



**Training course "Legal regulation on confiscation of property in Latvia and European Union; ensuring effective execution mechanism"  
17-18 October 2012, Riga**

**Summary of the lecture**

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**I Temporary measures to enforce confiscation of property in Latvia - seizure of property**

***Basis:***

- possible enforcement of a principal penalty or additional penalty – seizure of property;
- enforcement of a potential coercion measure – seizure of property – applicable to a legal entity;
- potential confiscation of property of crime;
- confiscation of instrumentalities used for committing offences.

***Identification of property subject to confiscation:***

- acquisition of information from public registers in which rights to the property are registered;
- acquisition of information from credit institutions or financial institutions;
- implementation of other required procedural and investigative measures.

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990; Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16 May 2005; Council Framework Decision 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Property **define:**

**"property"** 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, or gain from such property;

**"proceeds"** – means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any "property";

**"instrumentalities"** – means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences.



### ***Who imposes?***

- During the pretrial proceedings seizure is imposed to a property by a decision of the driving force of the proceedings that is approved by the investigating judge;
- During trial the decision is made by the court;
- In case of emergency the driving force of the proceedings may impose seizure of property with the consent of a prosecutor.

### ***When imposed?***

Taking into account grounds for seizure:

- the person must be detained in criminal proceedings or the person must be recognized as a suspect, a prosecution must be brought against the person;
- proceedings regarding the enforcement of coercion measures to the legal entity must be initiated in criminal proceedings;
- there must be a decision regarding the continuation of medical coercion measures in criminal proceedings.

### ***Imposed by whom?***

- To property of the detained, suspect or accused person, including the property due to the persons concerned from other persons;
- To property of crime, including the property of crime located at other persons, property, including financial means, in the value of the property of crime;
- To property of the legal entity in proceedings regarding enforcement of coercion measures to the legal entity;
- To property in proceedings regarding the determination of medical coercion measures.

It is not allowed to enforce seizure to living essentials used by the person whose property is subject to seizure, its family members and their dependents.

### ***Enforcement***

When enforcing seizure of property, its owner, possessor, user or holder is informed about the ban to handle or use them; but the property is exempted and transferred for storage, if required.

The seized property may remain in storage of:

- the owner or user of the property, its family members;
- other natural person;
- other legal entity.

The persons concerned must be explained their responsibility for preservation of the seized property transferred to their storage. These persons sign for this. The property that has been seized, but cannot remain in storage, is transferred for storage to the institutions specified by the Cabinet of Ministers.

## **II International cooperation aspects**

### **Procedures, if the property to be seized is located abroad**



***Cooperation with non-European Union countries - "General procedure":***

***Required procedural documents:***

- a proposition of the driving force of the proceedings in a competent institution to request a foreign country to perform a procedural action;
- a criminal cooperation request regarding performance of a procedural action (seizure of property);
- a decision of the driving force of the proceedings regarding seizure of property that is approved by the investigating judge;
- a court decision, if trial has begun.

***Cooperation with member states of the European Union – "Special procedure":***

***Required procedural documents:***

- a decision of seizure of property:
  - accepted by the main driving force of the proceedings and approved by the investigating judge;
  - at the trial state – a court decision;
- a document envisaged by the Council Framework Decision 2003/577/JHA certifying that the European Union enforces orders regarding freezing of property or evidence:
  - in pretrial proceedings – by approving the decision of the driving force of the proceedings regarding immediate seizure of property, but not later than in three working days (informing the driving force about it) is completed by the investigating judge;
  - at the trial state – completed by the court.

***Enforcement:***

- The decision of the driving force of the proceedings regarding seizure of property, a certification (freezing order) and its translation are submitted to the General Prosecutor's Office.
- The General Prosecutor's Office immediately, but not later than within three working days sends it for enforcement to a competent authority of a member state of the European Union concerned.

***Appeal:***

- In Latvia – complaints regarding actions and the decision of the investigating judge are resolved by the president of the court. An appeal in Latvia does not stop the enforcement of the decision regarding seizure of property in foreign countries.
- In foreign countries – by receiving information from the enforcement country regarding the appeal of the seizure of property, the General Prosecutor's Office may send arguments to a competent authority of the enforcement country required to examine the claim.

**Procedure, when enforcing a foreign request regarding seizure of property**

***Cooperation with non-European Union countries - "General procedure":***



*Basis:*

- a foreign decision regarding the provision of aid in performing procedural actions;
- A decision of a Latvian competent authority regarding the admissibility of the procedural action.

In pretrial proceedings a foreign request is examined and resolved by the General Prosecutor's Office, but till the beginning of criminal pursuit – in the State Police, as well. After the case has been referred to court, the foreign request is examined and resolved by the Ministry of Justice.

*Enforcement:*

- a foreign request regarding seizure of property, when the decision regarding the possibility of enforcement of the request is made, is enforced by an investigating authority, prosecutor's office or a court by order of the competent authority;
- a foreign request regarding seizure of property is enforced in the manner prescribed by the Criminal Procedure Law.

***Cooperation with member states of the European Union – “Special procedure”:***

*Basis:*

- a procedural decision regarding transfer of property for confiscation issued by a competent authority of a member state of the European Union;
- a certification (Certifying document envisaged by the Council Framework Decision 2003/577/JHA certifying that the European union enforces orders regarding freezing of property or evidence).

The possibility of enforcement of a procedural decision regarding provision of property for confiscation issued by a competent authority of a member state of the European Union is evaluated by the General Prosecutor's Office that defines the decision enforcement authority.

In cases when a procedural decision issued for the offences specified in Annex 2 to the Criminal Procedure Law, if a custodial sentence is envisaged for such offence in the issuing country, the maximum limit of which is not less than three years, no verification is performed whether this offence is criminal according to the Latvian laws as well.

*Enforcement:*

The procedural decision regarding securing of property for confiscation in Latvia is enforced in the manner prescribed by Section 28 of the Criminal Procedure Law. No consent of the Latvian investigating judge is required to seize the property.

**III Confiscation of material evidence, including instrumentalities**



The duty of the driving force of the proceedings when discontinuing criminal proceedings is to resolve the issue of handling seized items and values. Property is recognized as crime-related with a prosecutor's decision regarding discontinuation of criminal proceedings.

The Criminal Procedure Law of Latvia defines that:

- the instrumentalities of criminal offence belonging to the suspect or the accused are confiscated, but if they have no value, they are destroyed;
- property and documents of crime;
- items that were intended or used for committing a criminal offence, are confiscated, but if they have no value, they are destroyed;
- items prohibited for circulation are transferred to authorities concerned or destroyed.

Other property of the suspect or the accused may be subject to confiscation or to enforce funds in the value of the instrumentality, if the offence was performed with an instrumentality belonging to other person.