

The provisional freezing of assets (art. 48 par. 2d Law. 4557/2018). In urgent cases, when it is suspected that an asset or transaction is related to money laundering or terrorist financing, the President of the FIU has the powers to order the provisional freezing of the asset or the suspension of execution of the specific transaction, to investigate the validity of the suspicions as soon as possible.

Freezing of assets during the criminal pre-trial stage (art. 42 par. 1 L. 4557/2018)

Best practices

During criminal pretrial investigations prosecuting and judicial authorities tend to use the European Investigation Order as a tool to gather information from other EU member states. In case of a third country, Greek authorities may proceed with a mutual legal assistance request, which would be issued based on the provisions of the applicable bilateral or international treaty. Moreover, the Hellenic FIU is a member of the Egmont Group of FIUs and the FIU Platform. Also, SDOE's (Unit against Financial and Economic Crime) D' Division on Recovery of Assets deriving from criminal offences and on mutual assistance collaborates with CARIN network.

Case study

In the case *Paraponiaris* vs. Greece, the European Court of Human Rights (ECtHR) examined a matter concerning the compatibility of Greek confiscation provisions with the rights guaranteed by the European Convention on Human Rights (ECHR), specifically Article 6, paragraph 2, which establishes the principle of the presumption of innocence. The Court found that confiscating assets despite the termination of the criminal proceedings could constitute a punitive sanction that is inconsistent with the presumption of innocence.

Italy

General overview of the national legislation

Freezing orders

Articles 253-265 of the Code of Criminal Procedure (evidentiary seizure)

It is a means of evidence collection aimed at securing the movable or immovable property for evidentiary purposes. The reference provision is Article 253 of the Code of Criminal Procedure, according to which "the judicial authority orders, by means of a reasoned decree, the seizure of the corpus delicti and the things pertinent to the offense necessary for the ascertainment of the facts.

Art. 316 of the Code of Criminal Procedure (conservative seizure)

If there is a justified reason to believe that the guarantees for the procedural costs and any other amounts owed to the State Treasury are lacking or being dissipated, the public prosecutor, at any stage of the proceedings, requests the

precautionary seizure of the movable or immovable assets of the defendant or of any sums or items owed to him, within the limits permitted by law for seizure.

Article 321 of the Code of Criminal Procedure

Finally, the precautionary seizure has a protective purpose. Also a real precautionary measure, it is regulated by Article 321 of the Code of Criminal Procedure, which states that when there is a danger that the free availability of an item pertinent to the offense may aggravate or prolong its consequences or facilitate the commission of other offenses, upon request of the public prosecutor, the competent judge shall order its seizure by means of a reasoned decree.

Confiscation orders

Art. 240 Criminal Code

This rule regulates confiscation as a measure of property security. It includes both optional and mandatory confiscation scenarios.

Optional confiscation is based on the social dangerousness of the person when they can be considered dangerous because they possess property that has been used or intended for committing the crime.

Mandatory confiscation applies to property that is the product or profit of the crime; property that represents the "price" of the crime, or the compensation given or promised to induce, incite, or make someone else commit the crime, unless the asset belongs to someone not involved in the crime; electronic or digital tools used to commit various cybercrimes, and also property that is the profit or product of these crimes.

Finally, confiscation is mandatory (even without a conviction) for all property whose manufacture, use, possession, or transfer constitutes a crime (Article 240, paragraph 2, no. 2 of the Criminal Code).

Regarding its legal nature, most experts believe it is a property security measure. However, some scholars argue that it is a punitive measure.

The Extended Confiscation (art. 240-bis Criminal Code)

Another form of mandatory confiscation, introduced in the 1990s in complementary legislation as part of a measure to combat organized crime (Article 12 *sexies*, paragraph 2 ter of Law Decree No. 306 of June 8, 1992, converted into Law No. 356 of August 7, 1992), and gradually extended to a wider range of particularly serious crimes, is now provided for in Article 240 bis of the Penal Code, inserted into the criminal code in implementation of the principle of legal reservation by Legislative Decree No. 21 of March 1, 2018

This is the so-called "extended confiscation," which, in the case of a conviction or plea agreement, applies to crimes such as mafia association, crimes committed using the conditions described in Article 416 bis of the Penal Code, or crimes committed to facilitate the activities of a mafia association, certain aggravated forms of smuggling, corruption, other crimes against public administration, usury, and money laundering. The legislature's favour for this form of confiscation is further demonstrated by its extension to tax crimes when tax evasion exceeds a certain threshold, as set out in Article 12 *ter* of Legislative Decree No. 74 of March 10, 2000, introduced by Decree Law No. 124 of October 26, 2019, converted into Law No. 157 of December 19, 2019. Confiscation under Article 240 bis of the Penal Code applies to money, assets, or other valuables disproportionate to the convicted person's income — whether directly or through intermediaries — that the person cannot justify the origin of

Confiscation by equivalent

In relation to certain specific types of crimes, the legal system has introduced "confiscation by equivalent," which targets money, assets, or other valuables that the offender has at their disposal, equivalent in value to the price, profit, or product of the crime. This form of confiscation is intended to be applied in cases where direct confiscation of the proceeds of the crime is not possible for various reasons. Therefore, the equivalent in money of the asset that should have been confiscated is seized.

Confiscation by equivalent was introduced by Law No. 108 of March 7, 1996, and its scope of application was initially limited to the crime of usury (Article 644, paragraph 6, of the Penal Code).

In the Criminal Code, confiscation by equivalent is now included in a wide range of cases, which continues to expand:

Article 240, para. 2, no. 1 bis, c.p., regarding mandatory confiscation in relation to computer crimes;

Article 270 septies c.p. for crimes committed with the purpose of terrorism;

Article 322 *ter* c.p. for certain crimes committed by public officials against public administration (Articles 314 to 320 c.p.);

Article 452 *undecies*, para. 2, c.p. for environmental crimes under Title VI bis of Book II of the Criminal Code, introduced in 2015 (Articles 452 bis et seq.);

Article 452 *quaterdecies*, last paragraph, for the crime of organized activities for the illegal trafficking of waste;

Article 466 bis c.p. for certain crimes involving counterfeiting of money (Articles 453-455 and Articles 460-461 c.p.);

Article 474 bis c.p. for crimes involving the counterfeiting of trademarks (Articles 473 and 474 c.p.);

Article 493 *ter* c.p. for the crime of improper use and falsification of credit cards;

Article 600 *septies* c.p. for crimes against individual freedom (Articles 600 et seq. c.p.) and for certain sexual offenses against minors (Articles 609 bis et seq. c.p.);

Article 603 bis.2 c.p. for the crime of illegal labour intermediation and exploitation (so-called "*caporalato*": Article 603 bis c.p.);

Article 640 *quater* c.p. for crimes of fraud (Articles 640, para. 2, no. 1 and 640 bis c.p.) and computer fraud (Article 640 *ter* c.p.);

Article 648 *quater* c.p. for crimes of money laundering, the use of money or assets from illicit sources, and self-laundering (Articles 648 bis, 648 *ter*, and 648 ter.1 c.p.).

In special legislation, confiscation by equivalent is provided for in many other cases (only the main ones are listed here):

In Article 2641 of the Civil Code for corporate crimes;

in Article 187 of Legislative Decree No. 58 of February 24, 1998 (Consolidated Text on Financial Intermediation) for crimes of insider trading and market manipulation;

In Article 12-bis of Legislative Decree No. 74 of March 10, 2000, introduced by Legislative Decree No. 158 of September 24, 2015, for tax crimes (fraudulent or false declaration, failure to declare, fraudulent tax evasion, failure to pay VAT, etc.);

In Article 19 of Legislative Decree No. 231 of June 8, 2001, against entities held administratively responsible for crimes committed in their interest or benefit;

in Article 11 of Law No. 146 of March 16, 2006, for so-called transnational crimes (as defined by Article 3 of the same law);

In Articles 73, paragraph 7-bis, and 74, paragraph 7-bis, of the Consolidated Text on Narcotics, for crimes related to the production, trafficking, and illegal possession of narcotics and association aimed at trafficking such substances.

As for the nature of the confiscation for equivalent, the absence of a connection between the crime and the confiscated property, as opposed to confiscation under Article 240, leads to the absence of the presumption of the dangerousness of the confiscated property. Therefore, confiscation for equivalent cannot properly be considered a security measure but rather a penalty.

The non-conviction-based confiscation in the Italian legal system

The preventive confiscation

Preventive confiscation (Article 24 of Legislative Decree No. 159/2011) takes place after the precautionary seizure (Article 20 of the same Legislative Decree).

It applies not only to individuals to whom personal preventive measures are applicable, but also "to individuals or entities listed by the United Nations Sanctions Committee, or by any other competent international body responsible for freezing assets or economic resources, when there are well-founded reasons to believe that these assets or resources may be dispersed, hidden, or used to finance terrorist organizations or activities, including international ones" (Article 16)

Confiscation can be applied separately from personal measures, and regardless of the social danger posed by the individual at the time of the request, even after the death of the person against whom the measure could be imposed (Article 18 of the aforementioned Legislative Decree).

The conditions for the measure are essentially two: first, the social danger posed by the individual (as included in one of the categories outlined in Article 4 of the aforementioned Legislative Decree), even if this danger only existed in the past and is no longer present at the time of the request for the imposition of the asset forfeiture (the condition thus applies today to the past); second, the individual's inability to justify the ownership, either direct or indirect, of the seized assets, in terms of the legitimacy of their origin, or because they are disproportionate to the declared income or economic activities, or because the assets are the result of illicit activities or represent their reinvestment.

Regarding the legal nature, the prevailing view holds that preventive confiscation is not punitive in nature but serves a preventive purpose. The established case law of the European Court of Human Rights also affirms that preventive measures do not imply a judgment of guilt, but are intended to prevent the commission of criminal acts. They cannot be compared to a "penalty." Therefore, the related proceedings cannot address the "merits" of a "criminal charge." Confiscation of property whose lawful origin the applicant is unable to prove constitutes a control of the use of property

and is only a preventive measure. Articles 6 and 7 of the European Convention on Human Rights are not applicable, as the preventive measure does not involve a finding of guilt following a criminal charge (it does not constitute a penalty)[121].

Urban confiscation

Urban confiscation, provided for by D.P.R. No. 380/2001 (Consolidated Law on Construction), is a direct patrimonial measure that applies in the case of the crime of illegal land subdivision, governed by Art. 30 of D.P.R. No. 380/2001. When it is established that a piece of land has been subdivided for construction purposes without the necessary permits, the municipal official, pursuant to Art. 30, paragraph 7, issues a work suspension order, registered in the land registry, rendering the area and any works undertaken on it unavailable. After 90 days without revocation of the order, the land is automatically acquired by the municipality, and the authorities are required to demolish any illegal constructions. Confiscation is then consolidated by art. 44, par. 2: the final criminal judgment directly orders the confiscation of the land and illegal works, thereby strengthening the effect of the measure and protecting urban planning.

Legal Nature → before the judgment of the European Court of Human Rights (ECtHR), domestic case law classified confiscation as an administrative sanction, which could be imposed even in the case of an acquittal, with the sole limitation being a judgment of acquittal due to the non-existence of the fact. Therefore, it was applicable regardless of the outcome of the criminal trial and could also be applied to third parties (who had become owners of the property).

CASE STUDY

De Tommaso judgement of the ECourtHR (Corte EDU, Grande Camera, 23 febbraio 2017, De Tommaso c. Italia)

In the case at hand, the European Court of Human Rights (ECtHR) recently – while continuing to affirm the non-criminal nature of such measures – identified significant elements of indeterminacy in the national system that conflict with the Convention's system of guarantees (even though the applicable standard is not the criminal one). This reference pertains to the ruling in *De Tommaso v. Italy*, in which the Strasbourg Court found that the categories of dangerousness outlined in Art. 1(a) and (b) of Legislative Decree No. 159/2011 are not in conformity with the principles of precision, determinacy, and foreseeability; principles whose observance is necessary to justify the legitimacy of any restriction on a conventionally protected right, whether personal or proprietary in nature.

The identification of a dangerous individual represents – through a complex system of statutory references – the common denominator of both personal and asset-based preventive measures. In this regard, Italian legislation on preventive measures has been deemed inadequate due to the lack of determinacy in the statutory description of the so-called "generic dangerous individuals" identified in Art. 1(1) and (2) of Law No. 1423/1956, now Art. 1(a) and (b) of Legislative Decree No. 159/2011, which include among the subjects of preventive measures the so-called "generic dangerous individuals," namely: (a) "those who, based on factual elements, should be considered habitually engaged in criminal dealings" and (b) "those who, based on factual elements regarding their conduct and lifestyle, should be considered to habitually, even partially, subsist on the proceeds of criminal activities.

Const. Court. n. 24/2019

[121] *Riela and others v. Italy* (4 September 2001), § 2, aimed at specifying the previous approach expressed in the rulings *Guzzardi v. Italy* (6 November 1980), § 108, *Ciancimino v. Italy* (27 May 1991), and *Raimondo v. Italy* (22 February 1994), as well as *Cacucci and Sabatelli v. Italy* (17 June 2014), *Capitani and Campanella v. Italy* (17 August 2011), *Leone v. Italy* (2 February 2010), and *Bongiorno and others v. Italy* (5 January 2010).

After the De Tommaso judgment, the Italian Constitutional Court declared Article 19 of Law No. 152 of 1975, in the version in force until the entry into effect of Legislative Decree No. 159 of 2011, constitutionally unlawful for violation of Articles 42 and 117, first paragraph, of the Constitution, in relation to Article 1 of Protocol No. 1 to the ECHR, insofar as it provided that the seizure and confiscation measures set forth in Article 2-ter of Law No. 575 of 1965 also applied to the persons referred to in Article 1, no. 1), of Law No. 1423 of 1956.

The provision is criticized only in the part where it allows the application of preventive measures to those who are "suspected," based on factual elements, of being habitually involved in criminal activities. This provision suffers from a fundamental lack of precision, which was not corrected by case law following the 2017 judgment of the European Court of Human Rights (De Tommaso). According to the Strasbourg Court, the preventive measures regulated by the Italian legal system are legitimate as they are based on a suitable legal foundation, serve a legitimate purpose, and the limitation is necessary in relation to the objectives pursued. However, the case law has not been able to provide a clear and reasonably predictable interpretation of the statutory provision in question, as two opposing interpretative approaches coexist on this point. These approaches define the concept of "criminal activities" in a generic and inconsistent manner, and therefore, they do not appear capable of selecting, even with reference to the specifics of the case examined by the judge, the crimes whose commission might constitute a reasonable basis for a judgment of dangerousness of the potential subject of the measure. Furthermore, such notions of "criminal activities," which are not limited to profit-producing crimes, could never constitutionally justify measures aimed at the confiscation of assets possessed by a person who has committed such crimes in the past, as this would lack the very basis for the presumption of a reasonable criminal origin of the assets, which constitutes the rationale behind these measures.

The judgments of the ECHR on urban confiscation

ECHR Sud Fondi v. Italy → In the Sud Fondi judgment, the European Court of Human Rights recognized that urban confiscation is a penalty according to the definition of criminal matters adopted by the case law of the European Convention on Human Rights. As a penalty, it cannot be applied without first establishing the guilt of the individual. Specifically, it was held that "Article 7 does not explicitly mention a moral link between the material element of the offense and the alleged perpetrator. Nevertheless, the logic of punishment and the concept of 'guilty' (in the English version) and the corresponding notion of '*personne coupable*' (in the French version) are understood in the sense of an interpretation of Article 7 that requires, for punishment, an intellectual link (awareness and will) that allows the identification of a responsibility element in the conduct of the material perpetrator, an element without which the imposition of a penalty would be unjustified" (see § 116).

ECHR, Judgment of October 29, 2013, Varvara vs. Italy → After Italy's conviction in the merits ruling Sud Fondi srl and others v. Italy, the Court of cassation has consistently reaffirmed the "administrative" classification of urban confiscation, thereby confirming its applicability even in the absence of a conviction (and, in particular, in cases of acquittal due to the statute of limitations for the crime). On the other hand, to avoid contradictions with the conclusions of the Sud Fondi judgment— which for the first time linked the principle of culpability to Article 7 of the ECHR (in a case where urban confiscation had been applied despite the acquittal of the defendants under Article 5 of the Italian Penal Code)—the need for a determination by the judge of the subjective element of the crime, alongside the objective "urban or building transformation of the land in violation of urban planning regulations" (illegal land subdivision as provided by Article 30 of the Consolidated Building Code), was emphasized. The Second Section of the European Court of Human Rights considered that the application of the alternative form of urban confiscation, as provided by Article 40, paragraph 2, of Presidential Decree No. 380 of 2001 in cases of acquittal due to extinction of the crime, constitutes a violation of

the principle of legality established by Article 7 ECHR. The Strasbourg Court therefore states that urban confiscation can only be considered in compliance with the European Convention if it is imposed within the framework of a conviction.

ECHR, Grand Chamber, Judgment of June 28, 2018, G.I.E.M. and others v. Italy → After the Varvara v. Italy judgment, the Italian Constitutional Court interpreted that decision to mean that, in addition to a formal conviction, a substantive conviction could also be considered. A substantive conviction refers to an acquittal (e.g., due to the statute of limitations) in which all the elements of the crime have been established. This approach was confirmed by the Strasbourg Court in the G.I.E.M. case (appeal no. 1828/06). In this judgment, the Court held that the imposition of urban confiscation, even when the statute of limitations for the crime has expired, is compatible with the guarantees of Article 7 ECHR, provided that all the constitutive elements of the crime of illegal land subdivision have been substantially established (§§ 260-261)

BEST PRACTICES

Institutional promotion of networks that can facilitate the identification of assets, such as the Asset Recovery Office (A.R.O.) network, responsible for identifying and recovering assets subject to freezing and confiscation orders issued by the competent judicial authority.

In addition to the A.R.O., there are also some informal networks dedicated to Asset Recovery, including:

a) the C.A.R.I.N. (Camden Asset Recovery Interagency Network), an international information-sharing platform established in 2004 at the initiative of several European countries, comprising 54 countries, including all EU member states, and 9 international organizations, aimed at exchanging information among asset recovery offices;

b) the R.R.A.G. (Red de Recuperación de Activos del G.A.F.I.LAT.), a network managed by GAFILAT (Grupo de Acción Financiera de Latinoamérica), whose activation always occurs through the S.C.I.P;

c) the St.A.R. (Stolen Asset Recovery), an informal network managed by UNODC, INTERPOL, and the World Bank;

d) the Global Focal Point Network on Asset Recovery, established by INTERPOL, which provides a secure information exchange system for the recovery of illicit assets.

To ensure comprehensive information exchange, the network is supported by regional networks called A.R.I.N (Asset Recovery Interagency Networks).

Encouragement of the establishment of memoranda of understanding between the UIF (Financial Intelligence Unit), the National Anti-Mafia and Anti-Terrorism Directorate, the Special Unit for Financial Police of the Guardia di Finanza, and the Anti-Mafia Investigative Directorate.

With reference to the exchange of financial information between Member States, it should be noted that Council Decision 2000/642/JHA has been replaced by Directive 2019/1153, which provides that AROs (Asset Recovery Offices) are included among the authorities of each Member State authorized to access the centralized national bank account registry and to request information from the Financial Intelligence Units (FIUs)

ANNEX 2 – Selected Bibliography

Critical Application Issues and Relevant Bibliographical References

BELGIUM

Some Belgian examples of doctrine with some critical application issues (non-exhaustive list):

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KUTY, F., "La mainlevée en guise de sanction du dépassement du délai raisonnable d'une procédure de saisie pénale: une sanction judicieuse ?" (noot onder KI Bergen 7 mei 2011), *Rev. dr. pén.* 2011, 916.

ROZIE, J., "Over de beperkte actieradius van het K.B. van 9 augustus 1991" (noot onder Antwerpen 20 juli 2004), *T. Strafr.* 2005, 60-63.

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KLEES, O., "La bonne foi du légitime propriétaire d'une chose confisquée par le juge pénal" in *Het strafrecht bedreven. Liber Amicorum Alain De Nauw*, Brugge, die Keure, 2011, 491.

VANDERMEERSCH, D., "Les nouvelles règles applicables aux saisis. Discussion de quelques points controversés" in *De wet van 19 december 2002 tot uitbreiding van de mogelijkheden tot inbeslagneming en verbeurdverklaring in strafzaken. Kaalpluk: haarpluk?*, Antwerpen, Intersentia, 2004, 81-96.

FRANCE

Doctrine is highly critical of the restriction on third parties' access to documents during the judgment phase. In a decision of the Court de cassation of October 21st, 2020, no. 19-87.071, the supreme Court ruled that if article 1 of Protocol No. 1 to the ECHR provides that every natural or legal person has the right to respect for his property, and that these provisions in no way prohibit States from regulating the use of property in accordance with the public interest "the persons concerned must benefit from a fair procedure, which includes the principle of the right to a fair hearing". It then summarises the principles governing the communication of documents to a third-party seeking restitution of property before a criminal court, which the court must ensure are respected. As a preliminary point, the High Court explains that these principles only apply to third parties "if the seizure has been carried out in their hands or if they can prove that they have rights over the property whose restitution is sought". In the present case, the Court considered that the Panamanian company was not in either of these situations. Where this is the case, "in addition to the seizure reports or, in the event of a special seizure, the seizure requisitions, the seizure order and, where applicable, the seizure decision" as well as "the precisely identified documents from the proceedings on which it relies in its decisive reasons" must be communicated in good time. In so doing, the Criminal Division aligns the rules governing the disclosure of documents before the trial court with those applicable before the Investigation Chamber of the Court of Appeal. Selon Mathieu HY, However, the trial phase is public, oral and contradictory, so there is no justification for relegating the third-party claimant to the position of spectator in the

main trial. Furthermore, the ECHR appears to require that the person whose property is threatened with confiscation be given the status of a party to the proceedings[122].

On another subject, the doctrine is also very critical. It concerns the confiscation of intellectual property rights. These rights consist of an economic component and a moral component that is imprescriptible and inalienable. It is therefore impossible to seize the moral rights of authors. This creates practical difficulties, as the exercise of moral rights often enables the author to prohibit exploitation of the work. Furthermore, to ensure that confiscation of economic rights is respected, constant monitoring of the market in which works can be exploited should be put in place. However, there is currently no mechanism for such monitoring[123].

The AGRASC has also highlighted the practical difficulties posed by the confiscation of businesses, since those currently seized or confiscated are of no interest to the State, as they are often businesses with no real or serious activity, that were mostly used to launder illegal funds.

Furthermore, when a real business exists, it is very common for the owners of seized businesses to cease trading immediately or lose their customer base, fail to pay their debts and make their assets disappear, so that their lessors enforce the resolutory clauses in their lease contracts and confiscation becomes impossible.

GREECE

Academics have widely supported the view that owing to the punitive nature of confiscation in criminal proceedings, non-conviction based confiscation, as well as third party confiscation would be in breach of articles 2 par. 1, 7 par.1 and 96 par. 1 of the Greek Constitution, which establishes the principles of *nulla poena sine processu* and *nullum crimen, nulla poena sine culpa*. In other words, it would be in breach of the Greek Constitution to impose a criminal penalty against an individual who did not stand trial.

Ref.: *Ar. Tzanettis,* Η δήμευση των νομιμοποποιούμενων προϊόντων της εγκληματικής δραστηριότητας, σε Ένωση Ελλήνων Ποινικολόγων (επιμ.), Ξέπλυμα Βρώμικου Χρήματος: «Καθαρή» ή Ελεύθερη Κοινωνία;», Ένωση Ελλήνων Ποινικολόγων (επιμ.), Αθήνα – Κομοτηνή 2007, 249 επ., *Ath. Dionysopoulou.,* Η δήμευση των προϊόντων εγκληματικής δραστηριότητας. Παρατηρήσεις και de lege ferenda προτάσεις στις διατάξεις του Ν. 2331/95, Υπερ., 2000, 793 επ.,

Moreover, the Supreme Court's decision 1/2022 on the powers of the President of the FIU to order the freezing of assets, when a case is already being investigated by the prosecuting and judicial authorities, was heavily criticised by academics. The main points of the criticism was that i) the President of the FIU could detrimentally interfere with a pending criminal investigation, due to the fact that he does not have knowledge of the case file ii) the conditions, under which freezing of assets may be ordered during a criminal investigation, are bypassed when such measure is imposed by the President of the FIU who should act only before an official criminal investigation is opened and not when the case file is at the hands of the prosecuting or judicial authorities

Ref.: *Ar. Tzanettis,* Στον ιστό της Αρχής Καταπολέμησης της Νομιμοποίησης Εσόδων από Εγκληματικές Δραστηριότητες, Η (υπερ)ενίσχυση των εξουσιών της Αρχής μετά την ΟλΑΠ 1/2022 και το άρθρο 171 Ν. 4855/2021, ΠοινΧρον 2022, 401 επ.

[122] Source: «Droit des saisies pénales et confiscations : repères jurisprudentiel», Matthieu Hy, avocat au Barreau de Paris, September 22nd, 2021.
[123] Source: Droit et pratique des saisies et confiscations pénales, Lionel Ascensi, Dalloz reference edition, 2022/2023.

ITALY

DIRECT CONFISCATION:

There are no issues raised regarding direct confiscation by scholars, except for the previously mentioned matters of the non-retroactivity of the measure and the forfeitability of money as direct confiscation. Therefore, a brief bibliography is provided here for reading about these issues.

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Civello G., *Le Sezioni unite "Lucci" sulla confisca del prezzo e del profitto di reato prescritto: l'inedito istituto della "condanna in senso sostanziale"*, nota a Cass., Sez. Un., 26 giugno 2015, Lucci, in Arch. Pen., n. 2 del 2015

CONFISCATION BY EQUIVALENT:

Authoritative doctrine has expressed divergent views on the punitive function of equivalent confiscation. According to this view, confiscation by equivalence, like direct confiscation, has both a compensatory component, in that it affects the offender's assets to the extent of the net profit derived from the offense, and a punitive component, in that it affects the difference between gross and net profit, thereby adversely affecting the offender's assets.

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Nicosia E., *La confisca, le confische. Funzioni politico criminali, natura giuridica e problemi ricostruttivo -applicativi*, Giappichelli, Torino, 2012.

Trinchera T.*, Confiscare senza punire? Uno studio sullo statuto di garanzia della confisca della ricchezza illecita,* Giappichelli, Torino, 2020

PREVENTIVE MEASURES:

Strasbourg's denial - at least temporarily, pending the outcome of the Cavallotti v. Italy case - of the essentially criminal nature of preventive measures does not satisfy a significant number of legal scholars, who consider preventive measures to be truly second-class sanctions based on suspicion. Their criminal nature could be inferred from several indicators.

First and foremost, the fact that their application depends on the formulation of a criminal charge, albeit understood in the sense that the conduct of the person in question can be classified within a criterion of dangerousness. Secondly, such measures have a significant impact on the fundamental rights of the person concerned. Further analysis could show that these measures have the same objective as criminal sanctions, namely, to prevent the commission of crimes. Moreover, it could still be argued by referring to legal provisions that link the violation of a requirement imposed by special public security surveillance to the commission of a crime (see Constitutional Court judgment 25/2019 on this point). Another debate concerns the compatibility of the system of preventive measures with the typical safeguards of the criminal system, a system that, according to case law, conflicts with the primary function of preventive measures: to prevent the commission of a crime. To achieve this, it's necessary to "lighten" the application procedure of the preventive measure, without "weighing it down" by applying all the safeguards of the criminal matter.

Albanese D., *Confisca di prevenzione: smussato il requisito della 'correlazione temporale'*, DPC, 19Aprile 2018;

Basile F., Zuffada E., *Manuale delle misure di prevenzione*, in *Biblioteca Digitale Giappichelli*;

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Viganò F., *La Corte di Strasburgo assesta un duro colpo alla disciplina italiana delle misure di prevenzione personali,* in *www.penalecontemporaneo.it, 3 marzo 2021*

CONFISCATION IN TAX CRIMES:

Bargi, "*Processo al patrimonio" e principi del giusto processo: regole probatorie e regole decisorie nella confisca penale*, in *La giustizia patrimoniale penale*, a cura di Bargi e Cisterna, 5 ss;

Bonanno, *La confisca per equivalente nei reati tributari*, in Riv. Oss. della Giustizia Tributaria, Unipa, 1, 2017

De Blasis, *Osservazioni sulla confisca allargata nei reati tributari*, in Giurisprudenza Penale, 10, 2020;

Finocchiaro, *Riflessioni sulla quantificazione del profitto illecito e sulla natura giuridica della confisca diretta e per equivalente*, in Dir. pen. cont., 2020, 3, 322 ss;

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Vergine, *voce Confisca*, in Dig. disc. pen. Agg. 2016, Utet Giuridica, Torino, 2016, 186.

CONFISCATION IN CRIMES AGAINST THE PUBLIC ADMINISTRATION (P.A):

Finocchiaro, *Confisca e ragionevolezza temporale nei delitti contro la pubblica amministrazione: note a margine di una pronuncia della cassazione,* in Sistema Penale, 5, 2023.

CONFISCATION FOR ENVIROMENTAL CRIMES:

Longo-Distefano, *Il ruolo del principio di precauzione nella tutela del bene ambiente*, in Federalismi, 2019, 16.

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ANNEX 3 – DATA COLLECTION SHEET[124]

Guidelines for drafting the country report

Aim of data collection as stated in the Grant agreement: This Deliverable is aimed to produce valuable data and information about major training needs and gaps of investigators, prosecutors, judges and other key institutions involved in asset tracing and identification, freezing and seizure, confiscation and international asset disposal, concerning the knowledge and understanding of the 2 EU legislative provisions (Council Regulation (EU) 2018/1805 and EU Directive 2014/42) in 4 involved Member States (Belgium, France, Greece, and Italy).

The analysis will particularly assess the awareness level in the examined target group about national/EU law (including ECHR) requirements, standards and practices, focused on recovery and reuse of confiscated assets. Setting the ground for a greater understanding of national legislation in terms of the technical and legal aspects of freezing, seizure, confiscation, asset disposal, together with a sound understanding of how this may differ in other jurisdictions. Contributing to the identification of forms of freezing and confiscation that comply with the parameters set by the Regulation 2018/1805 highlighting existing best practices. Providing best practice guidance for increased international cooperation in the criminal law sector. The research outcomes will pave the way for shaping tailor-made and innovative training content and methods (WP3), underpinning the project's core activities.

The COUNTRY REPORT will provide in-depth overviews of individual countries involved in the project (IT-GR-BE-FR) analysing and assessing key implementation measures and practices at national level related to the 2 legislative provisions, highlighting weak spots, best practices and useful case studies.

Methodology: Univan has prepared a set of guidelines and questions that can provide useful guidance for completing the Country report. Please, add all the information not specifically requested that you find useful for analysing your country's framework.

At the bottom of the page, you will find an Appendix in which are some useful hints to facilitate answering some questions (marked with *) and a Glossary containing the European definition of terms relevant to the research

PART I

Mutual recognition of freezing and confiscation orders in the national legal system

SECTION I: ***what are we talking about?***

1. Indicate any legislative measures adopted in implementation of the Regulation 2018/1805, Directive 2014/42/EU, Council Framework Decisions 2003/577/JHA and 2006/783/JHA.

[124] Document authored by C. Scialla, post-doctoral researcher in criminal law, RINSE Project

2. * Indicate how many types of *freezing* and *confiscation* are provided in your national legislation. In particular, it is necessary to underline for each type of measure:

a. Legal name;
b. Legal source;
c. Authority that issues the measure;
d. Requirements of the measure: what are the crimes for which the measures can be ordered;
e. Function of the measure: for example, administrative sanction, civil sanction, criminal sanction, security measure, prevention measure, others;
f. Effects of the measures;
g. Remedies available against the measures;
h. Any other elements that characterize the measure;
i. Seizable assets.

Specify if there are any forms of civil or administrative freezing and confiscation that may fall within the scope of the "connection to the crime" criterion.

SECTION II: ***how are we doing that?***

3. Outline the main features of the mutual recognition procedure of freezing and confiscation orders involving national competent authorities for the execution and issuance of orders. Indicate if there are any problematic aspects in the procedure.
If YES, indicate which ones are the problematic aspects (e.g. failure to comply with the deadlines for executing the order; communication difficulties between authorities; difficulties in understanding the mutual recognition form attached to the Regulation 2018/1805; reasons for refusing mutual recognition other than those provided for by the Regulation; etc.).

4. List the national authorities identified under Article 24 of Regulation 2018/1805, responsible for issuing and executing confiscation orders, outlining their essential characteristics and functions. Specifically, the data should concern:

a. Competent authority for issuing freezing orders;
b. Competent authority for issuing confiscation orders;
c. Competent authority for executing freezing orders;
d. Competent authority for executing confiscation orders;
e. Any central authority designated as responsible for the transmission and receipt of freezing and confiscation certificates and for the assistance to be provided to its competent authorities. What functions are assigned to this authority and how it operates. If this authority has not been identified - being optional - ask if any practices have been adopted for a centralized management of the receipt and transmission of orders, and what these procedures are.

Regarding the identified authorities, it would be appropriate to conduct interviews with them to determine their main characteristics; operations; any dysfunctions they experience; the most useful practices that they follow; whether authorities from different states can communicate with each other and how they do so (for example, if

they need to request information regarding the respect of the defendant's procedural rights in the state requesting mutual recognition and conducting the proceedings).

5. Identify other entities involved in national proceedings for identifying and seizing assets, (such as the police, the financial police, etc).

6. How are cross-border asset investigations conducted? Which dedicated *Asset Recovery networks* are most used (e.g. the CARIN network)?

SECTION III: ***further consequences?***

7. ***** Identify the safeguards provided by the national legal system to protect third parties in good faith who have become holders of real rights on an asset subject to a confiscation order. Identify the protective measures provided by national legislation in favour of third-party holders of real security rights regarding assets subject to confiscation orders.

8. ***** What are the legal remedies available for opposing a freezing/confiscation order executed in a different State from the one in which the owner is charged/convicted? (for example, if a private individual wishes to complain about being subject to multiple seizure/confiscation orders in different states for the same offense/proceeding or for the failure to respect the principles of proportionality or the *ne bis in idem* principle?).

9. Indicate the resolution criteria provided for by national legislation to resolve the hypothesis that several ablative measures of different kinds are issued against the same property.

10. Is it possible to apply an ablative measure if a cause of extinction of the crime has occurred?

Yes or no.

If yes, indicate how confiscation operates in case of extinction of the crime.

11. Does the national legislation provide for mechanisms to protect and satisfy the victim of the crime through the return of the frozen property (Art. 29 Regulation) confiscated (Art. 30 Regulation) or compensation for the damage suffered? What are these mechanisms?

If the answer is yes, outline the concept of victim according to the national law (Recital n. 45 of the Regulation).

12. ***** In the case of freezing/confiscation of a company in a state of crisis, identify the measures provided for by national legislation to coordinate the application of the ablative measure with any insolvency procedures to which the company has been admitted.

13. ***** Does your national legislation regulate alternative and/or supportive mechanisms to freezing and confiscation useful for the reconversion to legality of companies linked to organized crime or other offenders? If YES, indicate how these mechanisms work.

14. Are there in the national law disqualification measures to prohibit companies polluted by organized crime? Can previously prohibited companies also be freeze or confiscated? How are the measures coordinated?

SECTION IV: ***what do the Courts say?***

15. Have national seizure and confiscation measures been the subject of conflicting case law? How have these contrasts been resolved by internal case law? Are there still critical applications? Have constitutional questions been raised before national Courts?

16. Have national seizure and confiscation measures been subject to censure by the European Court of Human Rights and the Court of Justice of the European Union? If so, what were the critical issues analysed by the Courts?

17. Specifically, regarding the contrast between the national ablative measures and the principles developed by the European and Conventional case law on criminal matters (*materia penale)* and fundamental guarantees, have there been any censures by European and Conventional Courts?

SECTION V: ***what does the doctrine say?***

18. Has the doctrine identified critical application issues? If so, indicate the bibliographical references.

PART II

Management and Reuse of Confiscated and Seized Assets

SECTION I: ***National Regulations***

19. Is there any national legislation governing the institutional and social use of a seized/confiscated asset? If so, provide the detailed description of the procedure, highlight the following points:

a. Legal source;
b. Stakeholders;
c. Function of stakeholders;
d. Procedure of destination and management;
e. Legal status of the seized and confiscated immovable property (for example, in Italy the asset belongs to the heritage of the local authority and is subject to a restriction of unavailability).

20. Have Member States established *Asset Recovery Offices*? If the answer is yes, indicate how these offices operate; whether they are sufficiently resourced. Where available, provide statistical data on the operation of *AROs*.

21. Which authority administers the seized/confiscated asset to avoid deterioration before allocation or sale? Has the *Asset Management Office (AMOs)* established in the Member State? Which authority administers the seized asset? Is the function performed by the National Agency or by another public or private authority?

22. ***** What are the tools used to ensure transparency and accessibility of data related to the management of assets subject to a freezing or confiscation order?

23. According to national legislation, how are confiscated movable assets (bank accounts, shares in companies, automobiles, business assets, etc.) managed?

24. Do local authorities (including regions, provinces, municipalities, etc.) have a role in the procurement process?

Yes or No

If YES, please specify which role they have.

Is there a national agency that has jurisdiction over confiscated assets?

Yes or No

If YES, what is its name and website (if any)?

What is the agency's role? (administers, controls, assigns, identifies the destination, etc.).

25. Please suggest as case studies virtuous examples of organizations with institutional and social purposes that have effectively managed confiscated assets.

SECTION II: *statistical data collection*

26. Is there a national organization responsible for collecting data on confiscated assets? Is there a database that contains data on confiscated assets?

a. No
b. Yes
   i. Please provide the name of the organization and its main functions
   ii. Please provide the name and website of the database.

27. What data is collected on the platform referred to in the previous question? For instance, does it include the specification of the composition, destination, and use of each asset, as well as, in the event of assignment to third parties, the identifying data of the concessionaire and the particulars, object, and duration of the concession agreement?

28. Please provide statistical data on the types of confiscated assets and the existence of strategies for their institutional and social reuse, including

a. Mobile assets (such as cars, motorcycles, boats, money, and bank accounts);
b. Immovable assets (including apartments, villas, lands, buildings, garages, and warehouses);
c. Corporate assets (such as companies, corporate shares, and stakes);
d. Other assets.

29. * Please provide statistical data on the quantity of seized and confiscated assets subject to assignment and/or management:

a. Assets redeveloped for social use;
b. Assets redeveloped for institutional use;
c. Assets not redeveloped;
d. Assets sold;
e. Assets returned to the victim;
f. Frozen/confiscated assets not assigned.

Please also provide information on the data collection, dissemination and communication modalities among national statistical data operators, as well as on the existence of a national database or multiple local databases.

30. Pursuant to Article 35 of the Regulation, Member States periodically collect comprehensive statistical data from the competent authorities. They maintain such data and send it to the Commission every year. Regarding this statistical activity, please provide the following information:

a. If such data collection activity has been carried out;
b. f data related to the provisions set out in Article 11 of Directive 2014/42/EU are available;
c. The number of freezing and confiscation orders that a Member State has received from other Member States, which have been subject to recognition and enforcement, or whose recognition and enforcement have been refused;
d. The type of crime to which the confiscation order, for which mutual recognition is requested, was linked;
e. The number of cases in which the victim has obtained compensation or restitution of assets following the execution of the confiscation order in accordance with the Regulation (if such data are available);
f. The average duration of the execution of freezing and confiscation orders in accordance with the Regulation (if such data are available);
g. Provide statistics on the types of crimes that are subject to freezing and confiscation measures, as well as quantitative data on seizure/confiscation proceedings, duration of the procedures, and other relevant information.

31. Did the national strategy for the valorisation of confiscated assets in the Member State improve as a result of the Next Generation EU funding allocated for this purpose?

a. No.
b. Yes.
i.Please specify in what way.

APPENDIX

Below are some useful instructions or examples to answer some of the previously formulated questions.

Question n. 2

The purpose of the question is to understand the forms of confiscation that each member state considers as mutually recognizable.

According to Article 2(2) and Recital 13 of Regulation 2018/1805, "Proceedings in criminal matters" is an independent concept of EU law as interpreted by the Court of Justice of the European Union, and therefore covers all types of freezing and confiscation orders issued as a result of proceedings related to a crime, and not only those measures that are within the scope of Directive 2014/42/EU, as well as other types of measures issued in the absence of a final conviction. Criminal proceedings may also include criminal investigations conducted by police and other law enforcement agencies.

It should be noted that although freezing orders and confiscation orders issued in the context of civil or administrative proceedings should be excluded from the scope of this Regulation, they could in any case be subject to mutual recognition if they are nevertheless found to be related to a crime.

Therefore, it is requested to provide an essential outline of the main ablative measures in the system under investigation that are found to be in any case related to a crime.

Question n. 7

The general interest in recovering to the legal economy an asset otherwise destined to feed flows of criminal wealth often must face the equally significant need to protect the trust of third parties who hold a right in rem and/or guarantee over the assets of the debtor, addressee of a freezing or confiscation order.

The identification of suitable instruments to ensure a fair balance between these values is an absolute priority for the State in order to prevent the risk of dangerous short circuits among rights and criminal policy choices. This latter need is emphasized by Recital 15 of the Regulation where it stresses the need for mutual recognition of freezing and confiscation measures to take into due account the existence of any rights claimed by third parties to the property in accordance with the principles of legality, subsidiarity and proportionality.

Therefore, it is requested that a comprehensive reconnaissance of the tools provided by national legislation be carried out to ensure full and effective protection for third parties of good faith.

Question n. 8

The question refers to the reason for refusal provided for in Article 19(e)(1) of the Regulation. This ground for refusal relates solely and exclusively to the recognition and execution of confiscation (not freezing) orders and concerns the protection of the rights held by those affected by such orders. The case considered by this provision concerns cases in which the execution of the confiscation order is not compatible with the protection that the order of the executing state

ensures to the subjects (other than the one against whom the ablative measure is right) holding rights over the affected property.

Question n. 12

Many ablative measures involve corporate assets. In practice, it frequently happens that companies targeted by seizure or confiscation go out of business. The risk of interference between criminal proceedings and insolvency proceedings calls for the adoption of appropriate coordination measures between them.

Considering the possible repercussions that could ensue in terms of the mutual recognition of freezing and confiscation orders, it is necessary to collect the data on the measures that each of the states involved has adopted to regulate the relationship between freezing, criminal confiscation and insolvency proceedings.

Question n. 13

The re-use and revitalization of seized companies is an extraordinary tool to fight crime. Although serving the purpose of restoring broken legality, ablative measures can damage, even permanently, the profitability of the individual production unit, causing detriment to the local economy and the workers employed there. Acting preventively becomes, therefore, a decisive factor where it is intended to prevent the risk of this occurring.

In some legal systems there are instruments through which it is possible to ensure the restoration to legality of the enterprise as an alternative or support to seizure and confiscation.

Although the Regulations do not deal with them directly, a prior analysis of them is appropriate to understand possible profiles of interference with the mutual recognition of confiscation and freezing orders.

This provision should be read in conjunction with Recital 18, according to which: «*in any case, the safeguards under the Charter should apply to all proceedings covered by this Regulation. In particular, the essential safeguards for criminal proceedings set out in the Charter should apply to proceedings in criminal matters that are not criminal proceedings, but which are covered by this Regulation*»

Question n. 22

The right to know is a fundamental precondition of the corruption and crime prevention system. The full accessibility of data relating to the management of seized and confiscated property constitutes a guarantee against forms of mismanagement destined to have detrimental repercussions on the community, as well as those involved in criminal proceedings.

Therefore, it is requested to provide more information on any instruments or institutions through which the national legislation guarantees to citizens the full accessibility of data relating to the management of assets after the adoption of the ablative measure.

Question n. 29

In Italian legislation, Legislative Decree 159/2011, Art. 48:

- Institutional purposes: reuse for institutional purposes is directly guaranteed by the National Agency, which, in connection with other State Administrations, can arrange for the use of confiscated property for "purposes of justice, public order, civil protection." One example is confiscated property that becomes the headquarters of Police Force barracks, public offices, schools and other services useful to citizens.

- Social purposes: reuse for social purposes is usually determined by local authorities who, through public notices open to all, assign assets to a range of social entities such as associations, cooperatives, groups and communities. These entities are called upon to develop projects that have social purposes such as family homes, shelters, shelters, etc.

- Profit-making purpose: Paragraph 3(c) of Article 48 of the Anti-Mafia Code stipulates that "Assets not assigned as a result of public procedures may be used by territorial entities for profit-making purposes, and the proceeds must be reused exclusively for social purposes." These assets can be transformed into economic experiences that create productivity and income, according to a social economy model that aims to promote the dignity of labour and workers. In addition, these assets can be used by the agency for economic purposes to find useful resources to ensure its strengthening.

ANNEX 4 - GLOSSARY[125]

ASSET RECOVERY: the process of identifying, tracing, freezing, seizing, confiscating and, where appropriate, returning property deriving from crime to the State or to victims.

ASSET MANAGEMENT OFFICE (AMO): a designated authority responsible for the administration of frozen and confiscated assets to preserve their value pending final disposal or allocation

ASSET RECOVERY OFFICE (ARO): A designated national contact point established under Framework Decision 2007/845/JHA to facilitate the tracing and identification of proceeds of crime in cooperation with other Member States. a designated national contact point established under Framework Decision 2007/845/JHA to facilitate the tracing and identification of proceeds of crime in cooperation with other Member States.

FREEZING: a measure to prevent the dissipation, transformation, movement or destruction of criminal assets to avoid confiscation during the investigation process.

FREEZING ORDERS: according to art. 2 n. 1 Regulation 2018/1805/EU freezing orders means a decision issued or validated by an issuing authority in order to prevent the destruction, transformation, removal, transfer or disposal of property with a view to the confiscation thereof.

SEIZURE: seizure is a temporary measure to prevent dissipation, transformation, destruction of the asset. The main difference with freezing is that the frozen asset will be kept by the owner, possessor or third party (es. bank). The seizure is when the asset is stored in the custody of law enforcement.

CONFISCATION:

a. **Ordinary confiscation:** a confiscation measure directed against an asset that is the direct proceeds or the instrumentality of a crime, following a criminal conviction for that crime.

b. **Value-based confiscation:** a confiscation measure by which a court imposes an order corresponding to the value of proceeds or instrumentalities of a crime, enforceable against any property of the individual.

c. **Extended confiscation:** a confiscation measure following a criminal conviction that goes beyond the direct proceeds of the crime for which a person was convicted, where the property seized is derived from criminal conduct. 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.

d. **Third-party confiscation:** a confiscation measure depriving someone other than the offender (a third party) of criminal property, where that third party possesses property received from the offender.

e. **Non-conviction-based confiscation (NCBC):** a confiscation measure taken in the absence of a conviction and directed against an asset of illicit origin. It covers cases where a criminal conviction is not possible because the suspect has become ill or fled the jurisdiction, has died, lacks legal capacity,

[125] Section authored by C. Scialla, post-doctoral researcher in criminal law, RINSE Project

or has immunity from prosecution, etc., but also cases where action is taken against the asset itself (in rem proceedings, generally civil proceedings) regardless of the person in possession of the property.[126]

CONFISCATION ORDERS: according to art. 2 n. 1 Regulation 2018/1805/EU 'confiscation order' means a final penalty or measure, imposed by a court following proceedings in relation to a criminal offence, resulting in the final deprivation of property of a natural or legal person.

SOCIAL REUSE: the allocation of confiscated assets to public bodies, communities, or civil society organisations for social, cultural or institutional purposes.

INSTITUTIONAL REUSE: the allocation of confiscated assets for purposes directly linked to the functions of public administrations, law enforcement agencies, the judiciary, or other State bodies, such as their use for offices, operational facilities, training, or other activities of institutional interest.

[126] EPRS, European Parliamentary Research Service https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/628225/EPRS_BRI(2018)628225_EN.pdf