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Confiscation

The confiscation of the proceeds of crime has long been seen within the European Union as one of the most effective tools to fight organised crime. The confiscation targets the main reason of existence of criminal organisations, i.e. maximisation of profit by illicit means. Confiscation means a final judicial decision, which results in the final deprivation of property.

Confiscation at international level

At international level there are several instruments promoting the confiscation of criminal proceeds. The real milestone in promoting the confiscation of criminal proceeds is the [1990 Strasbourg Convention](#), which has been ratified by all 27 EU Member States. It seeks to promote international cooperation in the identification, tracing, freezing and confiscation of criminal assets. This Convention has been supplemented and updated by the [2005 Warsaw Convention](#).

Confiscation in the European Union

The European Union has long proclaimed the importance of confiscation of criminal proceeds. To ensure a common approach to confiscation within the EU, several EU legislative instruments were adopted in the past years. The EU now focuses on the proper implementation of these instruments at national level.

- The [Framework Decision on freezing and confiscation](#) of proceeds from crime was adopted in 2001. The purpose was to ensure a common minimum approach of Member States in terms of those criminal offences for which they should provide for confiscation. The general rule is that if an offence is punishable by imprisonment of a maximum of more than one year, it must be possible under national law to order confiscation of proceeds generated by that offence. The Member States are required to have in place a system of value confiscation. All requests coming from other Member States must be processed with the same priority as is given to such measures in purely domestic proceedings.
- The [Framework Decision on Confiscation](#) of 2005 seeks to ensure an additional degree of approximation of Member States' law on criminal confiscation.
- The [Framework Decision on Mutual Recognition of Confiscation Orders](#) establishes the rules according to which the judicial authorities of one Member State will recognise and execute a confiscation order in its territory issued by competent judicial authorities of another Member State. The value of confiscated property will be shared equally between the issuing and executing State.
- The confiscation order is frequently preceded by the freezing of assets. To allow competent judicial authorities to seize property on request of another Member State's judicial authorities the [Framework Decision on freezing property or evidence](#) was adopted in 2003 (see also the section on [Freezing of assets and evidence](#)).
- To make the practical cooperation between the judicial authorities effective, the [Council Decision on Asset Recovery Offices](#) seeks to build on the informal cooperation, which has taken place among Member State contact points working in the area of criminal asset identification, tracing and recovery in the [CARIN network](#). This Decision requires Member States to establish or designate "Asset Recovery Offices", whose function is to facilitate effective cooperation and exchange of information in the asset recovery area.
- In 2014, a [Directive](#) was adopted to make it easier for EU states to confiscate assets derived from serious

and organised crime. The Directive aims at simplifying the existing rules and to fill important gaps which are being exploited by organised crime groups. It will enhance the ability of EU states to confiscate assets that have been transferred to third parties, it will make it easier to confiscate criminal assets even when the suspect has fled and will ensure that competent authorities can temporarily freeze assets that risk disappearing if no action is taken.

- In 2018 the Regulation on the mutual recognition of freezing and confiscation orders was adopted. It applies as from 19 December 2020. It aims at facilitating asset recovery in cross-border cases in the EU. The regulation applies to freezing and confiscation orders issued by a Member State within the framework of proceedings in criminal matters. It sets clear and short deadlines for the mutual recognition and execution of freezing orders. It improves the victims' rights to restitution and compensation in cross-border proceedings. The regulation provides safeguards to ensure that mutual recognition of freezing or confiscation orders are in line with the EU Charter of Fundamental Rights. It applies between EU Member States (except Denmark and Ireland) and replaces the framework decisions from 2003 and 2006.
- Information on the competent authorities and declarations by Member States is made available by the [European Judicial Network](#).

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