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(Article begins on next page)

DIRECTIVE 2014/42/EU AND SOCIAL REUSE OF CONFISCATED ASSETS IN THE EU: ADVANCING A CULTURE OF LEGALITY

Stefano Montaldo*

ABSTRACT

The article considers the EU legal framework on the disposal of confiscated assets and instrumentalities of crime, mainly focusing on their reuse for social purposes. Directive 2014/42/EU reinforces the tools for tracing and recovering the proceeds and instrumentalities of crime. However, the Directive shows that confiscation orders are no longer regarded solely as means of depriving criminal organizations of their resources. In fact, Article 10, par. 3, urges national legislators to consider the adoption of any necessary measure in order to allow for the reuse in the public interest or for social purposes of confiscated assets. This new approach can foster a positive attitude to strategies aimed at tackling crime, in particular fostering a culture of legality, helping to prevent criminal activities and supporting economic and social development at local level. The destination of confiscated assets for social reuse is an existing option in many national legal orders, but it is often considered a last resort or a residual solution. Moreover, the Directive does not bind the Member States to implement common EU standards on this matter, so that the road to a fully effective maximization of the value of confiscated assets is still long.

Keywords: confiscation; disposal; judicial cooperation; proceeds of crime; social reuse

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1. INTRODUCTORY REMARKS: CRIMINAL WEALTH AND CONFISCATION ORDERS IN THE EUROPEAN UNION

According to economic theory of crime, criminals are rational individuals engaging in a deviant behaviour in order to maximize their profits.¹ The choice of infringing institutionalized expectations underpinning a given rule is then usually the outcome of a rational analysis of the costs and benefits of a certain conduct and of its consequences. Any attempt to combat criminal phenomena – *a fortiori* organised ones –² must therefore take into serious consideration the need for a multidisciplinary approach, in which public order protection has to be paired with the proper understanding of the sociological implications of an illegal activity and of the economic incentives to perform it.³

In this context, over the past few decades, seizure and confiscation of the proceeds of crime have been identified among the most effective means of combating crime, at both national and international levels. Indeed, the current legal scenario is characterised by extremely varied and fragmented national regimes, practices and experiences, to a certain extent influenced or completed by an increasingly vast body of international rules. From this point of view, as it is well known, economic globalisation has revealed a dark side, because it has offered criminal organisations new lands of conquest. This trend has proved particularly evident in Europe, where even at the beginning of the twentieth century Donnedieu de Vabres warned of the fact that “*il est certain que la rapidité des voies de communication, la multiplicité des relations entre les peuples, offrent aux délinquants des chances d’impunité qu’ils ne possédaient pas autrefois. Le crime s’internationalise: la répression, pour être efficace doit s’internationaliser aussi*”.⁴ In this vein, as highlighted by some authors, the four fundamental freedoms of the internal market, along with the removal of controls at internal borders in the Schengen Area, have been gradually paving the way for a fifth one: the freedom of movement of criminals, criminal activities and, in parallel, of judicial decisions.⁵ Accordingly, as a further side effect of the European integration

¹ See for instance E. Eide, A. Aasness, T. Skjerpen, *The economics of crime: deterrence and the rational offender*, New York: Elsevier Science 1994; more recently, I. Ehrlich, Z. Liu (eds.), *The economics of crime*, Northampton: Edward Elgar Publishing 2006.

² See on this aspect the critical analysis conducted in P. Reuter, *Disorganized crime: the economics of the visible hand*, Boston: MIT Press, 1985. The author supports the view that that mafia-type criminal organisations are not able to obtain total control over the major illegal markets. According to his argument, the cost of suppressing competition has ensured that these markets are populated with small enterprises, many of them marginal and ephemeral.

³ The reference to the sociological implications of crime is knowingly vague from a conceptual point of view. Indeed, sociologists would underline the need to reverse the approach and to consider crime as a product of social processes which identify certain acts and persons as criminal. See S. Hester, P. Eglin, *A sociology of crime*, New York: Routledge 2004.

⁴ H. Donnedieu de Vabres, *Crimes et délits commis à l'étranger*, Paris: Sirey 1906, p. 8.

⁵ See G. de Kerchove, La reconnaissance mutuelle des décisions pré-sententielles en général, in G. de Kerchove, A. Weyembergh (eds.), *La reconnaissance mutuelle des décisions judiciaires pénales dans l'Union européenne*, Bruxelles: Editions de l'Université de Bruxelles 2001, p. 114; C. Amalfitano,

process, it has become increasingly easy for criminal enterprises to gain and reinvest profits in another Member State.⁶

This is the reason why, during the last two decades, building on the Tampere and Stockholm Programmes, also at the EU level focus has been given to the identification, seizure and confiscation of the proceeds and instrumentalities of criminal actions. In particular, in order to approach national legal orders and to strengthen judicial cooperation in this field, the Council adopted common rules on the seizure and confiscation of the proceeds and instrumentalities of crime,⁷ as well as on the application of the principle of mutual recognition to confiscation orders.⁸

Despite its undoubted importance, this legal framework is almost exclusively devoted to the minimum standards and the mechanisms for recognition and execution of seizure and confiscation orders.⁹ As a matter of fact, it addresses the core practical challenges to rapid and effective judicial cooperation, while very limited attention is paid to the disposal phase. Yet the destination of confiscated assets can have a remarkable impact on the outcomes of the efforts displayed by law enforcement agencies, especially in cross-border situations.¹⁰ Indeed, taking into account the above mentioned multidisciplinary perspective, an efficient use of these once-illegal gains can transform them into resources boosting social and economic development.

This gap has been partially bridged by Directive 2014/42/EU,¹¹ which stresses the importance of an adequate destination of confiscated proceeds and property. What is more, Article 10(3) calls on Member States to consider “taking measures allowing confiscated assets to be used for public interest or social purposes”. The express reference

Conflitti di giurisdizione e riconoscimento delle decisioni penali nell'Unione europea, Milano: Giuffrè 2006, p. 102.

⁶ See for instance N. Gratteri, A. Nicaso, *Fratelli di sangue. La n'drangheta tra arretratezza e modernità: da mafia agropastorale a holding del crimine*, Cosenza: Luigi Pellegrini Editore 2007. At page 14 the authors make reference to a criminal investigation on a local group of a criminal organisation which was able to purchase some buildings in Brussels, thereby laundering 28 millions of euro deriving from international drug trafficking.

⁷ See the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, OJ L 196, 2 August 2003, p. 45–55, and the Council Framework Decision 2005/212/JHA of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property, OJ L 68, 15 March 2005, p. 49–51. The latter replaced the Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, OJ L 182, 5 July 2001, p. 1–2.

⁸ Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, OJ L 328, 24 November 2006, p. 59–78.

⁹ F. Gascón Inchausti, ‘Mutual recognition and transnational confiscation orders’, in F. Ruggeri (ed.), *Transnational inquiries and the protection of fundamental rights in criminal proceedings*, Heidelberg: Springer 2013, p. 253.

¹⁰ B. Vettori, *Tough on criminal wealth. Exploring the practice of proceeds from crime confiscation in the EU*, Dordrecht: Springer 2007.

¹¹ 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, OJ L 127, 9 April 2014, p. 39–50.

to social reuse of assets diverted from criminal activities is the result of an intense political trilogue between the European Parliament, the Council and the European Commission and opens the way to a modern approach to the disposal phase. From this point of view, the present article aims at focusing on the implications of these provisions for the European and the national legal orders. The first part of the analysis focuses on the general *ratio* of social reuse of confiscated assets; the second step provides an overview of the existing international and European legal context on this specific topic. Then, the last two paragraphs concern the implications of Directive 2014/42/EU for the national legal scenario, focusing on the main features of social reuse in the EU Member States.

2. SOCIAL REUSE OF CONFISCATED ASSETS: *RATIO* AND PURPOSES OF AN INNOVATIVE DISPOSAL OPTION

Asset recovery plays a key-role in tackling profit-oriented crimes, since the accumulation of wealth is often the main objective of a criminal enterprise.¹² What is more, several studies on the structure of criminal organisations have revealed that these profits are essential to ensuring the daily functioning, the maintenance and the strengthening of the organisation itself.¹³ In fact, they enable the criminal enterprise to set up a sort of “shadow State”, in which, for instance, affiliated members are provided with a well-paid job and benefit from an *ad hoc* social assistance and social security system.¹⁴ The financial capacity, then, is a source of legitimacy of the criminal organisation and knots close ties between its members, especially in economically depressed and socially underdeveloped regions.

Yet, as underlined by the so called Matrix Report, a study conducted by the Commission on the effectiveness of the laws and practices on the confiscation process in the EU Member States,¹⁵ the objective behind asset confiscation extends beyond

¹² Some authors underline that accumulation of wealth is the true “*raison d’être*” of crime: T. Kolarov, ‘Mutual recognition of judicial decisions on confiscation: the way forward’, proceedings of an international conference on Mutual Recognition of Judicial Decisions and Confiscation 15 Years after Tampere: an Additional Tool for Depriving Criminals of their Illicit Assets all over the Union, held in Siracusa (Italy) on 22–23 September 2014, available at www.justizia.it/resources/cms/documents/italia2014_ue_siracusa_kolarov.pdf (last visited on 17 April 2015).

¹³ See, in general, D.R. Cressey, *Criminal organization: its elementary forms*, New York: Harper & Row, 1972. For what concerns mafia-type criminal organisations, J. Dickie, *Cosa nostra: a history of the Sicilian mafia*, New York: Palgrave Macmillan 2004.

¹⁴ Investigations and studies on social support to organised crime have revealed that the families of active members of criminal organisations often benefit from financial support, in case the latter be imprisoned.

¹⁵ Assessing the effectiveness of EU Member States’ practices in the identification, tracing, freezing and confiscation of criminal assets. Final Report prepared in June 2009 by Matrix Insights to the Directorate-General Justice, Freedom & Security of the European Commission, available at http://ec.europa.eu/home-affairs/news/intro/docs/20120312/final_asset_recovery_report_june_2009.pdf (last visited on 15 April 2015).

the mere deprivation of criminal enterprises of their ill-gotten gains. Indeed, confiscation measures allow law enforcement agencies to pursue further important policy objectives, which a modern regulation of the disposal phase should take into due consideration. In this perspective, confiscation must not be considered solely as an *ex post* counter-crime tool: instead, it is able to provide a basis for a more effective prevention of serious crimes and of criminal organisations' taking deep roots at local level. In particular, as highlighted by the European Parliament in the so called Alfano Report,¹⁶ social reuse and the use for public interest of confiscated assets 'is doubly constructive, in that it both helps to prevent organised crime and has the effect of boosting economic and social development'. An effective use of these properties promotes a 'positive attitude' to the strategies aimed at tackling crime, as it fosters a culture of legality and reinforces public confidence in the justice system.¹⁷

Indeed, taking the general theory of criminal sanctions and confiscation to new harbours, the rationale of social reuse of confiscated assets is that serious crimes affect local communities and society as a whole. Of course, specific and identifiable victims usually suffer a direct harm from organised crime, corruption, drug trafficking and several other serious offences; however, at the same time, there is a growing debate on the urgent need to address the damages incurred to local communities *per se*,¹⁸ in terms of lack of public security, loss of economic opportunities and blocks to social development.¹⁹ As a consequence, a "fair and appropriate" compensation for the detrimental consequences of a crime should be granted not only to its "formal"

¹⁶ See the so called Alfano Report on organized crime in the European Union, 2010/2309(INI) of 6 October 2011, p. 8, available at: www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2011-0333+0+DOC+XML+V0//EN (last visited on 15 April 2015).

¹⁷ Literature on this topic is minimal, the only relevant recent book is L. Frigerio, D. Pati, *L'uso sociale dei beni confiscati*, 2008, which is the outcome of a study developed by the Italian Ministry of Justice and the anti-mafia civil society association LIBERA. The book is available at www.mafieeantimafia.it/images/download/bookformativo.pdf (last visited on 15 April 2015).

¹⁸ In EU law, a victim is usually considered a natural person who has suffered harm, including physical or mental injury, emotional suffering or economic loss, directly caused by a criminal offence. This definition has been confirmed, with minor reforms, by Article 1(a) of the Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14 November 2012, p. 57–73. In the light of the second indent of the same provision, the notion of victim extends to the family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death. The exclusion of legal persons is confirmed by the case-law of the European Court of Justice: see for instance ECJ, *Emil Eredics and Mária Vassné Sápi*, 21 October 2010, case n. C-205/09, and ECJ, *Criminal proceedings against Maurizio Giovanardi and others*, 12 July 2012, case n. C-79/11.

¹⁹ Social damages and the need to repair them have been recently acknowledged in a case of international corruption in Costa Rica. For an in-depth analysis of the case, of its implications and of the debate on social damage see J. Olaya, K. Attisso, A. Roth, *Repairing Social Damage Out of Corruption Cases: opportunities and challenges as illustrated in the Alcatel Case in Costa Rica, 2010*, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1779834 (last visited on 15 April 2015).

victims, but also to the community involved.²⁰ As a result, under this perspective, compensation of victims shall also include the compensation of society that has suffered harm as a whole from the effects of a criminal conduct.²¹ This compensation can take the form of reusing the confiscated proceeds of aforementioned crimes for social purposes, directly involving civil society in the management of these assets and of the (cultural, economic, ...) activities performed therein.²²

In general, the use for public interest of confiscated assets traditionally takes the shape of a transfer of ill-gotten profits to the public budget – either local or national – but social reuse may also imply direct investment of capitals or the allocation of a property to a civil society organisation, in order to meet a specific social need. In both cases, a key element is the visibility of the destination of the resources or properties at stake, in order to raise citizens' awareness of the fact that crime does not pay and legality can turn out to be an important resource for each member of the community.

This approach to the disposal phase allows in some instances for a more active participation of civil society in the prevention and combating of crime, since every citizen is encouraged to have confidence in law enforcement authorities. Also, some authors underline that the transparency of the disposal mechanism facilitates the fight against crime, in that it deprives criminal enterprises of their breeding ground and strengthens active cooperation between citizens and public authorities.²³

This positive reading of the matter shows the complex and multifaceted nature of confiscation measures, which often rely on a punitive character, but are – or at least can be – also endowed with restorative purposes. The variety of aims is reflected by the wide variety of statutory schemes regulating this matter at national level, especially

²⁰ See Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L261, 6 August 2004, p. 15–18. Pursuant to Article 12(2) of this Directive, compensation to crime victims has to be “fair and appropriate”.

²¹ On the evolving notion of victim and harm, see, also from a European perspective, I. Vanfraechem, A. Pemberton, F. Mukwiza Ndahinda (eds.), *Justice for victims. Perspectives on rights, transition and reconciliation*, New York: Routledge 2014. See in particular E. Ezendam and F. Wheldon's chapter 'Recognition of victims' rights through EU action: latest developments and challenges, at p. 51.

²² In this respect, in another context, the notion of civil society has been defined by the European Commission as including trade unions and employers' organisations, non-governmental organisations, professional associations, charities, grass-roots organisations, organisations that involve citizens in local and municipal life with a particular contribution from churches and religious communities. See the Communication from the Commission COM(2001)428 of 25 July 2001, European Governance, a White Paper, OJ C 287, 12 October 2001, p. 1–29.

²³ In fact, usually citizens have no possibilities to link the subsequent public/social reuse of a confiscated asset to its original illegal nature. Social reuse makes this link explicit: what stems from crime is openly given back to society, thus spreading an important cultural message that promotes the so called 'social fight' against organised crime. See the summary of RECAST Project Report n. 2, Social reuse of confiscated assets in the EU: current experiences and potential for their adoption by other Member States, available at http://flarenetwork.org/media/files/recast/recast_summary_report_2_eng.pdf (last visited on 16 April 2015).

in Europe.²⁴ Accordingly, the issue has been repeatedly raised in front of the European Court of Human Rights, whose well-settled case-law stresses the importance of the consequences of a measure on the offender and on the victim of crime in order to establish whether it can be considered a criminal sanction or not.²⁵

In the case of cross-border crimes, this fragmented scenario can turn out to be a stumbling block to cooperation between national authorities at any stage of the confiscation process, including the disposal phase. Therefore, within the framework of universal and regional international organisations, efforts have been made with the purpose of adopting minimum rules or standards common to the contracting Parties. However, as we will consider more in detail in the next paragraph, despite its importance, the destination of confiscated assets has been largely neglected so far.

3. SOCIAL REUSE OF CONFISCATED ASSETS: THE INTERNATIONAL AND EUROPEAN LEGAL FRAMEWORK

A number of international treaties and conventions include provisions on the confiscation of the proceeds of crime and seek to promote international cooperation in this field. These instruments usually do not adopt a comprehensive approach to the subject, since they consider the identification, tracing, freezing and confiscation of illegally gained assets with regard to specific offences. Important examples are represented by the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption,²⁶ on the example of which the existing body of international legal instruments has been built.

On the one hand, the Transnational Organized Crime Convention binds State parties to cooperate ‘to the greatest extent possible’ in response to requests for execution of confiscation issued by the authorities of another State.²⁷ Besides this general obligation to cooperate, Article 14 addresses the disposal of the proceeds of crime or property, which should be conducted in accordance with the law of the

²⁴ B. Vettori, ‘La confisca dei proventi criminali nell’Unione europea: analisi comparata e implicazioni di policy’, *Politica del diritto*, 2002, Vol. 33, n. 2, p. 261, and, more recently, C. King, C. Walker (eds.), *Dirty assets. Emerging issues in the regulation of criminal and terrorist assets*, Farnham: Ashgate 2014.

²⁵ The European Court of Human Rights applies the so called Engel criteria in order to formally qualify confiscation measures. See ECHR, *Engel and others v. The Netherlands*, 8 June 1976, application n. 5100/71, 5101/71, 5102/71, 5354/71 and 5370/71; ECHR, *Welch v. United Kingdom*, 9 February 1995, application n. 17440/90.

²⁶ See respectively the United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of 15 November 2000, entered into force on 29 September 2003, and the United Nations Convention against Corruption, adopted by General Assembly resolution 58/4 of 31 October 2003, entered into force on 14 December 2005.

²⁷ See Article 13 of the Convention.

executing State. For the purposes of the present analysis, under Article 14(2), States Parties are asked to give priority consideration to returning the confiscated assets to the requesting State Party, to the extent permitted by domestic law and if so requested. This option is intended to award compensation to the victims of crime or to return the proceeds or property to the legitimate owner.

On the other hand, the Convention against Corruption has been described as a ‘new dawn’,²⁸ thanks to its innovative and far-reaching provisions on asset recovery, whose purpose is to ensure the effective respect of the duty to recognise and enforce foreign confiscation orders. As to the destination of confiscated assets, Article 57 attaches priority to the return of confiscated assets to the requesting State or to the prior legitimate owners. This provision is particularly important, since the phenomenon of international corruption often involves developing “victim” countries, where the detrimental effects of high-level corruption are sadly evident.²⁹ Moreover, the return to the requesting State is a priority in case of embezzlement and subsequent laundering of public funds, since the national community *per se* is directly affected by the criminal conduct.

A similar provision can be found in the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, whose Article 25(2) states that the requested State can ‘give priority consideration to returning the confiscated property to the requesting Party so that it can give compensation to the victims’.³⁰ Nonetheless, the Convention does not refer to the return to the requesting State *per se*, for compensation to the communities affected by the crime and therefore leaves no space for social reuse considerations. As far as the EU is concerned, the problem of the destination of confiscated proceeds has been a matter of concern over the past years in several policy documents. For instance, in a 2008 communication on the proceeds of organised crime, the Commission acknowledged the existence of different practices in the Member States with regard to the use of recovered assets.³¹ In this perspective, the Commission stressed the need to promote and spread the experiences which had proven to be effective at national level, including some forms of social reuse taken from the Italian context, where – as we will consider in more detail in the next steps of the analysis – assets can be entrusted to local public authorities, non-governmental organisations and associations for social uses. Accordingly, the matter under consideration was formally enshrined in the policy agenda of the Area of Freedom, Security and Justice by the Stockholm

²⁸ A. Bacarese, ‘Advancing international understanding and cooperation in combating fraud and corruption: recovering stolen assets – a new issue?’, *ERA Forum*, 2009, vol. 10, at p. 423.

²⁹ On this subject see L. Cockcroft, *Global corruption. Money, power and ethics in the modern world*, Philadelphia: University of Pennsylvania Press 2012.

³⁰ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, CETS n. 198, opened for signature in Warsaw on 16 May 2005 and entered into force after six ratifications on 1 May 2008.

³¹ Communication from the Commission to the European Parliament and the Council COM(2008)766final, of 20 November 2008 – Proceeds of organized crime: ensuring that “crime does not pay”, not published in the OJ.

Programme of 2009,³² where the European Council called upon the Commission and the Member States to plan new rules allowing a more effective identification of assets of criminals and to “consider reusing them wherever they are found in the EU common space”.³³ In 2011, a similar concern was expressed by the European Parliament, which urged the Commission “to accept and support the urgent need for European legislation on the reuse of crime proceeds for social purposes”,³⁴ in order to re-inject into legal economic circuits the resources of criminal organisations and their associates.³⁵

Responding to these pressures, the Commission launched a proposal for a new Directive on the freezing and confiscation of the proceeds of crime, which, as mentioned above, was eventually adopted in April 2014.³⁶ The Commission Communication made very limited and indirect reference to the destination of assets for public interest. As a matter of fact, it merely provided for the duty to collect data on the value of the property destined to be reused for law enforcement, prevention or social purposes, on a yearly basis, in order to allow the Commission to review the effectiveness of national confiscation systems.³⁷ Therefore, the Commission’s proposal presupposed the existence of national laws and practices on the matter, but failed to put forward standards common to the Member States.³⁸ The increased vulnerabilities caused by the

³² European Council, The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens, OJ C 115, 4 May 2010, p. 1–38.

³³ Instead, the Hague Programme of 2004 only made a few references to the need for cooperation between law enforcement authorities and civil society. European Council, The Hague Programme – Strengthening Freedom, Security and Justice In The European Union, OJ C 53, 3 March 2005, p. 1.

³⁴ European Parliament, Report on organized crime in the European Union, 6 October 2001, (2010/2309(INI)). The Parliament pointed out that at the EU level only limited attention has been given to the final destination of confiscated assets and that within Member States using confiscated assets for social purposes is not a widely established practice. It also analysed the advantages of the social re-use of confiscated assets and came to the conclusion that there was a clear need for a coherent European approach. A similar position was expressed by the Council: Justice and Home Affairs Council, Conclusions on confiscation and asset recovery of 4 June 2010.

³⁵ Two years before, on 7 May 2009, the European Parliament had adopted Resolution to the Council on the development of an EU criminal justice area, (2009/2012(INI)). The Parliament urged the adoption “without delay” of a legislative instrument “on confiscation of the financial assets and property of international criminal organisations and on their re-use for social purposes”.

³⁶ See the Commission Communication COM(2012)85 final of 12 March 2012, Proposal for a Directive of the European Parliament and the Council on the freezing and confiscation of proceeds of crime in the European Union, not published in OJ.

³⁷ It is interesting to underline that this provision has been eventually amended by the European Parliament and the Council, which have deleted any reference to the collection of data on reused assets. Pursuant to Article 11(1)(d) of the 2014/42/EU Directive, the Member States shall regularly collect and maintain comprehensive statistics on “the estimated value of property recovered at the time of confiscation”.

³⁸ See also the Communication from the Commission to the European Parliament and the Council COM(2010)673 of 22 November 2010, regarding the EU Internal Security Strategy in Action: Five steps towards a more secure Europe, adopted by the European Council on 25–26 March 2010. The Internal Security Strategy of the EU identified serious and organised crime, trafficking in drugs and persons, and corruption, among others, as the main crime-related risks and threats which Europe has to face. The document focused on the need to exploit the synergies among law enforcement

economic crisis and the subsequent new challenges for public authorities to finance growing needs for social services and assistance led the Commission to stress the – symbolic and practical – importance of the destination of confiscated assets. However, no provisions expressly considered this topic, so that it would have been for each Member State to decide whether to opt for such a disposal regime or not. In this vein, despite the appeals made by some non-governmental organisations and the strong criticism raised by the Economic and Social Committee and the Committee of the Regions,³⁹ the text of the proposal was only partially amended by the Civil Liberties, Justice and Home Affairs Standing Committee of the European Parliament. In fact, the Parliament – whose position was eventually approved by the Council at the end of the first reading of the ordinary legislative procedure – had to face fierce opposition to the imposition upon member States of a strict obligation to introduce compulsory forms of social reuse of confiscated assets in their legal orders.⁴⁰ The need to find a political compromise led to the current wording of Article 10(3) of the Directive 2014/42/EU, pursuant to which “Member States shall consider taking measures allowing confiscated property to be used for public interest or social purposes”.⁴¹

4. DIRECTIVE 2014/42/EU AND SOCIAL REUSE OF CONFISCATED ASSETS: NATURE AND IMPLICATIONS OF ARTICLE 10(3)

Some commentators have argued that this provision does not impose any obligation on the Member States, since national authorities are not asked to put in place specific forms of social reuse of assets.⁴² Also, the notions of social reuse and public interest

agencies; however, it did not exploit the potential synergies between public actors and the private sector and did not include any mention of the social re-use of confiscated assets.

³⁹ See for instance the opinion of the Committee of the Regions on the EU Internal Security Strategy, OJ C 259, 2 September 2011, p. 70–75. The Committee recommended that a legislative proposal should specify, “the municipality in which the confiscated property is located as the natural recipient of the right of ownership thereof. [...] The Committee recommends that this should be done for a socially useful purpose, such as giving it to charities and cooperatives, not least because local communities bear the highest cost of the activities of organised criminals and the social re-use of confiscated property has a high value in terms of compensating communities affected by this serious issue”.

⁴⁰ On the dialogue between the European Parliament and the Council during the legislative procedure see F. Mazzacupa, ‘La posizione della Commissione LIBE del Parlamento europeo alla proposta di direttiva relativa al congelamento e alla confisca dei proventi di reato’, www.penalecontemporaneo.it, available at www.penalecontemporaneo.it/area/3-/17-/2424-la_posizione_della_commissione_libe_del_parlamento_europeo_alla_proposta_di_direttiva_relativa_al_congelamento_e_alla_confisca_dei_proventi_di_reato/ (last visited on 15 April 2014).

⁴¹ This provision is not a good example of the “sober and precise legal wording” for which the first EC legal instruments have been praised: P. Pescatore, ‘Some critical remarks on the Single European Act’, *Common Market Law Review*, 1987, vol. 24, n. 1, p. 9.

⁴² See A.M. Maugeri, ‘La direttiva 2014/42/UE relativa alla confisca degli strumenti e dei proventi da reato nell’Unione europea: traguardo ed efficienza: un *work in progress*’, www.penalecontemporaneo.it.

have been considered too vague to give rise to a duty of implementation at national level, the timely and correct respect thereof the Commission could hardly verify. Nonetheless, there appears to be sufficient ground to support a different view. According to the well-settled general theory of the EU sources of law,⁴³ the provisions of secondary law cannot be deprived of any practical effect or rendered redundant. Instead, their *effet utile* should be maximised, to the extent that the full effectiveness of EU law is a cornerstone principle of the European legal order and of its relationship with national law.⁴⁴ This peculiar approach is confirmed by the criteria commonly used for interpreting EU law: a literal interpretation of the text of the Directive as well as a teleological reading of its meaning highlight that Article 10(3) entails a procedural obligation for Member States, whose content changes depending on the national legal background. For instance, the States which do not recognise any form of social reuse are under the duty to conduct – and to communicate to the Commission – an in-depth analysis of the advantages and disadvantages of introducing such measures; other States could simply consider the opportunity to improve the effectiveness of their disposal regime or to adopt foreign best practices in their legal orders.⁴⁵ In any case, every Member State will be asked to communicate to the Commission the initiatives conducted with the purpose of implementing Article 10(3) of the Directive, otherwise the “guardian of the Treaties” will be entitled to initiate an infringement procedure under Article 258 TFEU.⁴⁶

Besides the possible consequences of a failure to comply with the procedural obligation described, the importance of Article 10(3) should not be underestimated also due to its highly innovative character and its potential field of application. On the one hand, Article 10(3) is the sole provision in EU secondary law addressing this matter comprehensively. More precisely, only one – partially similar and extremely specific – precedent can be identified in Regulation 995/2010 on the obligation of the

it, available at www.penalecontemporaneo.it/tipologia/4-/-/3287-la_direttiva_2014_42_ue_relativa_alla_confisca_degli_strumenti_e_dei_proventi_da_reato_nell_unione_europea_tra_garanzie_ed_efficienza_un_work_in_progress/ (last visited on 15 April 2015).

⁴³ See for instance S. Prechal, *Directives in EC law*, Oxford: OUP 2005.

⁴⁴ See, for instance, ECJ, *Stefano Melloni v. Ministerio Fiscal*, 26 February 2013, case n. C-399/11.

⁴⁵ The original text of the Commission’s proposal lent indirect confirmation of these aspects. As already mentioned, Article 11 called upon Member States to collect and maintain comprehensive statistics, in order pave the way for a scrutiny of the effectiveness of the national confiscation system. Among the various elements, the proposal also listed “the value of the property destined to be reused for law enforcement, prevention or social purposes”.

⁴⁶ In particular, in the light of Article 260(3) TFEU, when the Commission brings a case before the Court pursuant to Article 258 on the grounds that the Member State concerned has failed to fulfil its obligation to notify measures transposing a directive adopted under a legislative procedure, it may directly specify the amount of the lump sum or penalty to be paid by the Member State. Therefore, the lump sum and/or the penalty payment can be imposed by the Court even at the end of the first infringement procedure.

operators who place timbers and timber products on the market.⁴⁷ In case of infringements of the provisions of the Regulation, Article 19 calls upon every Member State to take effective, proportionate and dissuasive penalties, aiming to ‘effectively deprive those responsible of the economic benefits’ illegally obtained. Recital nN. 27 further specifies that the penalty formally implies the destruction of illegally harvested timber, however “such timber or timber products should not necessarily be destroyed, but may instead be used or disposed of for public interest purposes”.

On the other hand, the scope of application of Directive 2014/42/EU extends to all those serious crimes with a cross-border dimension listed in Article 83(1) TFEU.⁴⁸ Therefore, unlike previous international instruments, the Directive does not apply to a specific offence, but involves the core of the criminal competence of the EU.⁴⁹ In this regard, the last sentence of Article 3 introduces an open clause allowing for further extension of the scope of the common rules on confiscation, in case other EU instruments provide specifically that the Directive applies to the criminal offences harmonised therein.⁵⁰

What is more, the scope of application of the Directive – and subsequently the potential practical implications of Article 10(3) – is further expanded by an innovative approach to the targets of confiscation orders. As a matter of fact, in line with the previous European acts on the subject, the Directive refers to the instrumentalities of crime, to the proceeds and to property, but expressly supports a wider notion of such crime-related assets. In particular, under Article 2(a) of Framework Decision 2005/212/JHA, the proceeds of crime were described as any economic advantage stemming from criminal offences, consisting of any form of property.⁵¹ This vague definition constituted the breeding ground for conflicting interpretations at national level, since some Member

⁴⁷ Regulation (EU) 995/2010 of the Council and the European Parliament of 20 October 2010, laying down the obligations of operators who place timbers and timber products on the market, OJ L 295, 12 November 2010, p. 23–34.

⁴⁸ Article 3 of the Directive provides for a clear list of the crimes involved and of the EU legal instruments currently covering such crimes. The provisions of Article 3 must therefore be considered dynamic references, capable of evolving in case of reform or replacement of the Directives or Framework Decisions expressly mentioned there.

⁴⁹ Moreover, Article 14 clarifies that the Directive replaces Joint Action 98/699/JHA, Article 1(a) and Articles 3 and 4 of Framework Decision 2001/500/JHA, and the first four indents of Article 1 and Article 3 of Framework Decision 2005/212/JHA. Therefore, as to the latter Framework Decision, Articles 2, 4 and 5 remain into force for criminal activities which fall outside the scope of the Directive 2014/42/EU. As a matter of fact, the Framework Decision under consideration applies to all criminal offences punishable at national level by deprivation of liberty for at least one year.

⁵⁰ The Directive does not specify whether such acts have to take the shape of Directives or Regulations. In any case, they have to harmonize a certain crime. The open clause under consideration has not been applied after the entry into force of the new rules on confiscation: Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive), based on Article 83(2) TFEU makes no reference to confiscation.

⁵¹ This definition stems from Article 1(a) of the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. Accordingly, Article 3 of the Framework Decision 2001/500/JHA stated that the words “proceeds and “property”, for the

States limited the scope of application of the national implementation measures only to economic advantages directly linked to a crime, thereby excluding indirect proceeds and subsequent reinvestments or transformations of such benefits. Article 3(a) of the Directive meets the need for a clearer “European guidance” on this topic and extends the definition of proceed to any advantage which “derives directly or indirectly from a criminal offence, including any form of property and any subsequent reinvestment or transformation of direct proceeds and any valuable benefits”.⁵² Thus, the scope of application of the Directive has been remarkably expanded, since the notion of proceeds involves any property which has been transformed or converted, fully or in part, into other property, and that which has been intermingled with assets acquired from legitimate sources, up to the assessed value of the intermingled proceeds.⁵³ The broad definition also includes the income or other benefits derived from the sale, transformation or conversion of the proceeds of crime. Accordingly, the Directive provides for a broad definition of “property”, which is to a large extent similar to the wording of Article 1, second indent, of Framework Decision 2005/212/JHA.⁵⁴ Indeed, the notion includes “property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property”.⁵⁵

Since the Directive does not replace *in toto* the previously existing EU provisions on confiscation, concerns were raised with regard to the risk of inconsistencies between different notions of proceeds and property. In fact, some provisions of Framework Decisions 2001/500/JHA and 2005/212/JHA are still in force, due to the fact that their field of application does not match perfectly with the definitions of the

purposes of that Third Pillar act, had to be defined and interpreted in accordance with the text of the 1990 Convention of the Council of Europe.

⁵² In this regard, the wording of the Directive partially shares the broad definition of proceeds provided for in other international instruments, such as the UNTOC and UNCAC Conventions, mentioned above. For instance, in the light of Article 2(e) of the former, “proceeds of crime shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence”.

⁵³ The Civil Liberties, Justice and Home Affairs Standing Committee of the European Parliament wanted to include goods held jointly with the spouse. This proposal of amendment was intended to avoid the frequent and crafty use to transfer the goods fictitiously to the spouse just in view of subtracting property from any Court orders. However, the proposal was not endorsed by the Council. On the contrary, the European Bar Association had urged the Commission and the European legislators to limit the definition of proceeds to the advantages directly deriving from the crime.

⁵⁴ As to the concept of instrumentalities, the definition has not changed over the time: since the Framework Decision 2001/500/JHA, they have been described as “any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences”. See Article 2(3) of the Directive 2014/42/EU. The same definition can be found at Article 1(c) of the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism.

⁵⁵ However, the notion is more precisely explained in recital no. 12 of the Directive, in the light of which such documents or instruments can include, for example, financial instruments, or documents that may give rise to creditor claims and are normally found in the possession of the person affected by the relevant procedures.

new Directive.⁵⁶ Interestingly, on the basis of a proposal put forward by the European Parliament, the potential gaps have been bridged by extending the new wide notion of proceeds and property to criminal offences not covered by the Directive. Therefore, always bearing in mind the urgent need to respect the principle of legality, the Member States are asked to uphold a uniform and coherent meaning of the notions at stake.⁵⁷

The potential practical consequences of Article 10(3) also depend on the application of other EU provisions on the disposal of confiscated assets. As already underlined, this aspect of the confiscation process has been largely neglected by the EU institutions so far. The only provision on the subject – which Article 10(3) must be read in conjunction with – is Article 16 of Framework Decision 2006/783/JHA, setting out some general criteria on the relationship between authorities of different Member States as to the use or destination of confiscated assets. Pursuant to Article 16(4), the foremost criterion governing the disposal phase is the “freedom of negotiation” between the Member States involved: any agreement concluded by the national authorities – whether preceding or following the confiscation order – prevails over the other criteria set out by the Framework Decision. As a consequence, some authors have pointed out that this provision is almost detrimental to the search for minimum common standards binding the Member States: the Framework Decision under consideration would not even establish mandatory minimum standards, but instead merely directing provisions from which the Member States would be free to deviate.⁵⁸ In all other cases, the disposal regime and the role of the authorities of the requesting and executing Member States depend on the nature of confiscated proceeds or property. Article 16(1) governs the powers of the executing State as regards money which has been obtained from the execution of a confiscation order. If the amount is below 10,000 Euro, the sum shall accrue to the executing State itself; if that threshold is overcome, 50% of the amount has to be transferred to the issuing State.⁵⁹ The following paragraph entitles the

⁵⁶G. Arcifa, The new EU Directive on confiscation: a good (even if still prudent) starting point for the post-Lisbon EU strategy on tracking and confiscating illicit money, University of Catania working paper n. 64/2014, available at www.cde.unict.it/sites/default/files/Quaderno%20europeo_64_2014.pdf (last visited on 16 April 2015).

⁵⁷ Another important element capable of indirectly enhancing the impact of Article 10(3) of the Directive regards the various forms of confiscation introduced by the Directive itself. As a matter of fact, the European Parliament and the Council managed to find a delicate political compromise on a new regime on third party confiscation, extended powers of confiscation and non-conviction based confiscation. These forms of confiscation strengthen the powers of law enforcement authorities in this field to a significant extent and increase the chances to deprive criminals and criminal enterprises of their assets. The relevant provisions – namely Articles 4(2), 5 and 6 of the Directive – would deserve an in-depth analysis and have been attentively commented by many authors so far. For the purposes of the present article, however, they are of minor importance, since they only influence indirectly and potentially the practical implications of social reuse of confiscated assets. For a specific study of these aspects see, from both European and national perspectives, see G. Arcifa, The new EU Directive on confiscation, *op. cit.*

⁵⁸ T. Kolarov, ‘Mutual recognition of judicial decisions on confiscation’, *op. cit.*

⁵⁹ This approach is quite similar to the 1990 Convention and the UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, where the disposal of confiscated property

authorities of the executing State to decide the destination of property other than money. In particular, the asset can be sold, transferred to the issuing State or, on a residual basis, disposed of in another way according to the law of the executing State. Henceforth, executing Member States benefit from an evident incentive to resort to sale as a disposal option for movable or immovable goods, due to the possibility to withhold 50% of the amount. In order to strengthen the tendency to resort to social reuse, the transfer of property under Article 16(2) would be highly desirable; however, it does not constitute a must-do option, rather an opportunity that compels the State to bear the financial burdens of the execution of the confiscation order, without receiving any direct benefits.

Therefore, Article 10(3), read in conjunction with Article 16 of the Framework Decision 2006/783/JHA, marks a step forward in spreading a positive attitude to cooperation procedures in the field of confiscation orders. The social reuse of confiscated assets represents one of the disposal options available to the Member States, nonetheless clearer policy choices should be taken in order to offer appropriate incentives to the executing State, taking into account its role in the disposal phase.

5. SOCIAL REUSE OF CONFISCATED ASSETS IN NATIONAL LAWS AND PRACTICES: BETWEEN TRADITIONAL AND INNOVATIVE DISPOSAL OPTIONS

The destination of confiscated assets for social reuse is an existing option in the legislation of the majority of the EU Member States. However, it is not easy to extract from the Member States examples for a common definition for “reuse for social purpose”, since very different and to a certain extent diverging solutions and practices are being experienced at national level. As already underlined, regulations concerning confiscation measures vary widely from country to country, despite the adoption of common minimum standards at European level: the disposal phase does not constitute an exception, also due to the difficulty of approaching or better coordinating diverging interpretations of new and ever-evolving concepts, such as the notions of social reuse or social purposes.

The national laws and practices on social reuse of confiscated assets have been analysed in-depth in a recent study developed within the framework of the RECAST Project (REuse of Confiscated Assets for Social Purposes: towards common EU standards), financed by the European Commission, DG Home Affairs, under the ISEC Programme. The final report of the project was drafted by the Department of European Studies and International Integration of the University of Palermo and Flare Network, under the auspices of UNICRI and with the support of the Italian

is left to the domestic law of requested States, unless the State agrees otherwise. See R. Golobinek, *Financial investigations and confiscation of proceeds from crime*, Council of Europe Training Manual for Law Enforcement and Judiciary, 2006.

Agenzia Nazionale per l'Amministrazione e la Destinazione dei Beni Sequestrati e Confiscati alla Criminalità Organizzata.⁶⁰ The key-finding of this report is that the main disposal options, in the vast majority of the Member States, are sale or use by public authorities. This situation is mainly due to the fact that the disposal phase is usually instrumental to ensuring compensation for the victims of crime and to either covering judicial costs or sustaining public budgets in general.⁶¹

At the same time, however, many national legal orders provide for various forms of reuse, which are usually qualified as a last resort or a residual solution. These options can be divided into two main categories, namely indirect and direct forms of social reuse. The measures of the former group are the most common and usually involve public authorities, called upon to invest the proceeds in funds and projects focused, for instance, on crime prevention and support to victims. In order to foster indirect social reuse, many Member States have extended the range of potential beneficiaries or the scope of traditional transfers of property, thereby allowing for the reuse of certain types of assets for the public interest or charitable purposes. In these cases, the transfer of property for social purposes is mainstreamed within the general legislation on disposal of confiscated assets and is usually applied as second option to ordinary public sale. As a consequence, despite their positive social impact, these forms of social reuse do not entail an active involvement of civil society, which is a mere beneficiary of such measures. Moreover, assets are often treated as public resources or mixed up with public funds, so that their true origin is disguised and citizens are prevented from fully identifying and appreciating the transformation of formerly-illegal gains into resources used for the benefit of the whole community.

Instead, the latter category includes more innovative approaches to social reuse, which to varying degrees imply a direct and pro-active involvement of civil society organisations. In this context, only a handful of Member States have adopted a comprehensive set of rules on the matter, even establishing specialised central agencies responsible for the management of the overall process of allocation of the confiscated assets. One of the best examples is Italy, which over the years has developed a remarkable expertise on this matter, also due to the deeply rooted presence of mafia-type criminal organisations on its territory. The Italian antimafia code, within the framework of an extremely detailed regulation of the disposal phase, among the various available options, provides for the opportunity to hire out companies to workers' cooperatives, in case their business is likely to continue, and to allocate real

⁶⁰ The final reports and all other information on the project are available at <http://flarenetwork.org/fight/recast> (last visited on 15 April 2015).

⁶¹ See also B. Vettori, T. Kolarov, Disposal of confiscated assets in the EU Member States Laws and practices, Working paper of the Centre for the Study of Democracy of the University of Palermo, available at www.csd.bg/artShow.php?id=17103 (last visited on 16 April 2015). Destruction of confiscated goods is a widespread option too, although it applies only under strict conditions. For instance, unusable, irretrievably depreciated or illegal items are usually destined to this disposal option.

estate to local entities, for institutional purposes or social reuse. In this case, assets can be transferred, for instance, to the municipality where they are located and it is for the public entity to manage the property or to transfer it to civil society organisations, on the basis of the collective needs of the community involved. A similar approach can be found in Hungary, where Act XII of 2000 allows for the allocation of confiscated assets to NGOs, taking into account the indications of a Council for Charity, which selects the potential beneficiaries. However, the same Act limits the resort to this form of disposal to a list of movable goods, such as food, clothing, telecommunications equipment and toys, whereas land and real estate are excluded.

In Luxembourg, a law dating back to 1992 introduced social reuse of proceeds from drug trafficking and money laundering and established the Fonds de lutte contre le trafic de stupéfiants. In 2010, the scope of intervention of the fund – now renamed Fonds de lutte contre certaines formes de criminalité – was extended, in order to support initiatives against several other serious crimes. The specific focus on drug trafficking also characterises the French legal order, since decree no. 322 of 17 March 1995 established a fund to reinvest the proceeds of confiscated assets in connection with this crime, under the supervision of a centralised body, the Mission interministérielle de lutte contre la drogue et la toxicomanie.

6. CONCLUDING REMARKS: A LONG ROAD AHEAD?

The experiences reported show that the Member States and the EU have still a long way to go to reach the objective of the maximisation of the value of confiscated assets. A value which is not only material or economic, but also social and symbolic, since an effective and transparent reuse of those assets for public interest is able to foster the culture of legality and to raise the citizens' confidence in the law enforcement system. Despite the gradually increasing attention of both the European institutions and the national authorities to the opportunities offered by the social reuse of confiscated assets, this disposal option still remains underexploited.

At the EU level, in all probability, the entry into force of Directive 2014/42/EU will not change the current scenario, since the Member States are not bound by the obligation to implement common Union standards on this matter. Instead, they are merely called upon to consider the opportunity of introducing this disposal option in their legal order, without additional guidance on the key elements which the social reuse of confiscated assets should respect and be based on. Moreover, the rules on the confiscation process lay at the core of national criminal systems, which often diverge sharply on this matter. As a consequence, many provisions of the Directive – and Article 10(3) is a perfect example – are worded vaguely and leave significant discretionary power to the Member States as to their implementation. In this perspective, nonetheless, it is worth remembering that the Member States have traditionally failed to correctly and timely implement the Framework Decisions adopted in the field of seizure and

confiscation. Several reports issued by the Commission on the state of the art at national level confirm that the vast majority of the States have to a large extent infringed their obligation to transpose the EU minimum rules in their legal orders. After the entry into force of the Lisbon Treaty the Commission is entitled to initiate infringement procedures against the Member States also with regard to judicial cooperation in criminal matters, however this structural tendency highlights that the Member States are willing to maintain and protect the peculiarities of their confiscation schemes. For the same reason, Denmark and the United Kingdom are not taking part in the Directive and therefore are not bound by its provisions, pursuant to the opt-out regime they benefit from in the light of Protocols n. 21 and 22.⁶²

Also, the impact of Article 10(3) of the Directive under consideration could be hindered by the peculiar functioning of the mechanisms of judicial cooperation in the disposal phase introduced by the Framework Decision 2006/783/JHA for cross-border situations.⁶³ In fact, Article 16 of the Framework Decision, analysed above, assigns a central role to the State of execution of the confiscation order, while usually the rules on judicial cooperation in criminal matters impose on the receiving State the obligation to recognise and execute the foreign judicial decision swiftly and without any additional formality. The rules on the application of the principle of mutual recognition to criminal judicial decisions pursue the objective of strengthening cooperation between national authorities, so that the “master” of the mechanism is the issuing State and the receiving one is under the primary duty to “recognise and execute”. The wide discretionary and operational power of the executing authority could then discourage mutual trust between the authorities involved.

As to the national level, judicial and law enforcement authorities have to face several operational challenges, which might hamper the functioning and the effectiveness of the disposal phase. Some of them derive from the material characteristics of the assets, such as their bad condition or rapid deterioration, the presence of mortgage liens or other third party claims.⁶⁴ Others depend on legislative or institutional gaps and range from the general attitude of the authorities involved to the lack of adequate cooperation between the various actors of the disposal process, *a fortiori* in cross-border situations. In response to these challenges, a specialised approach to the disposal phase would be necessary, especially as far as social reuse options are concerned.

⁶² This is quite surprising, since Denmark had taken the initiative for the adoption of Framework Decision 2005/212/JHA.

⁶³ It is important to point out, however, that the Directive does apply also to purely national situations, in case the crime the confiscation order stems from falls under the scope of application of the Directive itself.

⁶⁴ See J-P. Brun, L. Gray, C. Scott, K.M. Stephenson, *Asset recovery handbook. A guide for practitioners*, Washington: The World Bank 2011. The authors refer to common types of assets and associated problems. This is important, as not every type of assets can be re-used for specific purposes. Aside from money in its various forms and to some extent properties, other forms of assets such as businesses, livestock and farms, and precious metals, jewels and artwork are very difficult to manage and to sell.