

Research Questionnaire (proposal):

Part A – Analysis by each Member of the Research Team of the legal order of their EU Member State

Introductory question: How is the extended confiscation understood in legal order of your EU Member State?

1. Confiscation of proceeds of crime and the system of sanctions

1. Hungarian criminal codes (after 1998) does not provide for general confiscation. No criminal sanction is regulated which is designed to deprive offenders from any property which is not related to the commission of the criminal offence.

Hungarian criminal code regulates to similar, but not identical criminal sanctions, namely forfeiture and confiscation. Both types of criminal sanctions are designed to deprive offenders from certain objects related to the commission of a criminal offence. Forfeiture targets only tangible objects (cars, jewels, cash etc.). Confiscation enables the courts to deprive offenders from their tangible and intangible objects (e.g. pecuniary claims, balance of accounts, crypto currencies).

Hungarian Criminal Code regulates several sub-species of both sanctions, e.g. forfeiture of instruments of crimes and confiscation of property provided for the purpose of commission. These sub-species may be differentiated with regard to the type of relation between the property and the criminal offence. The main variants of forfeiture and confiscation are illustrated by Table 1. Confiscation of proceeds of crime is only a variation of the criminal sanction of confiscation.

Forfeiture			Confiscation		
tangible property			property		
instruments of crime	products of crime	objects of crime	proceeds from crime	provided for the purpose of crime	advantage given by active corruption offences
knives	illegally produced liquors	smuggled goods	(incl. advantage received by passive corruption offences)	money given to the hitman	

2. Confiscation of proceeds from crime

The central notion of Hungarian proceeds of crime legislation is property acquired during or in connection with the commission of the criminal offence.

2.1. Basic forms of confiscation of proceeds from crime

The regulation differentiates between two basic forms of confiscation of proceeds from crime.

These variations may be distinguished on the basis of whether property is acquired

- by the perpetrator [HCC 74 (1) a)] or
- by third parties (namely persons who are neither perpetrators, nor victims of offences) [HCC 74 (2)].

Both versions are independent (basic) types of confiscation of proceeds of crime, neither of them is labelled as “extended” confiscation in Hungary.

Both basic versions of confiscation require the establishment (beyond reasonable doubt) that a) a criminal offence was perpetrated and b) somebody (the perpetrator or the third person) acquired property on connection the commission thereof.

Confiscation may be ordered if the perpetrator is not punishable because he or she is under the age of criminal responsibility, he was insane or was not punishable because the subsequent extinction of punishability (e.g. death) [HCC 75 (2)]. Even in these cases, the commission of the criminal offence and the involvement of the non punishable perpetrator shall be proven beyond reasonable doubt.

2.1.1. Proceeds of crime acquired by the perpetrator

The first version of confiscation of proceeds from crime targets the gross profit originated from the offence. Therefore the whole income of drug dealers shall be confiscated, including the amount of money for which the drug was originally purchased (Uniformity Decision of the Supreme Court No. 1/2008).

2.1.2. Acquired by third persons

The second version targets explicitly the net profit (enrichment) of third parties who acquired property during or in connection with the commission of the criminal offence [HCC 74 (2)]. This second regulation is applied when tax fraud resulted in profits for companies or the drug dealer had been paid by a customer who transferred money to an account of a relative or a friend of the offender. The application of this second form is excluded if the third person acquired property for remuneration and acted bona fide [74 (5) b)]

2.2. Additional forms of confiscation

2.2.1. Confiscation of surrogates

Hungarian criminal code provides for confiscation of surrogates. Its regulation enables the confiscation of property which has been substituted for property derived from or in connection with the commission of a criminal offence [HCC 74 (1) d)]. This additional form of confiscation is applicable regardless whether the property was originally acquired by the perpetrator or by third person.

2.2.2. Confiscation of (subsequently) transferred property

Hungarian criminal law provides no specific regulation on confiscation of property transferred subsequently (after the commission of the offence) by the perpetrator to third parties.

If this is the case, the regulation on the second basic form of confiscation [HCC 74 (2)] may be applied. The scope of this regulation is limited, as it was indicated (cf. point 2.1.2), to the net profit acquired by (mala fide) third parties.

a) If the transfer involved no remuneration, the whole property acquired shall be confiscated from the third party (gifts of illegal origin) irrespective of the good faith of the receiver.

b) If the transfer involved a proper remuneration, the price given to the perpetrator shall be confiscated from the offender under the regulation on confiscation of surrogates [HCC 74 (1) d)] (cf. point 2.2.1). In this case the third parties is exempted from confiscation, since no enrichment is established.

If the transfer involved only partial remuneration (lower price), the application of the regulation of confiscation of surrogates shall be applied in combination with the regulation on confiscation of enrichment (in form of value confiscation cf. point 2.2.4.). If the transfer involved proper remuneration, bona fide third parties are exempted from confiscation if they acquire the property for remuneration [HCC 74 (5) b)]. [In this case only the proper remuneration is to be confiscated from the offender under the regulation on confiscation of surrogates [HCC 74 (1) d)] (cf. point 2.2.1).

This regulation has to be applied if the property enriched the third person and he or she transfers the enrichment to a fourth person.

2.2.3. Confiscation of property against successors

Hungarian criminal code contains a separate provision on confiscation of property against successors. According to this provision, if the perpetrator has died, the enriched third person has died or the enriched business organization has been transformed, confiscation shall be ordered against the successor [HCC 73 (3)].

This form of additional confiscation may also target property a) acquired originally by the perpetrator, b) enriched a third person (originally or subsequently) or cc) being a surrogate of the original proceeds of crime.

2.2.4. Value confiscation

Hungarian criminal code provides for value confiscation if the property subject to confiscation

- can no longer be found [75. § (1) a)],
- is inseparable from other property or its separation would cause disproportionate difficulty [75. § (1) b)],
- was acquired by bona fide third parties and for remuneration [75. § (1) c)].

First variation of value confiscation presupposes that the original proceeds or its surrogates may not be confiscated. It is, therefore, subsidiary to both basic forms of confiscation of proceeds of crime, confiscation of surrogates and confiscation of subsequently transferred property.

Second variation of value confiscation may be ordered when the property is subject to confiscation as original proceeds of crime, its surrogate or transferred property.

Third version of value confiscation may be ordered only against the perpetrator. This version of value confiscation requires that the third person acted for remuneration and bona fide and, therefore, confiscation is excluded against him or her (cf. report points 2.1.2. and 2.2.2.). Confiscation of surrogates in this case also takes precedence over value confiscation.

The Hungarian system of confiscation regarding proceeds from crime is illustrated by Table 2.

Confiscation	acquired by	property	transfer	remuneration	bad or good faith of the receiver	Legal base for confiscation
Confiscation normal (proven origin)	acquired by the perpetrator	exist by the perpetrator	--	--	--	74 (1) a)
		exist, but transferred	without remuneration		mala fide	enrichment from third party [74 (2)]
					bona fide	
			with remuneration	total	mala fide	surrogate from perpetrator 74 (1) d)
				partial		surrogate from perpetrator [74 (1) d)] and enrichment from third party [74 (2)] in form of value confiscation [74 (5) b)]
				total	bona fide	confiscation of surrogates or value confiscation [HCC 75 c)]
			exist, but death of the perpetrator			
		no longer exist				value from perpetrator

						or [75 (1) a)]
		intermingle with other property	-			value from perpetrator [75 (1) b)]
	acquired by third person					enrichment from third party [74 (2)]
	acquired by third person	transferred				see mutatis mutandis cases related to transfer by the perpetrator
	acquired by third person	successor of third person				against successor [74 (3)]

2.5. Extended confiscation

In Hungarian criminal law, extended confiscation is a special type of confiscation of proceeds of crime which

- requires the establishment (beyond reasonable doubt) of the commission of a criminal offence, and
- is based on presumptions on illicit origin of certain properties.

From 2016, Hungarian criminal law provides for two types of extended confiscation.

2.5.1. Older variation of extended confiscation [HCC 74/A (1)]

First (older) variation of extended confiscation is triggered by conviction for specified offences. The short list of relevant crimes includes participation in a criminal organisation, trading in drugs, aggravated cases of smuggling in migrants.

This sanction targets property acquired during the commission of specified offences.

The application of the extended confiscation was excluded if the legitimate origin of the property was proven (reversal of the burden of proof with regard to the origin of property).

2.5.2. New variation of extended confiscation [HCC 74/A (2)]

Second (newer) type of extended confiscation is triggered by a conviction for specified offences. The list of relevant crimes includes trading in drugs, trafficking in human beings, forced labour, certain prostitution related offences, certain forms of child-pornography child-labour, certain corruption offences, terrorism, extortion,

counterfeiting money, money-laundering, This list contains offences harmonized on European level, but also crimes which are regulated without any European standard. The sanction may be applied, only if the establishment of disproportion (property or lifestyle with regard to legitimate income) is established beyond reasonable doubt. The scope of the sanction is directed to property acquired by the offender in the five years prior to the commencement of the criminal proceedings. The application of this type of extended confiscation is also excluded if the legitimate origin of the property was proven (reversal of the burden of proof with regard to the origin).

Two types of extended confiscation are compared in Table 3 below.

	Version 1	Version 2
Trigger offences (conviction)	shorter list of offences	longer list of offences
special requirement of applicability	--	disproportionality
scope	during the commission from any origin	five years prior criminal proceedings
burden of proof	reversal of the burden of proof	

2.5.3. Additional and extended confiscation

Property under extended confiscation provisions may not rise the application of additional regulation on confiscation of surrogates. Confiscation of surrogates presupposes that the connection of the property and the criminal offence is proven beyond reasonable doubt. However, surrogates may be confiscated if they (eventually) fall under the applicability of sweeping presumptions included in the extended confiscation regime (acquired five within the years limit).

Extended confiscation regime presupposes that property acquired by the perpetrator. Therefore property under the extended confiscation regime, may not be confiscated from third parties.

Property under extended confiscation, however, may trigger the application of additional forms of confiscation from successors (in case of death of the offender) and value confiscation.

The interrelation of normal confiscation, extended confiscation and additional forms of confiscation is summarized in Table 4 below.

	Confiscation of proceeds of crime		
	Normal		Extended
	commission of the offence		commission of specified offences
offence is proven	beyond reasonable doubt		
acquired by	the perpetrator	third parties	the perpetrator
acquired	in (proven) connection with the criminal offence		during commission 5 years before

acquired by	the perpetrator	third parties	burden of proof
scope	gross profit	net profit	gross profit
criminal origin	shall be proven beyond reasonable doubt by the prosecution		is presumed by the regulation, but may be rebutted (reversal of the burden of proof)
confiscation of surrogates	applicable		not applicable (eventually presumptions may be applied)
confiscation of transferred property from receivers	applicable		not applicable (only property acquired by perpetrator)
confiscation from successors	applicable (death)	applicable (death, transformation)	applicable (death)
value confiscation	applicable		

- **RT 1:** How was the adoption of extended confiscation explained in the process of its introduction into the internal legal system in your EU Member State (e.g. by legal amendments):
 - before the transposition of Directive 2014/42/EU (if compensation regulation existed)?
 - in the transposition procedure into the internal domestic law ?
Was (extended) confiscation seen as unacceptable / acceptable under certain (what?) conditions before the transposition of the Directive 2014/42/EU?

Before the transposition of the Directive 2014/42/ EU, namely from 2001, extended confiscation was regulated by Hungarian criminal law. See. point 5.3.1. Confiscation of proceeds of crime from third parties was also regulated before the transposition of the Directive 2014/42/EU as an independent form of confiscation. See. 5.1.2. and 5.2.2.

After transposition of the Directive 2014/42/EU the scope of extended confiscation was broadened in Hungarian criminal law.

The original version of extended confiscation was preserved (in a slightly modified form), but a new type of extended confiscation was introduced. See. point 5.3.2.

Confiscation of proceeds of crime from third parties remained unmodified (and an independent form of confiscation) after the transposition of Directive 2014/42/ EU. See. points 5.1.2. and 5.2.2.

Extended confiscation was limited to proceeds of crime acquired by the perpetrator. The application of regulation on confiscation from third parties was, therefore, not “extended” by presumptions. See. points 5.3.

- **RT 2:** is there any case-law in your EU Member State relating to confiscation (e.g. of constitutional court, court of appeals), which:
 - referred to (extended) confiscation?
 - applied do (extended) confiscation?
 - rejected the (extended) confiscation?

- formulate any additional criteria / conditions for the admissibility of (extended) confiscation? What are those criteria? Are those criteria are met in the current extended confiscation regimes?

Extended confiscation is a relatively new feature of Hungarian Criminal law. Criminal courts rarely applied the older version regulation of extended confiscation. It was clarified that property acquired during drug trafficking are to be regarded as property subject to confiscation in their entirety, so that the measure is not limited to the purchase price obtained in the course of the trade (Higher Court of Pécs Bf.I.63/2017/10.) ÍH 2018.49, ÍH 2019.7.). In some cases the regulation of the first version of extended confiscation was not applied, since the special trigger offence (trading in drugs) was not established and the presumption was rebutted by the testimony of the spouse of the defendant (Higher Court of Pécs Bf.I.41/2018/9.) ÍH 2019.78

A new type of extended confiscation was introduced in 2016, therefore criminal courts only have started to apply this regulation. Criminal courts are stipulated that new forms of extended confiscation in case of conviction for the offence of trafficking in new psychoactive substances (not categorized yet as drugs) is less favourable to defendants, therefore, the retroactive application of these regulation is not permitted (Municipal Court 28.B.683/2018/17-I.)

- **RT 3:** Is there any specific experience by practitioners in your EU Member State which created a special attitude to (extended) confiscation? (e.g. organised crime, terrorism, drug crime, money laundering)

How did it influence the legislation (formulation of legal provisions of) (extended) confiscation?

No specific experience of practitioners influenced the introduction of regulation on extended confiscation (as it may be established from the preparatory materials).

The original version of extended confiscation was influenced by foreign examples, allegedly the regulation applied by Italy (as it was perceived by the Hungarian legislators).

The version of extended confiscation introduced in 2012 (concerning trading in drugs), was influenced by foreign examples, probably by the early UK system of proceeds of crime legislation.

The current regulation of extended confiscation has been inevitably influenced by the Directive 2014/42/EU.

- **RT 4:** What is the legal nature of extensive confiscation in your EU Member State?

- Is extended confiscation in your EU Member State:
 - a criminal sanction (accessory or principal criminal penalty)?
 - a preventive measure without the nature of criminal sanction (security measure in a broad sense, administrative measure adopted within or outside criminal proceedings)?
 - a precautionary measure on a suspect's assets (civil measure *in rem* or a kind of *ante delictum* criminal prevention measure)?
 - a civil consequence of committing an offense, provided for by criminal law?
 - an autonomous (*sui generis*) instrument of another kind (e.g. a measure aiming at neutralisation of criminal profit and at the removal of illegal proceed)?
- Is there only one type of extended confiscation or are there in fact several different instruments with a common name?
- Does a non-conviction-confiscation exist in your EU Member State?
- Is the proof of guilt of the offender required to apply extensive confiscation?

- Is a reversed burden of proof applied by extended confiscation?
- Are there any other evidence rules / lowered standards of evidence relating to extended confiscation?

In Hungary, confiscation of proceeds of crime is a sanction of substantive criminal law. It was regulated as a punishment in 1998, but from 2001, this sanction is regulated as a measure of substantive criminal law.

Confiscation may be ordered if the perpetrator is not punishable because he or she is under the age of criminal responsibility, he was insane or was not punishable because the subsequent extinction of liability (e.g. death). Even in these cases, the commission of the criminal offence and the involvement of the non-punishable perpetrator shall be proven beyond reasonable doubt.

Extended confiscation was included into the framework of this regulation, therefore, it is also regulated as a measure of substantive criminal law, but it may be applied against certain perpetrators acting without guilt.

Confiscation of proceeds of crime is not regulated in administrative law. Tax law provides explicit provisions for taxation of illicit acts (including criminal offences). Nevertheless, according to this regulation, offenders are not deprived from their entire property acquired by commission of criminal offences, but are required to pay income taxes and tax fines corresponding to their illegal enrichment.

• **RT 5:** What are the legal instruments for the protection of individual rights in your EU Member State

- at each stage of the confiscation procedure?
- in the substantive legal basis for adjudication?

Are considered as sufficient to protect individual rights and freedoms?

It is very hard to answer in general, but the following features of substantive law shall be considered, as marks of legislative self-restraint:

- The system of extended confiscation based on the proven commission specified criminal offences.
- Extended confiscation may be applied only against convicted perpetrators (or persons committing unlawful and criminalized acts without guilt).
- Third parties are not subjected to extended confiscation.
- Hungarian criminal law provides for only rebuttable presumptions with regard to the origin of certain property.
- When normal confiscation applied against third parties, these are exempted from normal confiscation if they acquire the property for remuneration and acted bona fide.
- However if third parties acquire the property bona fide but without remuneration, gifts (originated from proceeds of crimes) are confiscated from them.

Concerning the problems see RT6.

• **RT 6:** Does – in your opinion based on the answer of the above mentioned questions / the literature in your EU Member States – extended confiscation comply with the principles of:

- legality?
- legal specificity of a statute?
- proportionality?

- non-retroactivity of the /more severe/ statute?
- protection of the citizen's trust in the state and law?
- the right to private property?
- the rights to defence?
- the rights to a fair trial?
- the presumption of innocence?
- the right to privacy?
- and others relevant rights – what sort of?
- legality?

Extended confiscation is regulated by the Criminal Code (an act of the Parliament), therefore, the requirement of formal legality is not violated.

Some elements of the Hungarian regulation on extended confiscation (disproportionality) needed judicial interpretation or discretion. The level of uncertainty of these elements is, however, not higher than it is usual with regard to other criminal sanctions (fines, even imprisonment).

Concerning the non-retroactivity principle cf. RT2.

It is highly questionable, however, whether the new regulation is in line with the proportionality principle. The list of “trigger offences” is regulated inordinately. Ordinary fraud is a trigger offence only if it is committed in a criminal organization and causes particularly serious or particularly serious damage. Computer fraud is included in the list of trigger offences if it is committed by one perpetrator and caused one forint harm [HCC 74/A (2) points l) and m)].

Part B – Common / Comprehensive Analysis of the Research Team on the basis of the outcomes of Part A

- **RT 7:** How does the extended confiscation relate to the fundamental rights and general principles of EU law guaranteed by the Charter of Fundamental Rights and constitutional orders of EU Member States?
- **RT 8:** What are the limits of acceptable (not infringing on their essence) interference of instruments of crime prevention like extended confiscation with fundamental rights and general principles of EU law and constitutional orders of EU Member States?