

ILLEGAL ASSET CONFISCATION

MONITORING OF  
FORFEITURE/  
CONFISCATION  
PROCEDURE:  
METHODOLOGY AND  
INDICATORS





BULGARIA | ROMANIA | ITALY

## **MONITORING OF FORFEITURE/ CONFISCATION PROCEDURE: METHODOLOGY AND INDICATORS**

ISBN 978-954-2999-13-3

The present publication is published with the support of the Prevention and Fight Against Crime Programme of the Directorate-General Home Affairs of the European Commission within the Enhancing Integrity and Effectiveness of Illegal Asset Confiscation – European Approaches Project. This publication reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein



Co-funded by the  
Prevention of and Fight  
against Crime Programme  
of the European Union

## INTRODUCTION

In order to disrupt organised crime activities it is essential to deprive criminals of the proceeds of crime. Organised crime groups/criminal groups are building large-scale international networks and amass substantial profits from various criminal activities. The proceeds of crime are laundered and re-injected into the economy to be legalised. The confiscation and recovery of criminal assets is considered as a very effective way to fight organised crime, which is essentially profit-driven. Seizing back as much of these profits as possible aims at hampering activities of criminal organisations, deterring criminality and providing additional funds to invest back into law enforcement activities or other crime prevention initiatives.

The aims of asset confiscation are realised not only when criminals are deprived of their ill-gotten gains, but when these are redistributed effectively. In particular, the impact of asset confiscation upon public confidence in the institutions and the justice system may be enhanced through proper management, redistribution and restorative justice. Asset confiscation legislation is difficult to implement, requires strong capacities for national and transnational horizontal cooperation, and directly touches upon fundamental civil rights.

At the outset it should be stated that most of the EU Member States have different regulations as far as the confiscation is concerned. Out of the Member States that do have any regulation only some maintain statistics on the amounts recovered annually from crime, at present the number of freezing and confiscation procedures in the EU and the amounts recovered from organised crime seem modest if compared to the estimated revenues of organised criminal groups. Although reliable data sources are indeed scarce, the value of assets recovered in the EU can be considered insufficient, especially if compared to the estimated revenues of organised criminal groups or to the number of criminal convictions decided by courts for serious crimes. Organised crime activities are often transnational in nature and the assets of criminal groups are increasingly invested in other Member States.

Effective confiscation/forfeiture of assets entails the involvement of a number of institutions

and public authorities at national level. The aim of the present methodology is to shed light on the processes related to confiscation/forfeiture of assets and, at the same time, to enable citizens for active monitoring on the institutional performance and co-operation in order to attain a comprehensive level of understanding on the way confiscation/forfeiture could serve public interest.

The present methodology aims at the elaboration of a system of indicators for civil monitoring over the process of identification, forfeiture and management of forfeited/confiscated illegal assets<sup>1</sup>. The methodology shall provide for an in-depth understanding of the legal, institutional and policy practices of the Asset Recovery Offices (AROs) with focus on effectiveness, accountability and integrity. It is based on the three national reports of the three model countries – Bulgaria, Romania and Italy.

<sup>1</sup> The text uses both the terms *confiscation* and *forfeiture* in view of the fact that the Methodology is designed in such a manner that it can be applied in countries which use the model of confiscation of assets (conviction based confiscation) and the model of forfeiture of assets (non-conviction based confiscation), as well as for countries with mixed models.



## THEORETICAL BACKGROUND

### THE PREMISE: ASSETS CONFISCATION/ FORFEITURE AS A TOOL TO COMBAT ORGANISED CRIME AND RESTORE SOCIAL JUSTICE

There are generally two types of confiscation used internationally to recover the proceeds of crime: non-conviction based (NCB) asset confiscation and conviction based (criminal) confiscation. They share the same objective, namely the confiscation by the state of the proceeds and instrumentalities of crime. Both share common, two-fold rationales. First, those who commit unlawful activity should not be allowed to profit from their crimes. Proceeds should be confiscated and used to compensate the victim, whether it is the state or an individual. Second, unlawful activity should be deterred. Confiscation of assets ensures that such assets will not be used for further criminal purposes; it likewise serves as a deterrent.

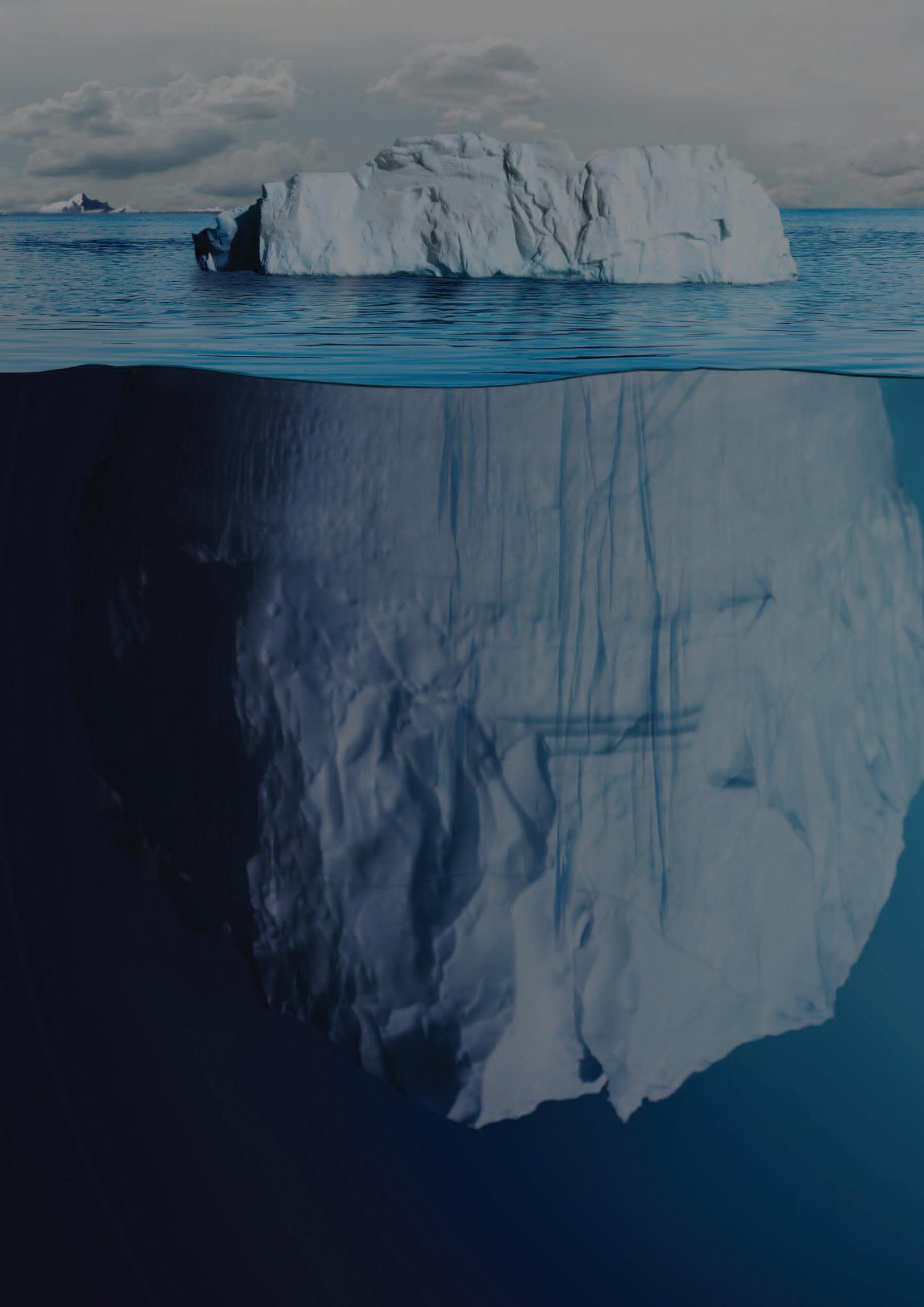
Where criminal and NCB asset forfeiture differ is in the procedure used to forfeit assets. The **main distinction** between the two is that criminal forfeiture requires a criminal trial and conviction, whereas NCB asset forfeiture does not. In addition, there are a number of procedural differences that generally characterize the two systems.

The first model, **conviction based confiscation**, is an *in personam* order, an action against the person. It requires a criminal trial and conviction, and is often part of the sentencing process. Some jurisdictions apply a lower standard of proof (that is, the balance of probabilities) for the confiscation process than for the criminal portion of the process. Nonetheless, the requirement of a criminal conviction means that the government must first establish guilt “beyond a reasonable doubt” or such that the judge is “intimately convinced”. Criminal confiscation systems can be object-based, which means that the prosecuting authority must prove that the assets in question are proceeds or instrumentalities of the crime. Alternatively, they can be value-based regimes, which allow for the confiscation of the value of the offender’s benefit from the crime, without proving the connection between the crime and the specific object of property. “Instrumentalities” are the assets used to facilitate crime, such as a car or boat used to transport.

The second model, **NCB asset confiscation**, also referred to as “civil confiscation,” *in rem*

confiscation,” or “objective confiscation” in some jurisdictions, is an action against the asset itself. It is a separate action from any criminal proceeding and requires proof that the property is tainted (that is, the property is the proceeds or an instrumentality of crime). Generally, the criminal conduct must be established on a balance of probabilities standard of proof. This eases the burden on the government and means that it may be possible to obtain confiscation when there is insufficient evidence to support a criminal conviction. Because the action is not against an individual defendant, but against the property, the owner of the property is a third party having the right to defend the property.

NCB asset confiscation is useful in a variety of contexts, particularly when criminal forfeiture is not possible or available, as in the following cases: the violator is a fugitive and a criminal conviction is not possible; the violator is dead or dies before conviction; the violator is immune from criminal prosecution; the violator is so powerful that a criminal investigation or prosecution is unrealistic or impossible; the violator is unknown and assets are found (for example, assets found in the hands of a courier who is not involved in the commission of the criminal offense), etc.



## MODELS OF CONFISCATION

### CLASSIC CONFISCATION

Punishment under  
criminal law

### CONVICTION BASED CONFISCATION

Both share the same objective: confiscation by the state of the proceeds and instrumentalities of crime; those who commit unlawful activity should not be allowed to profit from their crimes; Unlawful activity should be deterred.  
However, conviction based confiscation requires a criminal trial and conviction

### NON-CONVICTION BASED CONFISCATION

### CONVICTION BASED (CRIMINAL) CONFISCATION

Against the person (*in personam*)  
requires a criminal trial and conviction

When guilt is established beyond  
reasonable doubt  
Conviction is imposed on the basis of  
conviction (due to sentencing in criminal  
case)

Need to prove illegal conduct and have  
conviction in order to impose confiscation

*Object-based:* authority must prove the  
assets are proceeds of crime.  
Confiscation of criminal assets

### NON-CONVICTION BASED CONFISCATION (CIVIL CONFISCATION)

Against the assets (*in rem*): judicial action  
filed by government against the assets  
(civil law procedure)

Filed before, during, or after criminal  
conviction, or even if the person is not  
convicted for the alleged crimes.  
Confiscation procedures conducted by civil  
court separate from criminal convictions.

Criminal conviction not required. Must  
establish the unlawful conduct on a  
"balance of probabilities" standard of proof

*Value-based:* confiscation of the value of the  
offender's benefit from the crime, without  
proving the connection between the crime  
and the specific object of property (illicit  
enrichment, illegal assets etc.)



## STAGES IN THE ASSETS CONFISCATION/ FORFEITURE

Confiscation may apply in principle to all crimes but in practice it is more frequently applied to serious cases involving organised crime and especially crimes generating huge income and liquidity, such as drug trafficking, corruption, etc. The proceeds of crime are then converted into assets ranging from cash held in bank accounts to real estate, vehicles, livestock, artworks, company shares, businesses, collector's items, etc. State authorities should be able to expediently identify and trace such assets, seize them and manage them properly once they have been seized.

Confiscation and recovery of criminal assets are two stages of a legal process whereby criminal assets (proceeds or instrumentalities of crime) are recovered in favor of victims, deprived communities or the state. At the heart of this process lies the determination by a court that particular assets are criminal and, thereby, liable to confiscation or the inability of the violator to prove the legal origin of the assets. This typically takes the form of a confiscation order.

The application of the present methodology requires identification of the institutions involved in each stage of the process. This will create the institutional map of the process and it should be drawn up at the beginning of the civil monitoring because it is essential for the process of systematisation and analysis of the results.

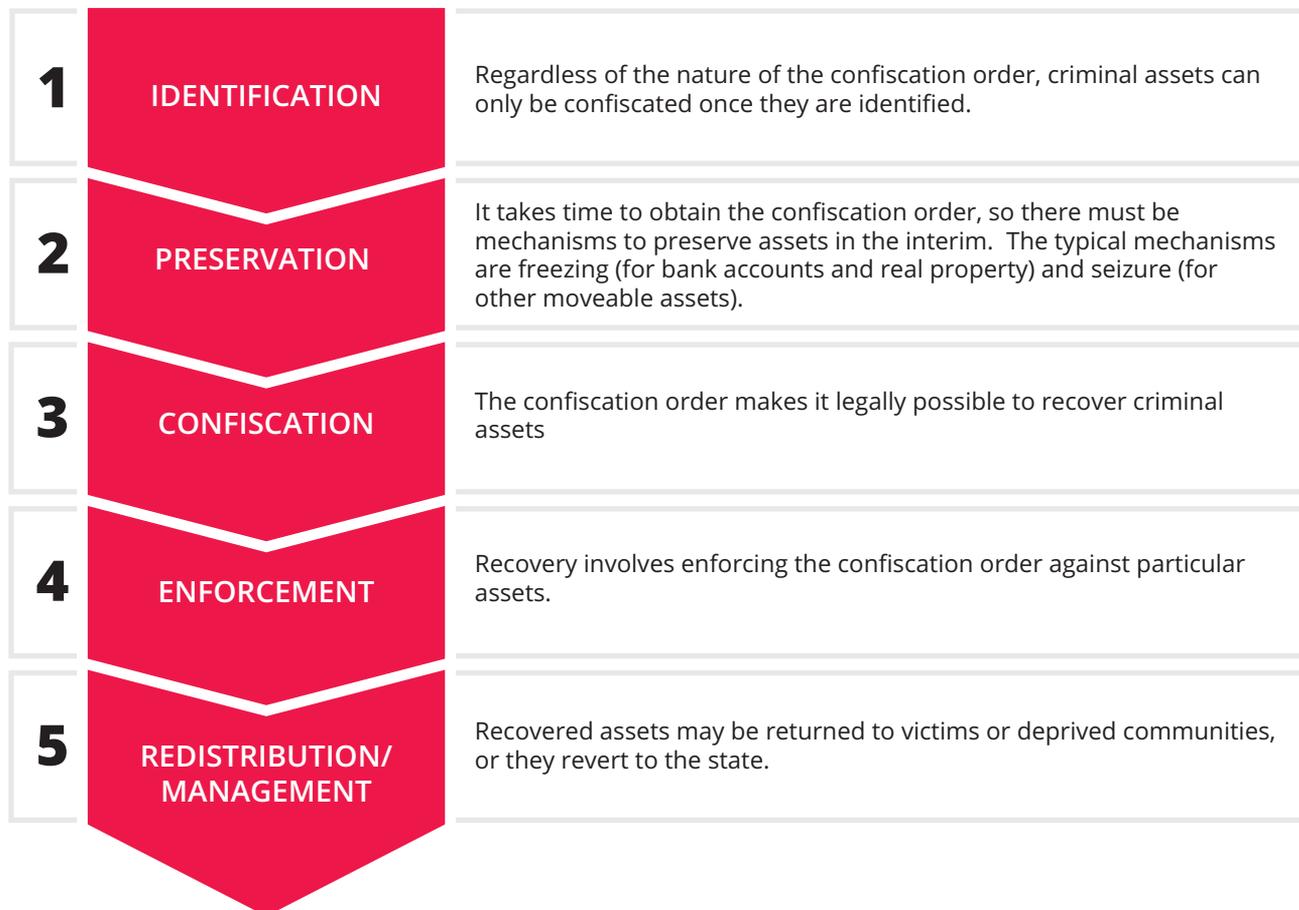
## KEY PRINCIPLES OF THE MONITORING

### Integrity

For the purpose of the case monitoring, integrity is perceived as an attribute of the overall performance of the system of checks and balances to control corruption. The concept of *Integrity* involves the behaviors and actions consistent with a set of moral or ethical principles and standards, embraced by individuals as well as institutions that create a barrier to corruption. More specifically, integrity enforcement is about the existence of rules that aim to prevent corruption in relationships between the actors involved in service delivery (e.g. codes of conduct, ethical codes, and integrity pacts).

The category integrity is broken down into three other categories which, for their part, reflect certain qualitative characteristics of the processes being studied:

## STAGES OF FORFEITURE/CONFISCATION PROCEDURE



- Visibility, accessibility, publicity and access to information
- Accountability
- Transparency

*Visibility, accessibility and publicity* are defined as regular forms of active institutional communication. Providing access to information about the work of the institutions, publishing regular reports so that they are accessible to the public, and establishing certain standards, deadlines and procedures which ensure the achievement of a higher level of publicity.

*Accountability* involves the responsibility for the measures taken and the results achieved through them. This entails also the responsibility to explain, clarify and elucidate the staff and the public. The system should be opened for monitoring form inside but also from outside. It is based on the understanding that the society has the right to know how an institution functions and the organisation is obliged to explain and report for its work. This responsibility is crucial due to the need for protection of the public interest.

*Transparency* is a requirement for the decision-makers working in the public and the private sector to act visibly, predictably and understandably and thus to ensure active participation and responsibility of all actors involved. The meaning of the principle of transparency lies in the obligation to create an easy-to-understand, open, honest, and corruption free environment with regard to all communications, transactions and operations.

**In this respect a set of indicators could be established in order to provide for a comprehensive monitoring of the *Integrity* as intrinsic principle within the different stages of the confiscation/forfeiture of assets process:**

- Accessible information about the legal framework (including secondary legislation) which regulates the work of the respective institutions;
- Public information about the structure and the functions of the various structures involved in the process of identification, forfeiture and management of forfeited illegal assets;
- Publicly accessible information about the average estimates of the public funds used (by all institutions involved in the process and with



respect to all activities performed) to establish and forfeit illegal assets;

- Availability of accessible and easy to understand information about the valuation methods for illegal assets;
- Availability of overall information and communication strategy which ensures the necessary degree of regularity of publishing, predictability and accessibility of the public information about the work of illegal asset forfeiture authorities;
- Existence of a Code of ethics and ethical infrastructure for its efficient application with regard to the officials involved in the process of confiscation/forfeiture;
- Overall policy to manage conflicts of interests and declaration of assets for the public officials involved in the confiscation/forfeiture of assets;
- Policy to ensure protection for whistle-blowers submitting signals about irregularities and corruption within confiscation/forfeiture authorities.

## Effectiveness

*Efficiency* has a border concept compared to effectiveness. Efficiency determines the practice to achieve the desired result and goals at any cost, regardless of the scope of the invested resources.

*Effectiveness*, as mentioned above, is determined by the achievement of the desired result using the minimum of the resources needed. It requires proportionality between the result and the resources needed for its achievement.

Effectiveness is defined through the principle of proportionality between all public funds invested (costs) to achieve the goals set and the result achieved, (revenue). It is important for the assessment to take into account all public resources used to provide for the result of the process and not just the budget expenses planned for the maintenance and work of the institutions involved directly in the pursuit of the relevant public policy.

Effectiveness is decomposed to three component indicators which, as well, are subject to further operationalization:

- Independence, institutional autonomy
- Institutional interaction
- Sustainability

*Independence* means that the institution is free from any external pressure or direction in the process of the application of its functions and the implementation of its tasks.

The extent to which the institution may plan, carry out, assess and adjust its own work by itself (without any external direction or orders) in each stage of the process, determines its *institutional autonomy*.

The *institutional interaction* is related to the cooperation with other relevant institutions which ensures better performance of its work and more successful achievement of its tasks. The existence of inter-institutional agreements, the application of common methodologies, common criteria to evaluate and assess the results achieved and the practice of joint planning of activities determine the level of institutional interaction. It makes part of a more general assessment of the effectiveness of the work of the institution.

*Sustainability* is the endurance of systems and processes. This definition can be applied to the process and institutions involved in the confiscation/forfeiture of assets. This is why it is defined both with regard to the legal framework and the institutional and structural level. It is essential with respect to the effectiveness of the activity being studied.

Sustainability presupposes the application of a methodology and certain procedures which have a proven effect with regard to the attainment of the goals set. In this sense, sustainability indicates the existence of a certain "institutional memory", of the system's ability to generate and pass on experience.

The framework of the general understanding of sustainability accords a special place to the concept of transitivity of the experience gained. Essential is the practice and possibility to transfer experience with regard to similar cases in different institutional environment so that it may lead to comparable results. This aspect is crucial to the goals of the monitoring to the extent to which it may offer solutions in the establishment of common European approaches in the area of combating organised crime by means of confiscation/forfeiture of illegal asset forfeiture.

**In this respect a set of indicators could be established in order to provide for a comprehensive monitoring of the *Effectiveness* as intrinsic principle within the different stages of the confiscation/forfeiture of assets process:**

- Total number of legislative amendments made; new laws or regulations adopted; amendments to the secondary legislation related to illegal asset forfeiture in the past five years;
- Administrative reforms applied in relation to

the number and structure of the staff; training to increase the officials' qualification and exchange of experience;

- Number of launched investigations;
- Number of completed investigations to identify and forfeit/confiscate assets;
- Number of checks terminated due to lack of grounds;
- Average number of checks ensured by other institutions in the country and abroad necessary to identify illegal assets;
- Number of cases to forfeit/confiscate illegal/criminal assets completed successfully;
- Number of cases to forfeit/confiscate illegal/criminal assets which prove to be unsuccessful in court;
- Total amount of funds used in court proceedings;
- Total amount of funds necessary to secure assets;
- Total amount of assets secured;
- Total amount of assets forfeited/confiscated;
- Total amount at which the assets forfeited have been disposed of;
- Total budget of the institution tasked to manage the assets;
- Total amount of the public funds for the management of illegal/criminal assets forfeited/confiscated;
- Relative degree of impairment of the value of the assets under duress until their final disposal;
- Share of the funds collected by means of disposing of the illegal/criminal assets forfeited/confiscated (sale or another way) in comparison to the total amount of the budget funds necessary to ensure the activities.



## CIVIL SOCIETY MONITORING METHODOLOGY

The independent civil society monitoring is meant to exercise effective public control over assets confiscation in order to identify loopholes and draw recommendations for addressing existing problems and the transfer of know-how.

The confiscation/forfeiture of assets process needs a complex monitoring approach. The following methods shall be applied to establish the level of integrity and effectiveness in the process of illegal asset forfeiture/confiscation:

### DESK RESEARCH

The aim of the desk research is to establish the institutional map of the process with a special focus on the interaction between institutions and opportunities for effective civil monitoring all along the different illegal asset forfeiture/confiscation stages. Its added value is higher if applied at the start of civil monitoring.

A **General Overview Questionnaire** is provided in Annex A. It sets out a framework for concise collection of baseline data as regards the levels of transparency, publicity and effectiveness in the work of the involved public authorities. Lack of information or deficit of the free public access to it is also an essential outcome of our study and should not be underestimated.

Changes in regulations and the public activity reports of the institutions involved in the process shall also be taken into account. The documentary analysis shall follow the logic of the monitoring of the five main stages of the process identified, namely: identification, freezing/seizure, confiscation/forfeiture, and management of forfeited/confiscated assets.

### MEDIA MONITORING

This part involves the monitoring of media publications, including:

- Newspapers, television and radio stations whose content is accessible;
- Information agencies;
- Independent electronic sites.

Subject to registration in the course of the media monitoring will be all text messages which contain information about the process of illegal asset forfeiture/confiscation. The **Registration Form**

provided in Annex B provides for the collection of the following data:

- Date of the publication of the material;
- The name of the media;
- Type of the publication: news, commentary, interview, analysis;
  - Which stage of the process of identification, preservation, forfeiture and management of illegal assets the content published refers to;
  - What type of activities of the relevant institution are covered by the publication;
  - Does the publication deal with the work of national institutions, does it have European or international implications.

## CASE STUDY

This method includes the monitoring and registration of information about a case in each of the main stages in the process of forfeiture and management of confiscated/forfeited illegal/criminal assets. Subject to monitoring and description in each individual case is the level of integrity and effectiveness of the process. The groups of indicators set out above for each of the two main categories of this study – integrity and effectiveness – are used for this purpose.

## PARTICIPATORY PUBLIC MONITORING

This method was developed as an outcome of the project activities and represents an added-value to the efforts civil society organisations are devoting to increase transparency and integrity in the functioning of different policy sectors. It seeks to address the need for both public information and public involvement into the process of confiscated assets management.

The proposed model of elaborated system of indicators for active participatory monitoring focuses on opportunities to attract public attention on confiscated or seized property. Current practice shows that when civil monitoring is carried out by a separate organization or a group of NGOs and media, they in turn must maintain public attention and interest in the topic. The practice of monitoring the activities of state institutions carries a serious risk of “professionalization” of the initiative, which can be gradually put out of public attention and the achievement of its predetermined goals.

The priority of this model is dedicated to active civic participation in the process of monitoring the integrity and effectiveness of the forfeiture and confiscation of criminal assets. Civil society organizations and the media should rather direct

the monitoring process and to systematize its results. In order to achieve a new level of respect to the process of confiscation and seizure of the illegally acquired property and receiving the effect of adequate public assessment and appreciation it is a must that the level of civic participation should be increased. We do believe that the modern technologies facilitate and improve that opportunity.

## Focus

Probably the most visible and recognizable forms of property that are the subject to confiscation and forfeiture is real estate. Unlike financial assets, such as the liquidities, funds, securities, shares in companies and movable property, the real estate is on display of the society “at large”. Local citizens recognize and relatively well know the property subject to foreclosure procedures. Some of them, as previous owners had been deprived of it, and once the confiscation procedures are complete, it can again be placed in the service of public interest. Thus logically the public interest should be directed towards the subject of the further destiny of this property. In this regard, the following questions must be the focus of methodological and structural attention:

- Who is the owner of the property (identification)?
- What is the actual material state of this property at the stage of identification (preservation)?
- What was and what is its value today (preservation)?
- How long was the period of confiscation taking place (judicial procedures and enforcement)?
- What was the final result of the confiscation (judicial procedures and enforcement)?
- How is the property managed under custody (preservation and management)?
- Who or what is the responsible body for the management (management)?
- Did or does the previous owner attempt to damage the property, knowing that it will be seized or simply neglects it (preservation and management)?

## Instruments

Insofar as the “ideal model” for establishing effective levels of transparency is achieved by setting-up a Public Register of confiscated property, active participatory monitoring by the civic society can create a mirror registry with its own gallery of pictures and information about illegally acquired property. In this way, citizens

themselves, can exercise a certain and constant level of control over the way public authorities execute their powers and the management of the property in focus. An internet platform could be envisaged as a natural spot to exchange information and foster public discussion. The use of the virtual space potential could provide for an active and sustained attitude towards the process of seizure of criminal assets.

A real civic network based on this initiative can form lasting roots in order to generate information pertaining to the development of the process of forfeiture, confiscation and the management of seized property. Thus the commitment of NGOs and the media will focus on dialogue with the institutions and representation of the civic

initiative, aimed at providing more transparency, openness and accountability.

Such a design of active civic participatory monitoring would provide increasing public pressure on the owners acquired their property illegally. At the same time, as far seized property should be put at the service of the public interest of local communities, such a form of effective monitoring will gradually build active attitude towards the management of the property.

The application of each of these methods aims to ensure comparability of the results achieved while preserving the specifics of the national policy and practice with respect to forfeiture/confiscation and management of confiscated/forfeited assets.

## INDICATORS FOR PARTICIPATORY CIVIC MONITORING

<b>INDICATOR</b>	<b>Periodic information regarding the property that was confiscated by a final decision of the court: volume, price, location, current status, institutions responsible for its further management</b>
<b>INDICATOR SUB-COMPONENTS</b>	<ul style="list-style-type: none"> <li>▪ How often the respective institution publishes official information about the confiscated property?</li> <li>▪ In what form the information is provided – summarized or concrete cases against concrete owners / property?</li> <li>▪ Is there included information about actual price of the property?</li> <li>▪ To what extent the published information allows for a public identification of the respective property?</li> <li>▪ Is there a published information about the cases where the courts and cases that have decided that there is insufficient grounds for forfeiture or confiscation?</li> <li>▪ What is the institutional explanation of these aforementioned cases?</li> <li>▪ Is there a clear and understandable information pertaining to the management of the properties?</li> <li>▪ Is there a clear identification about the institutional responsibility regarding the stewardship and management of these properties?</li> </ul>
<b>INDICATOR</b>	<b>Periodic information about the property that is subject to court proceedings and foreclosure: type, volume and price</b>
<b>INDICATOR SUB-COMPONENTS</b>	<ul style="list-style-type: none"> <li>▪ How often the institution responsible for this process publishes official data on initiated proceedings for forfeiture of illegally acquired property?</li> <li>▪ What kind and form of information is provided?</li> <li>▪ On whose initiative - the institution or the party concerned?</li> <li>▪ What is the price of the property at the time of initiating the proceedings, according to the institution responsible?</li> </ul>

INDICATOR	<b>Civic monitoring initiatives regarding confiscated properties: number, type, frequency, scope and range of the civic signals</b>
INDICATOR SUB-COMPONENTS	<ul style="list-style-type: none"> <li>▪ How often citizens publish information regarding the state of the already confiscated property? <ul style="list-style-type: none"> <li>▪ In what type this information does come usually: photographs, text messages or opinions?</li> <li>▪ Is there a territorial specific of the civic activity range: i.e. more and less active zones of monitoring?</li> <li>▪ What kind of response these civic signals about the actual state and management of the seized property create?</li> <li>▪ Are there civic initiatives pertaining to participation in the decision making process regarding the management of the confiscated property?</li> </ul> </li> </ul>
INDICATOR	<b>Media events and journalist investigations: number, genre of publications, relation to institutional activities, as well, as the right of reply</b>
INDICATOR SUB-COMPONENTS	<ul style="list-style-type: none"> <li>▪ On whose initiative are and were media events organized – by the institutions, by civic signal or as a result of the work of the journalists themselves?</li> <li>▪ How often the topic is covered in national, regional or local media?</li> <li>▪ Is there a comment on the activity of the specialized institutions and the cases progress where the property was confiscated? <ul style="list-style-type: none"> <li>▪ Was the right of reply to those whose property was confiscated readily provided?</li> <li>▪ What importance is attached to the topic of the effective and transparent management of the confiscated property?</li> </ul> </li> </ul>
INDICATOR	<b>Initiatives pertaining to effective civic control and institutional performance improvement in terms of confiscation and management of assets and property: number of legal amendments proposals, analyses and expert evaluations concerning the evaluation of the confiscated property, public institutional reports periodicity and civic initiatives for transparency and accountability increase in the work of the institutions at stake.</b>
INDICATOR SUB-COMPONENTS	<ul style="list-style-type: none"> <li>▪ Who initiates the proposals for institutional improvement: the institutions involved in the process, affected parties or journalists and NGO's that are engaged in this process? <ul style="list-style-type: none"> <li>▪ Are there published independent analyses and evaluations pertaining to the methodology of property evaluation?</li> <li>▪ Are there published economic evaluations and analyses of the effectiveness of the process of confiscation of illegal assets and property?</li> <li>▪ Who initiates the information provision about the activity of the institutions – in reply of concrete civic and media questions and petitions or periodically in a form of a public reports?</li> <li>▪ Is there an effective parliamentary control exercised over the executive power in the process of legal implementation?</li> </ul> </li> <li>▪ How many are the incoming legal amendment proposals?</li> <li>▪ How many of these have led to a real result?</li> </ul>



# ANNEX A.

## GENERAL OVERVIEW

### QUESTIONNAIRE

#### DESCRIPTION OF INITIAL STATE OF THE PROCESS OF ILLEGAL ASSET FORFEITURE

COUNTRY

*Please, collect and systematize the publicly available information, by using the proposed indicators and questions:*

#### I. PUBLIC AWARENESS AND TRANSPARENCY OF THE PROCESS

1. Is there a publicly available and active source of information about the process of illegal asset forfeiture?
2. Existence of publicly accessible information about the regulatory framework and secondary legislation providing for the work of the respective institutions.
3. Public information about the structure and the functional commitments of the various administrative structures involved in the process of establishment and forfeiture of illegal assets. (For example, description of hierarchy and superposition's between certain structures in the national, regional and local level).
4. Existence of publicly accessible information about the amount of budget funds for the maintenance of the administrative structures and the way in which they are used.
5. Publicly accessible information about the estimate average of the public funds used (by all institutions involved in the process and with respect to all activities performed) to establish and forfeit illegal assets.
6. Availability of accessible and understandable information about the valuation methods for illegal/criminal assets. What methodology for the valuation of the property is used?
7. Existence of overall information about the communication strategy which ensures the

necessary degree of regularity, predictability and accessibility of the public information about the work of illegal asset forfeiture. Who is responsible for management of this strategy?

8. Ensuring a possibility for active feedback from the bodies of the respective institutions. Are there effective methods and tools to provide feedback to the institutions involved in the process?

9. Existence of a code of ethics and mechanisms to apply it effectively with regard to the officials in the respective administrative structures.

10. Overall policy to counter conflicts of interests and policy to guarantee the rights of people submitting signals about irregularities in the administration. What mechanisms have been established for this?

## II. EFFECTIVENESS OF THE PROCESS

1. What is the sustainability of the existing legal framework? Please, indicate total number of legislative amendments made; new laws adopted; amendments to the secondary legislation related to illegal asset forfeiture in the past five years.

2. Administrative reforms pursued in relation to the number and structure of the staff; training to increase the officials' qualification and exchange of experience; changes in the procedure for recruitment of the public servants and experts.

3. Number of investigation to establish assets on an annual basis.

4. Number of investigations to establish and forfeit assets completed assets on an annual basis.

5. Number of examinations terminated due to lack of grounds assets on an annual basis.

6. Average number of examinations ensured through other institutions in the country and abroad necessary to establish illegal/criminal assets on an annual basis.

7. Number of cases to forfeit/confiscate illegal/criminal assets completed successfully on an annual basis.

8. Number of cases to forfeit/confiscate illegal/criminal assets lost on an annual basis.

9. Total amount of funds used in court proceedings (if available) on an annual basis.

10. Total amount of funds necessary to secure assets (by approximately value) on an annual basis.

11. Total amount of assets secured on an annual basis.

12. Total amount of assets forfeited/confiscated on an annual basis.

13. Total amount at which the assets forfeited/confiscated have been disposed of (an approximately value) on an annual basis.

14. Total budget of the institution tasked to manage the assets forfeited on an annual basis.

15. Total amount of the public funds for the management of illegal/criminal assets forfeited/confiscated on an annual basis.

16. Relative degree of impairment of the value of the assets under duress until their final disposal (by the expert evaluation, if exist).

17. Share of the funds collected by means of disposing of the illegal/criminal assets forfeited/confiscated (sale or another way) in comparison to the total amount of the budget funds necessary to ensure the activities (accessible by the expert evaluation, if any).

18. Existence of partnership agreements, instructions or conventions between the institutions, aimed at improving the work of the illegal asset forfeiture. If any, please, indicate the institutions to which such agreements were signed, AROs, Prosecution, Ministry of Interior, etc.

19. Existence of special, internal audit procedures. Is there a separate internal audit system in setting activities, forfeiture and management of illegal/criminal asset?

20. Number of public servants and procedures for recruiting staff in these institutions, at the national, regional and local level.

## ANNEX B. MEDIA MONITORING REGISTRATION FORM

1. Date of publication

*dd/mm/yyyy*

CODING CARD  
NUMBER




2. Name of the media and link to the web address

*(if available)*

3. Section or rubric of publication

*(if available)*

4. Title of publication

*Please include all subtitles*

5. Author of publication

*Please indicate name and status of the author by using the following positions:*

Journalist – 1  
Public servant - representative of institution involved in the confiscation procedure – 2  
Representative of the police or other specialised institution – 3  
Politician – 4  
Expert – 5  
NGO/ SCO representative – 6  
Editors (the author is not mentioned) – 7  
Blogger – 8  
Other (impossible to identify) – 9

6. Genre of publication

*Please use the following codes:*

News – 1  
Comment – 2  
Interview – 3  
Analysis – 4  
Other, including mix of genres – 5

7. Topic of the publication

*Please use the following codes:*

Proposals for amendments in legislation – 1  
Overview of the of forfeiture/confiscation procedure practice – 2  
Overview of a case – 3  
National institutions activities – 4  
Comparison of national cases with European or international practice – 5  
Assessment of the effectiveness and integrity of forfeiture procedures – 6

Opinion of individuals against whom an investigation to identification illegal assets has triggered – 7  
Other (including mix of topics) – 8

### 8. What stage of the process is the subject matter of publication?

*Please, indicate stage by using the following codes:*

Start of investigation procedure – 1  
Identification of assets – 2  
Securing/freezing of the assets, precautionary measures – 3  
Asset forfeiture judgment – 4  
Enforcement of the judgment, actual assets forfeiture/confiscation – 5  
Management of forfeited/confiscated assets – 6  
Whole process of illegal/criminal asset forfeiture/confiscation – 7

### 9. The work of which institution is mostly covered in the publication or the publication contains information about its activities

*Please specify the institution whose activities are subject to publication or the most often mentioned in it*

### 10. How the work of the institutions and the process of illegal asset forfeiture is presented?

Mostly positive – 1  
Mostly negative – 2  
Neutral position – 3

### 11. How would you evaluate the content of the publication?

*Please, indicate the dominant character and style of publication, using the following options:*

It is dominated by facts – 1  
It is rather personal judgment and interpretation of the author – 2  
It is difficult to judge – 3

### 12. What consequences, do you think, will have this publication on the process and results of illegal assets forfeiture in your country?

*Please express your personal opinion*



## ANNEX C. CASE STUDY

### 1. PERIOD OF MONITORING

COUNTRY

From   
dd/mm/yyyy

To   
dd/mm/yyyy

### 2. GENERAL DESCRIPTION OF THE CASE

**Legal ground for the  
confiscation procedure**

*Indicate the relevant law provision*

*Please describe the general background of the case – what made the case particularly sensitive to the general public/  
investigative journalists*

*Major question to be addressed: What consequences, do you think, will have this case into the process and results of  
illegal assets forfeiture in your country?*

## 3. STEP BY STEP ANALYSIS OF THE CASE

**STAGE 1: IDENTIFICATION OF ILLEGAL ASSETS**

Institution/s involved	<i>Please specify which institution was responsible for this phase.</i>
Who is performing the identification procedure	<i>Please indicate the delimitation of competences in regards with: Who is performing the checks of the assets on the field; Who is taking decision whether the investigation is about to establish discrepancies between the income and the assets that need to be confiscated?</i>
Length of the identification phase according to the law provisions	<i>Please specify if a standard timeframe is established by the law or the internal Rules of procedure.</i>
Length of the identification phase in practice	<i>Please specify the reasons for any speed-up/delay in the process of identification (e.g. established internal good practices; effective inter-institutional co-operation; etc.).</i>
Evaluation of assets	<i>Please specify: Is an evaluation of assets methodology applied? What value of assets to be confiscated was established?</i>
Conflict of Interest prevention tools required	<i>Please specify whether an obligation to declare Conflict of Interests is established by law or by any statute/Rules of procedure for this phase? Who is the addressee of this provision?</i>
Conflict of Interest prevention tools implemented in practice	<i>Please specify whether any of the following has taken place: compulsory declaration on the absence of conflict of interests; formal withdrawal from the process of identification of the person that is charged with the task to identify and evaluate the assets?</i>
Within the institution specified, is an internal mechanism for administrative offenses and Conflict of Interests oversight applied?	<i>Please specify whether by law or by the internal Rules of procedure a specialized body within the institution is entrusted with oversight competencies on the way the procedure is performed? Did it act on this specific case?</i>
Was the outcome of this phase challenged by the person, against whose assets a confiscation procedure was launched?	<i>Please indicate on what grounds and the reasons for overruling (if any). Indicate any reference to the lack of a clear procedure, systematic breaches of the established procedure, conflict of interests or any ethics related issue.</i>
How did you get information on this stage of the procedure?  <i>Please specify whether:</i>	<i>a) Full access to all relevant documents was granted on the spot upon request; b) Some information was provided upon special request based on Access to information law; c) All information is publicly accessible via internet/on-line accessible register; d) No information officially provided – data acquired through media publications/ sources.</i>
Overall assessment of the phase	<i>Please indicate your own assessment of the phase in terms of integrity, transparency, effectiveness and efficiency.</i>

## STAGE 2: PRESERVATION OF ILLEGAL ASSETS, PRECAUTIONARY MEASURES

Institution/s involved	<i>Please specify which institution was responsible for this phase.</i>
Whose responsibility is the precautionary measures procedure?	<i>Please indicate the delimitation of competences.</i>
Length of the phase according to the law provisions	<i>Please specify if a standard timeframe is established by the law or the internal Rules of procedure.</i>
Length of the phase in practice	<i>Please specify the reasons for any speed-up/delay in the process of identification (e.g. established internal good practices; effective inter-institutional co-operation; etc.).</i>
Value of secured assets	<i>Please specify the value of secured assets. Please specify the reasons for a decrease/increase of the secured assets value.</i>
Conflict of Interest prevention tools required	<i>Please specify whether an obligation to declare Conflict of Interests is established by law or by any statute/Rules of procedure for this phase? Who is the addressee of this provision?</i>
Conflict of Interest prevention tools implemented in practice	<i>Please specify whether any of the following has taken place: compulsory declaration on the absence of conflict of interests; formal withdrawal from the process, etc.?</i>
Within the institution specified, is an internal mechanism for administrative offenses and Conflict of Interests oversight applied?	<i>Please specify whether by law or by the internal Rules of procedure a specialized body within the institution is entrusted with oversight competencies on the way the procedure is performed? Did it act on this specific case?</i>
Was the outcome of this phase challenged by the person, against whose assets a confiscation procedure was launched?	<i>Please indicate on what grounds and the reasons for overruling (if any). Indicate any reference to the lack of a clear procedure, systematic breaches of the established procedure, conflict of interests or any ethics related issue.</i>
How did you get information on this stage of the procedure?  <i>Please specify whether:</i>	<i>a) Full access to all relevant documents was granted on the spot upon request; b) Some information was provided upon special request based on Access to information law; c) All information is publicly accessible via internet/on-line accessible register; d) No information officially provided – data acquired through media publications/sources.</i>
Overall assessment of the phase	<i>Please indicate your own assessment of the phase in terms of integrity, transparency, effectiveness and efficiency.</i>

### STAGE 3: CONFISCATION/FORFEITURE OF ASSETS: JUDICIAL PROCEDURES

Institution/s involved	<i>Please specify which court instance was involved in this phase.</i>
Length of the phase according to the law provisions	<i>Please specify if a standard timeframe is established by the law .</i>
Court hearings	<i>Please specify: Number of Court hearings on the case; Whether any of the Court hearings was canceled because of the absence of the ARO representatives; Whether any of the Court hearings was canceled because of the absence of the defendant/defendant representatives.</i>
Length of the phase in practice	<i>Please specify the reasons for any speed-up/delay in this phase.</i>
Essence of the Court ruling	<i>Please provide a summary of the Court ruling.</i>
Value of assets confiscated upon Court ruling	<i>Please specify the value of assets established for confiscation. Please specify the reasons for a decrease/increase of the confiscated assets value – provide arguments based on the Court ruling.</i>
Conflict of Interest prevention tools required	<i>Please specify whether an obligation to declare Conflict of Interests is established by law or by any statute/Rules of procedure for this phase? Who is the addressee of this provision?</i>
Conflict of Interest prevention tools implemented in practice	<i>Please specify whether any of the following has taken place: compulsory declaration on the absence of conflict of interests; formal withdrawal from the process of judges/jurors, etc.?</i>
Was the court ruling challenged?	<i>Please indicate on what grounds and the reasons for overruling (if any). Indicate any reference to the lack of a clear procedure, systematic breaches of the established procedure, conflict of interests or any ethics related issue.</i>
How did you get information on this stage of the procedure?  <i>Please specify whether:</i>	<i>a) Full access to all relevant documents was granted on the spot upon request; b) Some information was provided upon special request based on Access to information law; c) All information is publicly accessible via internet/on-line accessible register; d) No information officially provided – data acquired through media publications/ sources.</i>
Overall assessment of the phase	<i>Please indicate your own assessment of the phase in terms of integrity, transparency, effectiveness and efficiency.</i>

## STAGE 4: ENFORCEMENT OF THE JUDICIAL DECISION FOR FORFEITURE/CONFISCATION

Institution/s involved	<i>Please specify which institution was responsible for this phase.</i>
Whose responsibility is the judgment enforcement?	<i>Please indicate the delimitation of competences within the institution.</i>
Length of the phase according to the law provisions	<i>Please specify if a standard timeframe is established by the law or the internal Rules of procedure of the institution.</i>
Length of the phase in practice	<i>Please specify the reasons for any speed-up/delay in the process of judgment enforcement (e.g. established internal good practices; effective inter-institutional co-operation; etc.).</i>
Value of assets forfeited	<i>Please specify the value of forfeited assets. Please specify the reasons for a decrease/increase of the forfeited assets value (if any).</i>
Conflict of Interest prevention tools required	<i>Please specify whether an obligation to declare Conflict of Interests is established by law or by any statute/Rules of procedure for this phase? Who is the addressee of this provision?</i>
Conflict of Interest prevention tools implemented in practice	<i>Please specify whether any of the following has taken place: compulsory declaration on the absence of conflict of interests; formal withdrawal from the process of the person that is charged with the task to enforce the court judgment?</i>
Within the institution specified, is an internal mechanism for administrative offenses and Conflict of Interests oversight applied?	<i>Please specify whether by law or by the internal Rules of procedure a specialized body within the institution is entrusted with oversight competencies on the way the procedure is performed? Did it act on this specific case?</i>
Was the outcome of this phase challenged by the person, whose assets were forfeited/confiscated?	<i>Please indicate on what grounds and the reasons for overruling (if any). Indicate any reference to the lack of a clear procedure, systematic breaches of the established procedure, conflict of interests or any ethics related issue.</i>
How did you get information on this stage of the procedure?  <i>Please specify whether:</i>	<i>a) Full access to all relevant documents was granted on the spot upon request; b) Some information was provided upon special request based on Access to information law; c) All information is publicly accessible via internet/on-line accessible register; d) No information officially provided – data acquired through media publications/ sources.</i>
Overall assessment of the phase	<i>Please indicate your own assessment of the phase in terms of integrity, transparency, effectiveness and efficiency.</i>

## STAGE 5: MANAGEMENT OF THE ASSETS FORFEITED/CONFISCATED

Institution/s involved	<i>Please specify which institution was responsible for this phase.</i>
Whose responsibility is the management of forfeited assets?	<i>Please indicate the delimitation of competences within the institution: Who is taking the decision on how forfeited assets will be managed – is it a collegial decision, or is it in the discretion of one person?</i>
Length of the phase according to the law provisions	<i>Please specify if a standard timeframe is established by the law or the internal Rules of procedure of the institution.</i>
Length of the phase in practice	<i>Please specify the reasons for any speed-up/delay in the process of taking decision on assets management (e.g. established internal good practices; effective inter-institutional co-operation; etc.).</i>
Forfeited/confiscated assets management in practice	<i>Please specify what happened with the forfeited/confiscated assets.</i>
Value of assets managed	<i>Please specify the value of assets managed. Please specify the reasons for any loss of the value of the forfeited assets (if any).</i>
Conflict of Interest prevention tools required	<i>Please specify whether an obligation to declare Conflict of Interests is established by law or by any statute/Rules of procedure for this phase? Who is the addressee of this provision?</i>
Conflict of Interest prevention tools implemented in practice	<i>Please specify whether any of the following has taken place: compulsory declaration on the absence of conflict of interests for people taking decision on the assets management; formal withdrawal from the process of taking decision, etc.?</i>
Within the institution specified, is an internal mechanism for administrative offenses and Conflict of Interests oversight applied?	<i>Please specify whether by law or by the internal Rules of procedure a specialized body within the institution is entrusted with oversight competencies on the way the procedure is performed? Did it act on this specific case?</i>
Was the outcome of this phase challenged by any interested parties?	<i>Please indicate who has challenged the decision on the forfeited assets management. Please indicate on what grounds and the reasons for overruling (if any). Indicate any reference to the lack of a clear procedure, systematic breaches of the established procedure, conflict of interests or any ethics related issue.</i>
How did you get information on this stage of the procedure?  <i>Please specify whether:</i>	<i>a) Full access to all relevant documents was granted on the spot upon request; b) Some information was provided upon special request based on Access to information law; c) All information is publicly accessible via internet/on-line accessible register; d) No information officially provided – data acquired through media publications/ sources.</i>
Overall assessment of the phase	<i>Please indicate your own assessment of the phase in terms of integrity, transparency, effectiveness and efficiency.</i>





**TRANSPARENCY INTERNATIONAL  
BULGARIA**

50 Petőfi Sándor Str., fl. 1  
1463 Sofia, Bulgaria  
Phone: + 359 2 9867713  
Fax: + 359 2 9867834  
mbox@transparency.bg  
www.transparency.bg

**TRANSPARENCY INTERNATIONAL  
ITALY**

Via Zamagna 19  
20148 Milan, Italy  
Phone: + 39 02 40093560  
Fax: +39 02 406829  
info@transparency.it  
www.transparency.it

**TRANSPARENCY INTERNATIONAL  
ROMANIA**

21 Nicolae Balcescu Bvd.  
010044 Bucuresti, Romania  
Phone: +4 031 6606000  
Fax: +4 031 6606006  
office@transparency.org.ro  
www.transparency.org.ro

**WWW.CONFISCATION.EU**