

Wider scope in Romania for extended confiscation of goods in force begins today



On the 2 November 2020, the President of Romania promulgated Law No 228/2020, which expands the scope of the extended confiscation of goods regulated by the Romanian criminal codes.

Law 228 transposes into the national legislation certain provisions of the Directive 2014/42/UE on the freezing and confiscation of 'instrumentalities' and proceeds of crime in the EU and Directive 2016/343/UE on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings.

The most important amendment of Law 228 is the elimination from the former regulating text of the exhaustive list of crimes for which extended confiscation could have been applied so that the legislation can be used for all crimes of a certain nature and in certain well-specified conditions.

This means that extended confiscation can now be applied as a precautionary measure including for offences in public positions such as abuse of office or embezzlement.

According to the amendments brought by Law 228, extended confiscation of property belonging to a convicted person can be applied if the following conditions are met cumulatively:

- the person was convicted for a deed liable to give rise to economic benefit;
- the criminal offence is punishable by a minimum of four years of imprisonment;
- the court is satisfied that the property in question is derived from criminal conduct; (The court can ground its decision on the disproportion between the value of the property and the lawful income of the convicted person);
- the property was acquired by the convicted person during a period spanning five years before and, if applicable, after the moment of committing the crime until the date of indictment.

Law 228 simplifies and clarifies the possibility of confiscating the property of third parties. Currently, this type of property can be confiscated if it was transferred from the convicted person and the former owner knew or should have known that the purpose of the transfer was to avoid confiscation.

Another important amendment concerns the prosecutor's possibility to order special or extended confiscation in certain cases. Law 228 transforms this possibility into an obligation for prosecutors to apply precautionary measures in order to avoid concealing, destroying, alienating or evading the pursuit of property.

Furthermore, Law 228 contains several amendments regarding the hearing of defendants by videoconference when

a defendant cannot physically appear in court. A hearing by videoconference can only take place in the presence of a lawyer. However, if the court decides that the suspect or defendant cannot be heard by videoconference or at his location or that this type of hearing would prejudice his rights or the proper performance of the trial, the trial can be suspended.

For more information on extended confiscation or general advice on criminal defence issues in Romania, contact your local CMS experts [Mihai Jiganie-Serban](#), [Anca Elena Ion](#) and [Cosmin Cretu](#).