

The ‘unexplained wealth order’: a promising tool for a comprehensive EU strategy to combat transnational money laundering and corruption?

An ‘unexplained wealth order’ (UWO) is a civil-based investigative tool designed to combat transnational money laundering and corruption. This tool allows for the recovery of illegal assets via a non-criminal path, an alternative to the traditional methods of freezing or seizing illicit assets and their confiscation, as well as to the criminalization of illicit enrichment. The latter action was recommended by the UN Convention against Corruption (UNCAC) 2003.

The regulations governing UWOs were developed by states with common law traditions. At present, UWOs are only in use in one EU country, Ireland, where they were successfully introduced by the Proceeds of Crime Act (POCA) 1996. The UWO concept is not yet widely used. For example, in the United Kingdom, UWO regulations were introduced in 2018 by the Criminal Finances Act 2017 amending the Proceeds of Crime Act (POCA) 2002 (so-called ‘Mc Mafia Orders’).

The question arises as to whether a UWO is a promising enough tool to be useful as part of a comprehensive EU strategy to combat transnational money laundering and corruption of politically exposed persons (PEPs) from outside the European Economic Area (EEA) who store illicit assets in EU Member States. Could this be an additional asset-based method to combat such transnational serious crime, complementing the traditional methods of seizure or freezing and confiscation of illicit assets?

The main objective of the project is to determine if a civil-based UWO (rooted in the law of states with a common law tradition) can be recommended to EU Member States (other than Ireland, which already uses this tool) by EU policy, or, on the contrary, if its introduction under the label of a ‘civil method’ (to fight transnational serious crime) should be discouraged, as it poses too great a threat to fundamental rights, such as the right to property, the presumption of innocence, the right of defence, right to silence.

The transferability of UWOs to a comprehensive EU strategy to combat transnational money laundering and corruption has not yet been the subject of separate research. The study of this area may have an effect on future EU policy against serious crime, as well as the internal policy of the individual EU Member States in this regard. Moreover, the research results may positively affect the return of illicit assets from the EU territory to the territory of non-EEA ‘victim countries’ according to common harmonised rules established at the level of EU law.

In order to achieve the goals of the project, the following analyses will be carried out. Dogmatic and comparative analysis of civil-based models of UWOs adopted in the selected legal systems: Ireland; England, Wales and Northern Ireland (the UK); Western Australia, Northern Territory, Commonwealth (Australia). Analysis of the relevant case law of domestic courts concerning the selected UWO models and the case-law of the Court of Justice of the European Union and the European Court of Human Rights for determining the boundary conditions for the possible inclusion of civil-based UWOs in a comprehensive EU strategy to combat transnational money laundering and corruption. Analysis of the current EU policy in the field of combating transnational money laundering and corruption, as reflected in the adopted strategies, action plans and other EU public documents outlining policy objectives in this field. As an auxiliary point of reference, the project will also attempt to analyse the partial published data on the use of UWOs.