Ariadna H. Ochnio, Hanna Kuczyńska (eds),
Current Issues of EU Criminal Law
(Publishing House of ILS PAS 2022)
DOI: 10.5281/zenodo.6860700
pp. 137–158

Addressing barriers to victims' rights to recovered assets in the mechanism for mutual recognition of freezing and confiscation orders

Ariadna H. Ochnio

Abstract

This paper deals with the normative barriers to victims' rights to recovered assets and their re-use for social and public purposes. Although the EU legislator has made some efforts to strengthen victims' rights in the new mechanism for the mutual recognition of freezing and confiscation orders, much still needs to be done. The main difficulties are associated with the fact that the changes introduced in the field of mutual recognition were not accompanied by appropriate changes in the field of harmonisation. EU law does not sufficiently prioritise the rights of the victim to recovered assets over the rights of the state. Other areas requiring improvement are transparency and control over the allocation of recovered assets to social and public purposes. Changes to these fields should foster the restorative function of the asset recovery process and increase the added value of EU criminal law. The 'tangibility' of the outcomes of this process can in turn contribute to increasing public confidence in the criminal justice system.

Keywords

Regulation 2018/1805, confiscation and asset recovery, freezing orders, victims' rights, social re-use of assets, mutual recognition, added value of EU criminal law

INTRODUCTION[1]

The process of cross-border asset recovery, like any other organised series of state-led actions, has its own unique social dimension. This dimension still appears to not be fully appreciated in EU policy, in particular as regards the role that the recovery of crime-related assets can play in restoring a social balance disturbed by crime. A disturbance in this respect may take place across different communities, crossing state borders. What distinguishes the process of asset recovery from other institutions belonging to the realm of criminal justice, is the tangibility of the results of its operation, as more recovered assets are transferred to social and public purposes. This tangibility becomes greater, the more transparent the public information about the directions of asset transfer becomes, and the more effective is the ongoing control involving social and public stakeholders. The latter two factors may positively affect the course of the asset recovery process itself, by putting pressure on the state to 'polish' its shortcomings. From an EU perspective, 'public visibility' of the results of the cross-border process of fair redistribution of assets becomes an opportunity to increase public confidence in the criminal justice system, in particular in view of the current crisis of trust in the mutual recognition mechanisms.[2]

One apt observation that has emerged in the literature is that the social re-use of assets is a factor advancing the culture of legality.[3] To this it must be added that this culture is developing in the field of EU criminal law, being 'shared' by the Member States, taking into account to some extent national differences.[4] However, this shift of mindset towards the social significance of confiscation and asset recovery has not yet been embedded in EU policy and law. Defining the term 'asset recovery' must also take place at the policy and normative layer. This requires that the problems of cross-border asset recovery are dealt with in the EU forum, taking into account, first and foremost, the social dimension of the process, including its social role, perception and acceptance. Then appropriate changes at the normative level could lead to an advance in the comprehension of the term 'asset recovery', so that its primary connotations are associated with serving social and public goals.

---

1 This paper was written within a research project 'Standards for the confiscation of the proceeds of crime set in European Union law and their impact on Polish, German, French and English criminal law', No 2019/33/B/HS5/01617, founded by the National Science Centre, Poland.

2 Cf interesting comments on the 'risks and disadvantages' of mutual recognition in criminal matters by Helmut Satzger in the article 'Is mutual recognition a viable general path for cooperation?' 2019 (10) New Journal of European Criminal Law 44, 53-54 <https://doi.org/10.1177/2032284419836516>.

3 See Stefano Montaldo, 'Directive 2014/42/EU and Social Reuse of Confiscated Assets in the EU: Advancing a Culture of Legality' (2015) 6 New Journal of European Criminal Law 195 <https://doi.org/10.1177/203228441500600204>.

4 On this issue see the article by Rosaria Sicurella, 'Fostering a European criminal law culture: In trust we trust' (2018) 9 New Journal of European Criminal Law 308, 311 <https://doi.org/10.1177/2032284418801561>.

Strengthening victims' rights to restitution and compensation was supposed to be one of the key elements of the new architecture of the mutual recognition of freezing and confiscation orders in the EU. Guarantees of victims' rights were recognised as an area requiring major change in the EU policy on asset recovery. Among the problems that were addressed when designing the new mutual recognition mechanism was the under-regulation of the rights of victims to restitution and compensation in the broadly understood cross-border process of asset recovery.[5] The Impact Assessment accompanying the Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders identified the problem to be addressed as follows:

> *A major issue is that the current two mutual recognition instruments do not cover many types of freezing and confiscation orders that can be adopted at national level (...). Moreover, the current procedures and certificates are unnecessarily complicated and inefficient. In addition to the above-mentioned problems, the current instruments do not contain any provisions on victims' compensation or restitution.*[6]

Nevertheless, it is not an easy task to strengthen the rights of crime victims to assets recovered in cross-border proceedings. Therefore, the positive self-assessment in this regard, expressed in the Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders should be approached rather carefully. The Proposal states as follows:

> *The victim's right to compensation and restitution has been duly taken into account in the Proposal. It is ensured that in cases where the issuing State confiscates property, the victim's right to compensation and restitution has priority over the executing and issuing States' interest.*[7]

Although some efforts have been made, the inclusion of a limited number of provisions on the priority of victims' rights over states' rights to recovered assets in the mutual recognition instrument cannot be considered to be an adequate response by EU

5 See also Ariadna H. Ochnio, 'The Tangled Path From Identifying Financial Assets to Cross-Border Confiscation. Deficiencies in EU Asset Recovery Policy' (2021) 29 European Journal of Crime, Criminal Law and Criminal Justice 218, 236 <https://doi.org/10.1163/15718174-bja10024>.

6 Commission Staff Working Document. Executive Summary of the Impact Assessment. Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders, Brussels, 21 December 2016, SWD(2016) 469 final, 2.

7 Commission 'Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders', Brussels, 21 December 2016, COM(2016) 819 final, 6.

law to the needs of a hitherto neglected area. The problem of victims' access to recovered assets for compensation and restitution purposes is still present under 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 (hereinafter Regulation 2018/1805).[8]

This paper presents the thesis that properly addressing the problem of access to recovered property by crime victims will not only require changes in the field of mutual recognition, but also in the field of harmonisation. The rationale for this is that only these two instruments operating together – the harmonisation instrument and the mutual recognition instrument – have the potential to create a coherent, efficient and socially fair system for cross-border asset recovery, one that takes due account of the rights of crime victims. Furthermore, assuming that the mutual recognition of freezing or confiscation orders is an act secondary to the primary act of issuing the *meriti* order under national law, it is even justified to conclude that the problem mainly lies in the national systems of freezing and confiscating assets, for which the minimum rules are set by the EU harmonisation instruments. Unfortunately, not enough changes have been made in the field of harmonisation towards strengthening the rights of crime victims to recovered assets.

The purpose of this research paper is to identify the normative barriers to the rights of crime victims to recovered assets and propose how to overcome them. To this end, the provisions of EU law on confiscation and asset freezing, the legislative path, and the objectives of the EU's asset recovery policy have been analysed. In addition, some problems with the practical execution of freezing orders have been identified.

1. A PROBLEM WITH THE EXECUTION OF ASSET FREEZING ORDERS OF A RESTORATIVE NATURE

The problem of the limited enforceability of freezing orders issued to return recovered assets to the victim of a crime has been well known in the EU forum since the previous instrument of mutual recognition, i.e. Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence (hereinafter Framework Decision 2003/577/JHA).[9] This instrument is still applicable in cooperation with Denmark and Ireland.

For example, this problem is a recurring one in Eurojust's casework in the field of cross-border asset recovery. Obstacles to the execution of a freezing order in another Member State have been encountered where the purpose of the order was restitution

8 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 [2018] OJ L 303/1.

9 Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence [2003] OJ L 196/45.

and not confiscation. Such situations have been identified in mutual recognition procedures under Framework Decision 2003/577/JHA. As one of the main difficulties in the process of asset recovery, Eurojust pointed out the 'Legislative issue associated with the purpose of a request for the freezing of monies where the requested Member State is unable to execute such a request if the purpose of the freezing is the return of the frozen monies to the victims, and not confiscation (...).'[10] Some issues were dealt with at the level of agreements reached within Joint Investigation Teams, one of which, for example, was set up with the specific purpose of 'financial compensation for victims'. The sources of compensation were to be assets obtained as a result of freezing, seizure and confiscation.[11]

On April 26–27, 2012, a strategic meeting of Eurojust on trafficking in human beings was held in The Hague. The Outcome Report from this meeting stated that 'Securing civil compensation claims for victims when suspects' illegally obtained assets have been confiscated should be considered at national level.'[12] However, each of the Member States settling this issue separately in national law, without sufficient harmonisation of the minimum rules, seems to go only half-way in solving the problem, as differences in this field will distort the mutual recognition of restorative freezing orders.

The issue of mutual recognition of asset freezing orders is all the more challenging as, depending on the national model, an order to freeze assets may be issued in criminal proceedings for the purpose of restitution or compensation for a crime victim, not only for confiscation. At the same time, restorative measures, the execution of which is the ultimate goal of such an order, may be nominally criminal measures, but in essence of a mixed nature – punitive and compensatory, or may be purely civil measures, if they are adjudicated by a court as a result of a so-called civil action carried out in the course of criminal proceedings (for example in the form of an adhesive claim). Taking into account the sophistication of legal measures having a dual punitive-compensatory character located in national criminal justice systems, the EU's asset recovery policy should clearly set out how such orders should be recognised in cross-border cooperation, whether via the criminal or civil route. Only then will these orders avoid causing problems at the stage of their execution in another Member State.

It has long been recognised that there is a maze of pathways to the recognition of restorative freezing orders in another Member State, and there have been various attempts

10 Eurojust, 'Report on Eurojust's Experience in the field of Asset Recovery, including Freezing and Confiscation', 24 November 2014, 4.

11 Ibid, 13.

12 Eurojust Strategic Meeting on Trafficking in Human Beings. Outcome Report, The Hague, 26–27 April 2012, 13 <https://ec.europa.eu/anti-trafficking/system/files/2016-02/eurojust_strategic_meeting_on_trafficking_in_human_beings_1.pdf> accessed 28 January 2022. See also Eurojust, Strategic project on Enhancing the work of Eurojust in drug trafficking cases. Final results, January 2012, 39-41 < https://www.eurojust.europa.eu/sites/default/files/Publications/Reports/drug-trafficking-report-2012-02-13-EN.pdf> accessed 31 January 2022.

to solve complications in this area. For example, one of the studies for the Commission presented the following scenarios of action.

Firstly, if it was found that a freezing order based on a non-condemnatory judgment was nevertheless of a civil nature, then the application of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (hereinafter Regulation 44/2001),[13] was considered.[14] According to Article 5 (4) of Regulation 44/2001 concerning special jurisdiction, there existed a possibility to sue a person domiciled in a Member State, in another Member State, regarding a civil claim for damages or restitution based on an act giving rise to criminal proceedings - in the court seised of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings. A similar solution is provided for in Article 7 (3) of Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[15] (in force).

Secondly, if it was found that a freezing order was based on a non-condemnatory judgment that could have resulted in a confiscation of a criminal nature, the application of Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders[16] was considered. However, it is necessary to take into account that in such a case it might additionally be necessary to issue a freezing order falling under Framework Decision 2003/577/JHA.[17]

Thirdly, in the case of a freezing order based on a non-condemnatory judgment that may include a payment order, the possibility of applying Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties[18] was considered.[19]

13 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2001] OJ L 12/1.

14 Commission, Directorate General for Justice. Directorate B. Criminal Justice, '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', Thompson Reuters, Aranzadi, 118-119 <https://e-justice.europa.eu/fileDownload.do?id=523d1bc6-69c3-4d69-895b-4b14221eccde> accessed 28 January 2022.

15 Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L 351/1.

16 Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders [2006] OJ L 328/59. See also Regulation 2018/1805 in force.

17 Commission, 'Handbook for judges', (n 14) 119.

18 Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties [2005] OJ L 76/16.

19 Commission, 'Handbook for judges', (n 14) 119.

2. What legislative efforts have recently been made to implement the EU asset recovery policy goals and strengthen victims' rights?

2.1. Solutions adopted in the field of mutual recognition

The new mechanism for mutual recognition of freezing and confiscation orders introduced by Regulation 2018/1805 contains provisions previously unknown in EU law, strengthening the rights of victims to restitution and compensation.[20] The importance of the EU policy objective to strengthen these rights is reflected in the preamble to Regulation 2018/1805, which states as follows:

> *The victims' rights to compensation and restitution should not be prejudiced in cross-border cases. Rules for the disposal of frozen or confiscated property should give priority to the compensation of, and restitution of property to, victims. The notion of 'victim' is to be interpreted in accordance with the law of the issuing State, which should also be able to provide that a legal person could be a victim for the purpose of this Regulation. This Regulation should be without prejudice to rules on compensation and restitution of property to victims in national proceedings* (Recital 45).[21]

Pursuant to Article 29 of Regulation 2018/1805, where the issuing authority has made a reference in the freezing certificate to the decision to restitute frozen property to the victim, or communicated such later, the executing authority shall take the necessary measures to ensure that, after freezing, the property is directly restituted to the victim as soon as possible. In this regard, the procedural rules of the executing State apply. The issuing State may be involved if necessary. However, such a procedure is subject to the cumulative fulfilment of the following conditions: the victim's title to the property is not contested, the property is not required as evidence in criminal proceedings in the executing State, and the rights of the affected persons are not prejudiced. If one of these conditions is not met, and no solution can be found through consultation, the executing authority may decide not to restitute the frozen property to the victim.

Certain guarantees for victims' rights were also introduced at the stage of disposing of confiscated property or money obtained after its sale (Article 30 of Regulation 2018/1805).

20 See also Ariadna H. Ochnio, 'Between the medium and the minimum options to regulate mutual recognition of confiscation orders' (2018) 9 New Journal of European Criminal Law 432-445 <https://doi.org/10.1177/2032284418806667>; Sofia Mirandola, 'Borderless enforcement of freezing and confiscation orders in the EU: the first regulation on mutual recognition in criminal matters' (2020) 20 ERA Forum 405, 417 <https://doi.org/10.1007/s12027-019-00581-x>.

21 See also Recital 46 of the preamble to Regulation 2018/1805.

Where the issuing authority or another competent authority of the issuing State has duly informed the executing authority of a decision to restitute confiscated property to the victim or to compensate the victim (issued in accordance with national law), the executing authority shall take the necessary measures to ensure that the property is returned to the victim as soon as possible following confiscation. If necessary, the issuing State may be involved. If such a course of action is impossible, but the money was obtained from the execution of a confiscation order in relation to that property, the corresponding sum shall be transferred directly to the victim for the purposes of restitution. Similarly, if necessary, the transfer may take place via the issuing State. Importantly, the executing authority is required to take similar action when notified by the issuing authority of a decision to compensate a victim.

Moreover, as far as the cross-border execution of confiscation orders is concerned, if proceedings for restitution or compensation are pending in the issuing State, the executing authority informed thereof shall refrain from disposing of the confiscated property until the information on the decision to restitute or compensate property to the victim has been communicated to the executing authority, even in the case of confiscation orders that have already been executed (Article 30 (5)).

Another important factor from the perspective of strengthening the rights of victims to recovered property is the obligation of the Member States introduced by Regulation 2018/1805 to report to the Commission each year the number of cases in which a victim has obtained compensation or restitution as a result of the execution of a confiscation order in accordance with this Regulation. Nevertheless, this is subject to the availability of such data at a central level in a given Member State (Article 35 (2) (a)).

It should be recognised that the statistical obligations require some extension. It would be justified to introduce the obligation to collect such data at a central level, as well as to extend the obligation to collect data on the number of cases in which the victim has obtained restitution as a result of the execution of a freezing order in accordance with this Regulation. Moreover, statistics should be prepared in a multifaceted way, be comprehensible and publicly available, in order to encourage social control over the way of re-use of recovered assets in terms of the directions of their allocation to social and public purposes.

2.2. Solutions adopted in the field of harmonisation

Far fewer solutions to strengthen victims' rights in the asset recovery process can be found in the field of harmonisation. The preamble to Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union Directive (hereinafter 2014/42/EU)[22] states: 'In the context of criminal proceedings, property may

22 Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union [2014] OJ L 127/39.

also be frozen with a view to its possible subsequent restitution or in order to safeguard compensation for the damage caused by a criminal offence' (Recital 29). However, Directive 2014/42/EU lacks minimum standards obliging Member States to introduce the possibility of freezing assets for restorative confiscation, thus failing to ensure that the confiscated assets can then (at the stage of execution of the confiscation order) be restored or compensated to the victim of the crime.

Reference to the rights of victims is also included in Article 8 (10) of Directive 2014/42/EU, which states:

> *Where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Directive, Member States shall take the necessary measures to ensure that the confiscation measure does not prevent those victims from seeking compensation for their claims.*

Nevertheless, the solution adopted in this provision should be considered problematic – rather than solving the existing problems with ensuring the access of victims' rights to the recovered property, as it leaves unresolved the question of whether the pursuit of claims is to take place in procedures belonging to the realm of criminal or civil justice. In the latter case, the main consequence is a problem in the application of the instruments of mutual recognition of freezing and confiscation orders in criminal matters.

Finally, EU policy has handled the need to use recovered assets for social and public purposes in a way that is highly inadequate for meeting society's expectations of the restorative function of criminal justice measures. Ultimately, the EU legislator decided only to recommend that Member States use confiscated assets for social purposes or for the public interest. Instead, there should be a firm commitment obliging Member States to reform their national laws with the aim of opening up the use of confiscated assets for social purposes and public interest. Article 10 (3) of Directive 2014/42/EU concerning the management of frozen and confiscated property merely states that 'Member States shall consider taking measures allowing confiscated property to be used for public interest or social purposes'.

2.3. What options were on the table?

Looking at the legislative path preceding the adoption of Directive 2014/42/EU, it must be admitted that there were some doubts around the issue of social and public re-use of confiscated assets and various solutions were proposed, including some which, even from today's perspective, would have no realistic chance of being implemented, but which to some extent reflect a promising start to identifying a possible social dimension to the asset recovery process at EU level, and are therefore worth presenting.

The first version of the proposed directive did not even recommend that Member States allocate confiscated assets to social or public interest purposes. As originally proposed,

Article 10 did not address this issue at all.[23] In the working impact assessment accompanying the proposal for a directive on the freezing and confiscation of proceeds of crime, in section 4 (1) regarding the problem definition and insufficient recovery of criminal assets in the EU, the issue of social re-use of confiscated assets was operatively addressed as follows:[24]

> *The aims of asset recovery are realised not only when criminals are deprived of their ill-gotten gains, but when these are redistributed effectively. In particular, the impact of asset confiscation upon public confidence in the criminal justice system may be enhanced through redistribution and restorative justice. [reuse wording. Yes, but not advocating reuse for social nor public purposes.]*[25]

At the same time, 'to raise public confidence in the criminal justice system' was among the general objectives of the policy for the confiscation and recovery of criminal assets, in line with the general objectives of the EU in the Treaty of Lisbon.[26] Thus, the approach to the issue of re-use of assets for social or public purposes already contained discrepancies at the stage of planning new harmonisation solutions.

It is significant that at a further stage of the legislative process the European Economic and Social Committee (the EESC) recommended:

> *If measures to freeze and confiscate the proceeds of crime are to be effective, a holistic approach is needed that governs every dimension of the instrument and, when it comes to the confiscated goods being reused, takes care to give priority to socially beneficial purposes* (1.4).[27]

In addition, the EESC highlighted the advantages of applying recovered assets first to social purposes, as is the case in Italy, and stressed the importance of the social application of the proceeds of crime in the following manner: 'There are various possible approaches, which must involve the central authorities of the Member States and which should be explored and adapted in light of the victims, the public interest and the nature of the frozen assets'.[28]

---

23 See Commission, 'Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union', Brussels, 12 March 2012, COM(2012) 85 final, Article 10.

24 Commission Staff Working Paper. Accompanying document to the Proposal for a Directive of the European Parliament and the Council on the freezing and confiscation of proceeds of crime in the European Union. Impact Assessment, Brussels, 12 March 2012, SWD(2012) 31 final, 14.

25 Original wording.

26 Commission Staff Working Paper (n 24) 24.

27 Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union', COM(2012) 85 final [2012] OJ C 299/128, Section 4.1.

28 Ibid, Sections 4.9.1. and 4.9.2.

Even more far-reaching comments on the issue of the social re-use of recovered assets can be found in the opinion of the Committee of the Regions (the CoR) on the 'Package on protection of the licit economy', which recommended the involvement of local and/or regional authorities in sharing the recovered assets, with the reference to the example of the Italian practice of re-using real estate.[29] As arguments for introducing the possibility of returning recovered assets in this direction, the CoR indicated that criminal organisations disrupt the social order at the local level and local and/or regional authorities 'are best placed to take local-level measures to eradicate the deep-rooted causes of crime'.[30] The wide scale of activities of the Italian National Agency for the administration and destination of assets seized and confiscated from organised crime [*L'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata*] in the field of reusing recovered assets is reflected, for example, in the report on its activities in 2020, which presents, *inter alia,* the destination of the immovable property.[31]

Following consultations, the Commission adopted a proposal for a directive on the freezing and confiscation of proceeds of crime in the EU, recommending that Member States consider introducing measures to enable confiscated property to be used for social purposes or in the public interest.[32] Finally, Article 10 of the Proposal in question was amended (to the wording as it stands now), and Recital 35 of its preamble relating to this issue emphasised the importance of public and social directions for the re-use of recovered assets.[33]

The interest in strengthening the social allocation of recovered assets is also reflected in the subsequent amendments tabled by the Committee on Civil Liberties, Justice and

29 Opinion of the Committee of the Regions on the 'Package on protection of the licit economy' [2012] OJ C 391/134, Section 46. See also Michele Panzavolta 'Confiscating Dirty Assets: The Italian Experience' in Colin King, Clive Walker, Jimmy Gurulé (eds), *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Palgrave Macmillan 2018) 491-514; Michele Panzavolta and Roberto Flor 'A Necessary Evil? The Italian «Non-Criminal System» of Asset Forfeiture' in Jon Petter Rui and Ulrich Sieber (eds), *Non-Conviction-Based Confiscation in Europe* (Duncker & Humblot, Max-Planck-Institut für ausländisches und internationales Strafrecht 2015) 111-149.

30 Opinion of the Committee of the Regions (n 29).

31 L'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata 'Relazione sull'attività svolta Anno 2020' (Articolo 112, comma 1, D.Lgs. n. 159/2011) 14-18 <https://www.benisequestraticonfiscati.it/wp-content/uploads/2021/08/ANBSC_RELAZIONE_ANNO_2020_WEB_2.pdf> accessed 24 March 2022. The scope of the social re-use of recovered assets in the Italian legal system is also presented in the study: Libera. Associazioni, nomi e numeri contro le mafie. Settore Beni Confiscati 'Social re-use of confiscated assets in Italy. Numbers, practices and proposals' (2021) 29-41 https://delegazioneosce.esteri.it/delegazione_osce/resource/doc/2021/12/libera_fatti_per_bene_en.pdf> accessed 31 January 2022.

32 See Council, Council adopts directive on the freezing and confiscation of proceeds of crime, Press Release 7643/14, Brussels, 14 March 2014 <https://www.consilium.europa.eu/media/28747/141493.pdf> accessed 31 January 2022.

33 Legislative acts and other instruments. Subject: Directive of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, Brussels, 5 March 2014, 2012/0036 (COD), PE-CONS 121/13 <https://data.consilium.europa.eu/doc/document/PE-121-2013-INIT/en/pdf> accessed 31 January 2022.

Home Affairs. The proposed amendment to Recital 16 of the preamble related to the creation of an EU fund from a part of the assets confiscated in the Member States, which was to be used, inter alia, for 'pilot projects by the citizens of the Union, associations, coalitions of NGOs and any other civil society organisation, to encourage the effective social reuse of the confiscated assets and to expand the democratic functions of the Union'.[34] However, this direction was ultimately not taken. It seems that rather more effective action in this field could be taken at the national and cross-border level, and the idea of EU-wide centralised management of recovered assets does not have a convincing justification.

Another interesting initiative, raised by the Committee on Civil Liberties, Justice and Home Affairs, was the proposal to include Recital 16b in the draft directive (which was also not finally adopted), which stated:

> *The practice of using confiscated assets for social purposes fosters and sustains the dissemination of a culture of legality, assistance to crime victims and action against organised crime, hence creating «virtuous» mechanisms, which may also be implemented through non-governmental organisations, that benefit society and the socio-economic development of an area, using objective criteria.*[35]

The final position adopted by the European Parliament at the first reading was to include the issue of the social re-use of recovered assets, but only in the form of a recommendation to the Member States to take a certain course of action. This issue was limited to Recital 35 and Article 10 of the proposed directive (in the form of the current recommendation to the Member States to use assets for public interest or social purposes).[36]

3. Existing normative barriers weakening victim' rights to cross-border recovered assets – areas for improvement

When trying to determine what the normative barriers weakening victims' rights to cross-border recovered assets are, the following preliminary assumptions should be made.

34 Amendments 001-059 by the Committee on Civil Liberties, Justice and Home Affairs. Report Monica Luisa Macovei A7-0178/2013. Freezing and confiscation of proceeds of crime. Proposal for a directive (COM(2012)0085 – C7-0075/2012 – 2012/0036(COD)), A7-0178/ 001-059, 19 February 2014, 9 < https://www.europarl.europa.eu/doceo/document/A-7-2013-0178-AM-001-059_EN.pdf> accessed 31 January 2022.

35 Ibid, 10.

36 Position of the European Parliament adopted at first reading on 25 February 2014 with a view to the adoption of Directive 2014/.../EU of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, (EP-PE_TC1-COD(2012)0036), 25 February 2014 < https://www.europarl.europa.eu/doceo/document/TC1-COD-2012-0036_EN.pdf> accessed 31 January 2022.

The first assumption is that all freezing orders, irrespective of their compensatory or restitution purpose, if issued by criminal courts in connection (understood broadly) with an offence, belong to the realm of criminal justice and therefore should be enforced cross-border via the framework of cooperation in criminal matters, on the basis of a single EU instrument of mutual recognition (with relevant exceptions for non-participating Member States) governing cooperation in criminal matters, not civil.

The second assumption is that the rights of crime victims to restitution and compensation exercised on recovered assets should take precedence over the rights of states, and the institution of confiscation should facilitate, and not hinder, the exercise of these rights by victims, therefore it should be possible to use the recovered assets for the purposes of restitution and compensation at the stage of execution of the confiscation both in domestic and cross-border enforcement proceedings.

In order to strengthen the rights of victims to the recovered assets, actions should be taken at two normative layers: harmonisation and mutual recognition. Even though the autonomous concept of 'proceedings in criminal matters' was adopted in Regulation 2018/1805, this does not solve the problems in the field of harmonisation.[37] Despite the adoption of a broad concept of 'proceedings in criminal matters' in Regulation 2018/1805, the aim of which was to include all freezing and confiscation orders issued following proceedings in relation to a criminal offence in the mutual recognition mechanism, including those not covered by Directive 2014/42/EU, the current situation is that only freezing orders issued for subsequent confiscation can be recognised via this mechanism. Freezing orders aimed at restitution or compensation are excluded from this mechanism if, according to national law, confiscated assets cannot be used for the purposes of restitution or compensation. This is the case when the national legal order makes the state the beneficiary of the assets recovered through confiscation, not the crime victims. This limitation to the cross-border recognition of freezing orders is reflected in the definitions of 'freezing' in Directive 2014/42/EU and 'freezing order' adopted in Regulation 2018/1805, which clearly indicate the purpose of these actions, which is the subsequent confiscation. The key problem is that confiscation in national law may not have a restorative function, so the access of victims to the cross-border recovered assets is limited. This reason, justifies obliging Member States to open up access for victims to confiscated assets for the purpose of restitution and compensation.

According to Article 2 (1) of Regulation 2018/1805 the term 'freezing order' 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'. The interpretation of this provision in the context of the subject matter of Regulation 2018/1805 is of key importance, as it established the rules under which a Member State recognises and executes in its territory freezing orders and confiscation orders issued by another Member State within the framework of 'proceedings in criminal matters'. The

37 See Recital 13 of the preamble to Regulation 2018/1805.

goal of the concept of 'proceedings in criminal matters' (broader than 'criminal proceedings') adopted in Regulation 2018/1805, was to increase the scope of the enforceability of the orders.[38] Nevertheless, to increase the enforceability of such orders, changes should be made to the harmonisation layer with regard to the minimum rules on the freezing of property with a view to possible subsequent confiscation and the minimum rules on the confiscation of property, including the management of frozen and confiscated property. First of all, this should be done by introducing a strict obligation for Member States to introduce in their national legal orders the possibility of using confiscated assets for the purposes of restitution and compensation for crime victims, given priority over the states' rights to confiscated assets. The rationale behind this is that the restorative capacity of confiscation is still underused. In addition, confiscation procedures are simplified by applying legal presumptions or assumptions (depending on the national system) about the origin of assets from criminal activity allowing for an increase in the recovered assets to which victims of crime should have access. It would also be helpful to modify the definition of 'freezing' in Directive 2014/42/EU, as well as the definition of 'freezing order' in Regulation 2018/1805. The definition of 'freezing' should cover freezing for the purpose of restitution and/or compensation for the victim of a crime from frozen or confiscated assets. The definition of 'freezing order' should also cover a decision issued for the purpose of restitution and/or compensation to the victim of a crime from frozen or confiscated assets. Thus, freezing orders issued for the purpose of restitution and/or compensation from confiscated assets may be simultaneously recognised as freezing orders issued with a view to confiscation, and may be subject to the mutual recognition mechanism established by Regulation 2018/1805.

Considering that it is not always possible to identify specific victims of a crime, while at the same time a crime always carries some social harm, it should be expected that the minimum rules of EU law would oblige the Member States (a step further than a soft recommendation) to provide in national law the possibility of the destination of confiscated assets or the temporary use of frozen assets for social and public purposes at the frozen or confiscated asset management stage. This would require appropriate changes within Article 10 of Directive 2014/42/EU on the management of frozen and confiscated property. Consideration could be given to allowing Member States to choose between direct or indirect asset allocation to social and public purposes. In the event of an indirect allocation, for example by creating a state special purpose fund (controlled with the participation of a certain social factor), the resources could come from confiscated assets.[39]

38 The concept of 'proceedings in criminal matters' is broader than that of 'criminal proceedings' adopted in Framework Decision 2003/577/JHA for the purpose of executing freezing orders. Cf Article 1 of Framework Decision 2003/577/JHA. See also Eurojust, Note on the Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders. A new legal framework for judicial cooperation in the field of asset recovery, 2 <https://www.eurojust.europa.eu/sites/default/files/assets/20201207_note_on_regulation_eu_2018_1805.pdf> accessed 31 January 2022.

39 Cf Barbara Vettori, 'The Disposal of Confiscated Assets in the EU Member States: What Works, What Does Not Work and What Is Promising', in Colin King, Clive Walker, Jimmy Gurulé (eds), *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Palgrave Macmillan 2018) 724-730.

There is also room for improvement in Member States' statistical obligations in relation to confiscated assets. The establishment of social control over the allocation of confiscated assets largely depends on the existence of statistical obligations on the Member States, resulting from EU law, to collect multi-faceted data at a central level reflecting the social and public re-use of confiscated assets. This obligation should also cover the collection of data at a central level on the number of cases in which confiscated assets were used for the purposes of restitution or compensation for crime victims. Furthermore, information should be provided about the number of cases in which the victim obtained restitution as a result of the domestic execution of freezing orders, as well as via the cross-border execution of freezing orders in accordance with Regulation 2018/1805. These datasets should be publicly available and comprehensible so that social control can be truly exercised. This would require changes to both instruments – harmonisation and mutual recognition, specifically within Article 11 of Directive 2014/42/EU and Article 35 of Regulation 2018/1805. Transparency of the social and public re-use of confiscated and frozen assets should foster confidence in the legitimacy of asset recovery measures forming part of the criminal justice system at the national level, and at the level of cross-border cooperation in the EU.

It is worth mentioning that the conclusions of the Report from the Commission to the European Parliament and the Council 'Asset recovery and confiscation: Ensuring that crime does not pay' included the need for greater precision as regards the management of frozen assets, as well as the introduction of provisions on the disposal of assets, including the social re-use of confiscated assets and establishing the rules on the compensation of victims of crime.[40]

4. The perspective of Poland and Germany

An example of a Member State where it is not legally possible to exercise the rights of crime victims to restitution and compensation directly from confiscated assets is Poland. Consequently, national freezing orders issued under Article 291 para 1 point 4 or 5 of the Polish Code of Criminal Procedure (1997) [*Kodeks postępowania karnego*][41] for the purpose of restitution or confiscation cannot be regarded as issued with a view of subsequent confiscation ('forfeiture' according to the nomenclature used in Polish criminal law). This means that these freezing orders do not meet the definition of 'freezing order' adopted in Regulation 2018/1805, and are therefore excluded from the mutual recognition mechanism of freezing orders introduced by that Regulation.

40 Commission, Report from the Commission to the European Parliament and the Council 'Asset recovery and confiscation: Ensuring that crime does not pay', Brussels, 2 June 2020, COM(2020) 217 final, 17-18 <https://ec.europa.eu/home-affairs/system/files/2020-06/20200602_com-2020-217-commission-report_en.pdf> accessed 31 January 2022.

41 Kodeks postępowania karnego (1997) [Code of Criminal Procedure], Dz.U. (1997), No 89, item 555 with subsequent amendments.

The national solutions concerning the execution stage of forfeiture do not allow for the direct allocation of the forfeited assets for the purposes of restitution or compensation. On the contrary, pursuant to Article 44 (5) and Article 45 (1) of the Polish Penal Code (1997) [*Kodeks karny*][42] restitution of the aggrieved party or another entity excludes ordering the forfeiture of objects, material benefits or their equivalent. Therefore, restitution does not take place at the stage of forfeiture enforcement, when all aggrieved persons and their claims can be established. The beneficiary of the forfeited assets is the state, therefore its rights to forfeited assets are given priority, not those of the victims.

For comparison, more advanced solutions were adopted in the German criminal law, which solved the problem of the appropriate stage of settling the claims of crime victims from confiscated assets. Previously (before the amendments of April 13, 2017), according to Section 73 (1) sentence 2 of *Strafgesetzbuch* (StGB),[43] forfeiture was excluded where there was a victim's claim arising from the act committed which justified the forfeiture. As a result of the solutions adopted in the Act on the reform of criminal asset confiscation [*Gesetz zur Reform der strafrechtlichen Vermögensabschöpfung*] of April 13, 2017,[44] the aforementioned exclusion of the forfeiture order has been removed from Section 73 (1) of StGB.[45] It is worth mentioning that as a result of the aforementioned act reforming the German system of depriving property related to crime, the term 'confiscation' was also uniformly applied, corresponding to EU law. A key change in this reform in terms of victims' rights to restitution and compensation is that the issue of these claims was moved to the execution stage of confiscation.[46]

These two different national legal solutions show that there is a need to secure the rights of crime victims to restitution and compensation under the confiscation mechanism at the level of EU law. The introduction of minimum harmonisation standards to Directive 2014/42/EU and amendments to Regulation 2018/1805 would allow, at least partially, a reduction in the discrepancies between the position of crime victims across the EU, both in the domestic and cross-border asset recovery processes, with the former having a significant impact on the latter.

42 Kodeks karny (1997) [Penal Code], Dz.U. (1997), No 88, item 553 with subsequent amendments.

43 Strafgesetzbuch (StGB) (1871), [Penal Code], in the version published on November 13, 1998, Bundesgesetzblatt [Federal Law Gazette of the Federal Republic of Germany], BGBl. I, 3322 with subsequent amendments (until 13 April 2017).

44 BGBl. 2017 I, 872. See also David Ullenboom, *Praxisleitfaden Vermögensabschöpfung* (C.F. Müller 2019) 1-4.

45 See also Gesetzentwurf der Bundesregierung. Entwurf eines Gesetzes zur Reform der strafrechtlichen Vermögensabschöpfung, Drucksache 18/9525, 5 September 2016, 1-2; Wilhelm Schmidt, *Vermögensabschöpfung. Handbuch für das Straf- und Ordnungswidrigkeitenverfahren* (2nd edn, C.H. Beck 2019) 7-9; Thomas Fischer, *Strafgesetzbuch mit Nebengesetzen,* (68th edn, C.H. Beck 2021) 736-737.

46 See Section 459g et seq of Strafprozeßordnung (StPO) (1877, revised in 1950) [Code of Criminal Procedure], in the version published on 7 April 1987, BGBl. I, 1074, 1319 with subsequent amendments. See also justification for the draft of a law to reform the criminal asset confiscation [*Gesetzentwurf der Bundesregierung Entwurf eines Gesetzes zur Reform der strafrechtlichen Vermögensabschöpfung*], Bundesrat Drucksache 418/16, 12 August 2016, 105-111.

Conclusions

The operational capacity of the mechanism for mutual recognition of freezing and confiscation orders introduced by Regulation 2018/1805 largely depends on national freezing and confiscation rules that are influenced by EU minimal harmonising standards. The analysis of EU law regarding the asset recovery process allows the identification of certain normative barriers weakening the victims' rights to restitution and compensation and the re-use of assets for public and social purposes. These barriers result from the fact that the EU legislator has not yet decided to introduce minimum standards obliging Member States to ensure asset allocation for restitution and compensation for victims, nor for social and public purposes (directly or indirectly). Being forced to operate in such a legal environment hampers developments away from the traditional meaning of the term 'asset recovery', which in many European jurisdictions is still associated with the connotation of primarily meeting state goals, and not social or public ones.

The asset recovery system across the EU should perform its restorative function according to its potential in both national and cross-border dimensions. To this end, the development of EU policy should be expected to oblige Member States to ensure the priority of victims' rights to restitution and compensation over states' rights to recovered assets. The relevant obligations in this regard should be integrated into the current legal framework harmonising asset recovery in the EU. Changes in this field would open the way for victims to seek restitution and compensation under the asset recovery mechanism, without discrepancies in their treatment between EU jurisdictions.

Among the areas for improvement at the EU law level, there are also the minimum rules on the freezing of property, which should be modified to ensure victims' rights to restitution and compensation. The rationale for this is the variety of forms of restitution and compensation in criminal justice systems, where it may not be possible to use for these purposes the assets obtained from confiscation or from freezing for subsequent confiscation. To this end, the definition of 'freezing' in Directive 2014/42/EU should be amended to cover freezing for the purpose of restitution and/or compensation for the victim from frozen or confiscated assets. Additionally, the definition of 'freezing order' in Regulation 2018/1805 should be amended to additionally cover a decision issued for the purpose of restitution and/or compensation for the victim from frozen or confiscated assets.

From the perspective of triggering the restorative potential of the asset recovery process, the phase of managing and disposing of the frozen and confiscated assets is no less important. It does not seem possible to fully exploit this potential without the commitment of Member States to ensure that the recovered assets can be allocated (through direct or indirect transfer) to social and public purposes.

Finally, in order to ensure social control over the asset recovery process, it would be desirable to extend the statistical obligations of Member States to collect data on the allocation of assets for restitution and compensation for victims, as well as for social

and public purposes. Transparency in this regard would foster public confidence in the criminal justice system across the EU, of which the cross-border asset recovery process has become an indispensable part. Social control over the asset recovery process would also contribute to an improvement in terms of the coherency, efficiency and fairness of this process. These factors could in turn increase the added value of EU criminal law.

BIBLIOGRAPHY

Legal acts

Strafgesetzbuch (StGB) (1871) [Penal Code], in the version published on 13 November 1998, BGBl. I, 3322 with subsequent amendments

Strafprozeßordnung (StPO) (1877, revised in 1950) [Code of Criminal Procedure], in the version published on 7 April 1987, BGBl. I, 1074, 1319 with subsequent amendments

Kodeks karny (1997) [Penal Code], Dz.U. (1997), No 88, item 553 with subsequent amendments

Kodeks postępowania karnego (1997) [Code of Criminal Procedure], Dz.U. (1997), No 89, item 555 with subsequent amendments

Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2001] OJ L 12/1

Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence [2003] OJ L 196/45

Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties [2005] OJ L 76/16

Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders [2006] OJ L 328/59

Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters [2012] OJ L 351/1

Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union [2014] OJ L 127/39

Gesetz zur Reform der strafrechtlichen Vermögensabschöpfung (2017) [Act on the reform of criminal asset confiscation], BGBl. 2017 I, 872

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 [2018] OJ L 303/1

Official documents

Commission Staff Working Paper. Accompanying document to the Proposal for a Directive of the European Parliament and the Council on the freezing and confiscation of proceeds of crime in the European Union. Impact Assessment, Brussels, 12 March 2012, SWD(2012) 31 final

Commission, 'Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union', Brussels, 12 March 2012, COM(2012) 85 final

Opinion of the European Economic and Social Committee on the 'Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union', COM(2012) 85 final [2012] OJ C 299/128

Opinion of the Committee of the Regions on the 'Package on protection of the licit economy' [2012] OJ C 391/134

Eurojust, 'Report on Eurojust's Experience in the field of Asset Recovery, including Freezing and Confiscation', 24 November 2014

Gesetzentwurf der Bundesregierung Entwurf eines Gesetzes zur Reform der strafrechtlichen Vermögensabschöpfung, Bundesrat Drucksache 418/16, 12 August 2016

Gesetzentwurf der Bundesregierung. Entwurf eines Gesetzes zur Reform der strafrechtlichen Vermögensabschöpfung, Drucksache 18/9525, 5 September 2016

Commission 'Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders', Brussels, 21 December 2016, COM(2016) 819 final

Commission Staff Working Document. Executive Summary of the Impact Assessment. Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders, Brussels, 21 December 2016, SWD(2016) 469 final

Scientific publications

Fischer T, *Strafgesetzbuch mit Nebengesetzen*, (68th edn, C.H. Beck 2021)

Mirandola S, 'Borderless enforcement of freezing and confiscation orders in the EU: the first regulation on mutual recognition in criminal matters' (2020) 20 ERA Forum <https://doi.org/10.1007/s12027-019-00581-x>

Montaldo S, 'Directive 2014/42/EU and Social Reuse of Confiscated Assets in the EU: Advancing a Culture of Legality' (2015) 6 New Journal of European Criminal Law <https://doi.org/10.1177/203228441500600204>

Ochnio A H, 'Between the medium and the minimum options to regulate mutual recognition of confiscation orders' (2018) 9 New Journal of European Criminal Law <https://doi.org/10.1177/2032284418806667>

Ochnio A H, 'The Tangled Path From Identifying Financial Assets to Cross-Border Confiscation. Deficiencies in EU Asset Recovery Policy' (2021) 29 European Journal of Crime, Criminal Law and Criminal Justice <https://doi.org/10.1163/15718174-bja10024>

Panzavolta M, 'Confiscating Dirty Assets: The Italian Experience' in C King, C Walker, J Gurulé (eds), *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Palgrave Macmillan 2018)

Panzavolta M, Flor R, 'A Necessary Evil? The Italian «Non-Criminal System» of Asset Forfeiture' in J P Rui and U Sieber (eds), *Non-Conviction-Based Confiscation in Europe* (Duncker & Humblot, Max-Planck-Institut für ausländisches und internationales Strafrecht 2015)

Satzger H, 'Is mutual recognition a viable general path for cooperation?' 2019 (10) New Journal of European Criminal Law < https://doi.org/10.1177/2032284419836516>

Schmidt W, *Vermögensabschöpfung. Handbuch für das Straf- und Ordnungswidrigkeitenverfahren* (2nd edn, C.H. Beck 2019)

Sicurella R, 'Fostering a European criminal law culture: In trust we trust' (2018) 9 New Journal of European Criminal Law <https://doi.org/10.1177/2032284418801561>

Ullenboom D, *Praxisleitfaden Vermögensabschöpfung* (C.F. Müller 2019)

Vettori B, 'The Disposal of Confiscated Assets in the EU Member States: What Works, What Does Not Work and What Is Promising', in C King, C Walker, J Gurulé (eds), *The Palgrave Handbook of Criminal and Terrorism Financing Law* (Palgrave Macmillan 2018)

Online sources

L'Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata 'Relazione sull'attività svolta Anno 2020' (Articolo 112, comma 1, D.Lgs. n. 159/2011)<https://www.benisequestraticonfiscati.it/wp-content/uploads/2021/08/ANBSC_RELAZIONE_ANNO_2020_WEB_2.pdf> accessed 24 March 2022

Amendments 001-059 by the Committee on Civil Liberties, Justice and Home Affairs. Report Monica Luisa Macovei A7-0178/2013. Freezing and confiscation of proceeds of crime. Proposal for a directive (COM(2012)0085 – C7-0075/2012 – 2012/0036(COD)), A7-0178/ 001-059, 19 February 2014 <https://www.europarl.europa.eu/doceo/document/A-7-2013-0178-AM-001-059_EN.pdf> accessed 31 January 2022

Eurojust, Note on the Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders. A new legal framework for judicial cooperation in the field of asset recovery <https://www.eurojust.europa.eu/sites/default/files/assets/20201207_note_on_regulation_eu_2018_1805.pdf> accessed 31 January 2022

Eurojust Strategic Meeting on Trafficking in Human Beings. Outcome Report, The Hague, 26–27 April 2012 <https://ec.europa.eu/anti-trafficking/system/files/2016-02/eurojust_strategic_meeting_on_trafficking_in_human_beings_1.pdf> accessed 28 January 2022

Eurojust, Strategic project on Enhancing the work of Eurojust in drug trafficking cases. Final results January 2012 <https://www.eurojust.europa.eu/sites/default/files/Publications/Reports/drug-trafficking-report-2012-02-13-EN.pdf> accessed 31 January 2022

Commission, Directorate General for Justice. Directorate B. Criminal Justice, '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', Thompson Reuters, Aranzadi <https://e-justice.europa.eu/fileDownload.do?id=523d1bc6-69c3-4d69-895b-4b14221eccde> accessed 28 January 2022

Commission, Report from the Commission to the European Parliament and the Council 'Asset recovery and confiscation: Ensuring that crime does not pay', Brussels, 2 June 2020, COM(2020) 217 final <https://ec.europa.eu/home-affairs/system/files/2020-06/20200602_com-2020-217-commission-report_en.pdf> accessed 31 January 2022

Legislative acts and other instruments. Subject: Directive of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, Brussels, 5 March 2014, 2012/0036 (COD), PE-CONS 121/13 < https://data.consilium.europa.eu/doc/document/PE-121-2013-INIT/en/pdf> accessed 31 January 2022

Libera. Associazioni, nomi e numeri contro le mafie. Settore Beni Confiscati 'Social re-use of confiscated assets in Italy. Numbers, practices and proposals' (2021) <https://delegazioneosce.esteri.it/delegazione_osce/resource/doc/2021/12/libera_fatti_per_bene_en.pdf> accessed 31 January 2022

Position of the European Parliament adopted at first reading on 25 February 2014 with a view to the adoption of Directive 2014/.../EU of the European Parliament and of the Council on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, (EP-PE_TC1-COD(2012)0036), 25 February 2014 <https://www.europarl.europa.eu/doceo/document/TC1-COD-2012-0036_EN.pdf> accessed 31 January 2022

Council, Council adopts directive on the freezing and confiscation of proceeds of crime, Press Release 7643/14, Brussels, 14 March 2014, <https://www.consilium.europa.eu/media/28747/141493.pdf> accessed 31 January 2022

Information about the Author

Ariadna H. Ochnio, Ph.D., is an Assistant Professor at the Institute of Law Studies, Polish Academy of Sciences; the author of books and articles in the field: AML/CFT, anti-tax fraud law and policy, EU asset recovery policy, cross-border cooperation in criminal matters, guarantees of a fair criminal trial; the principal investigator in the research project

'Standards for the confiscation of the proceeds of crime set in European Union law and their impact on Polish, German, French and English criminal law', Opus 17, National Science Centre, Poland, No 2019/33/B/HS5/01617. ORCID 0000-0003-1957-6942. E-mail: ariadna.ochnio@inp.pan.pl.