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The implementation at the national level of the European legislation regarding the administration and recovery of assets resulting from crimes. An overview of the Romanian case

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Abstract

In recent years, the European Union has insisted that convicts should be deprived of illegally obtained goods as a result of a crime. The asset confiscation resulted from crimes is one of the most effective tools in the fight against organized crime. In order to ensure a common approach to confiscation within the EU, several EU legislative instruments have been adopted in recent years, among which there are the most common secondary EU legislation as decisions, directives and regulations. Thus, confiscation is a strategic priority in the EU's fight against organized crime and, as such, has been reflected in the EU's Internal Action Strategy. The purpose of this paper is to make an analysis on the EU legislation regarding the administration and recovery of assets resulting from crimes. Also, the qualitative research of this work will be conducted in order to underline how Romania, as an EU member state, adapted and change its domestic legislation and which authorities and procedures were created in order to fulfill with main EU legislative requirements.

Keywords: confiscation, asset recovery, asset management, forfeiture, regulation, decisions.

1. Introduction

In general, confiscation is a security measure ordered by the court as a result of a criminal act. This can be accompanied by a main punishment, but it can also intervene in the absence of a criminal conviction and consists in the final dispossession of a certain category of goods related to the crime - goods obtained, used or resulting from the commission of a crime (Transparency International, https://www.transparency.org.ro/stiri/comunicate_de_presa/2014/27februarie/RaportNationalProceduraConfiscareExtinsa.pdf, p. 8). In EU law, "confiscation" means a punishment or measure ordered by a court following a proceeding in connection with an offense or offenses, resulting in the final deprivation of the property in question (Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property).

Initially, the confiscation of property resulting from criminal activity was given little importance. One of the reasons was that, in essence, criminal proceedings were aimed more at sanctioning the crime than recovering the assets resulting from the wrongful act. Another reason was the lack of means.

At the international level, there are several tools that promote the confiscation of proceeds of crime. The most important step in promoting the confiscation of the proceeds of crime is the Strasbourg Convention of 1990¹. By signing it by the participating states, the aim is to promote international cooperation in identifying, prosecuting, making unavailable and confiscating assets from the commission of a crime. The recommendations of this document show that states should adopt efficient and profitable mechanisms for the administration of seized assets. To this end, States should consider setting up a Seized Goods Fund.

In this regard, recommendations have been made at the international level on the management of seized assets, the 2005 G-8 Summit produced a paper on best practices in the management of seized assets (G8 Best Practices for the Administration of Seized Assets, 2005).

The recommendations of this document show that states should adopt efficient and profitable mechanisms for the administration of seized assets. To this end, States should consider setting up a Seized Goods Fund.

¹ See <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/14>, which was supplemented and updated by the Second Strasbourg Convention, see <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/198>

For the purpose of this study, it should be emphasized that the document considers the designation of a national entity / authority, with jurisdiction over the administration of assets, based on internal regulations, an important element in the administration of seizure assets. States must also establish strict controls on the administration of seized assets.

Assets not made available for confiscation must be managed in a transparent manner and the competent authority must be subject to annual audits carried out by independent auditors or similar experts in accordance with national law.

It should be underlined here, that, regarding the international confiscation practices, there are various recommendations at the international level. These include those of the International Financial Action Task Force Group, which has drafted a document on best practices in confiscation. The purpose of the document is to help countries properly implement the recommendations made by this international organization in the fight against money laundering.

One of the issues addressed in this document is related to the administration of seized or confiscated property. The document makes specific reference to the methods of administration to various recommendations (FATF/OECD, 2012):

- Existence of competent authorities for the administration of assets
- Delegating this task to private entities
- The existence of an administrator appointed by the court or
- The person who owns the goods can keep them in administration, but with restrictions regarding their use and potential sale (practice no. 26).

2. The European legislation regarding the administration and recovery of assets resulting from crimes

2.1 Short analysis on Main EU legislative instruments

In recent years, the European Union has insisted that convicts should be deprived of illegally obtained goods as a result of a crime. The asset confiscation resulted from crimes is one of the most effective tools in the fight against organized crime. In order to ensure a common approach to confiscation within the EU, several EU legislative instruments have been adopted in recent years, among which there are the most common secondary EU legislation as decisions, directives and regulations. Thus, confiscation is a strategic priority in the EU's fight against organized crime and, as such, has been reflected in the EU's Internal Action Strategy See table 1).

Table 1. EU legislative instruments regarding the administration and recovery of assets resulting from crimes

European legal instruments	Objectives
2001/500/JHA: Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, Official Journal L 182 , 05/07/2001 P. 0001 - 0002	the purpose was to ensure a common minimum approach of Member States in terms of those criminal offences for which they should provide for confiscation. The general rule is that if an offence is punishable by imprisonment of a maximum of more than one year, it must be possible under national law to order confiscation of proceeds generated by that offence. The Member States are required to have in place a system of value confiscation. All requests coming from other Member States must be processed with the same priority as is given to such measures in purely domestic proceedings.
Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, Official Journal L 196 , 02/08/2003 P. 0045 - 0055	its purpose was to lay down the rules under which a Member State recognizes and enforces on its territory a freezing order issued by a judicial authority of another Member State in criminal proceedings
Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, Official Journal of the European Union L 68/49	aimed to ensure further harmonization of Member States' legislation on confiscation of criminal assets.
Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (no longer in force, date of end of validity: 18/12/2020)	established the rules according to which the judicial authorities of one Member State will recognize and execute a confiscation order in its territory issued by competent judicial authorities of another Member State. T

	<p>he value of confiscated property will be shared equally between the issuing and executing State.</p>
<p>Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, Official Journal of the European Union L 332/103</p>	<p>informal cooperation between Member States' contact points working in the field of identifying, prosecuting and recovering assets from crime has been strengthened.</p> <p>It obliges Member States to set up or designate "assets recovery offices" (AROs), whose function is to facilitate effective cooperation and the exchange of information in the field of asset recovery.</p>
<p>Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, Official Journal of the European Union L 127/39</p>	<p>aims at simplifying the existing rules and to fill important gaps which are being exploited by organised crime groups. It will enhance the ability of EU states to confiscate assets that have been transferred to third parties, it will make it easier to confiscate criminal assets even when the suspect has fled and will ensure that competent authorities can temporarily freeze assets that risk disappearing if no action is taken.</p>
<p>Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders, Official Journal of the European Union L 303/1</p>	<p>address issues related to the implementation of existing legal instruments by establishing a single regulation - covering both lay-off orders and confiscation orders - which are directly applicable in the EU.</p> <p>The general principle of mutual recognition, in the sense that all judicial decisions in criminal matters taken in one EU country will normally be recognized and enforced directly by another EU country. There are only a limited number of reasons for non-recognition and non-execution.</p> <p>Standard certificates and procedures to enable faster and more effective unavailability and confiscation.</p> <p>A period of 45 days for the recognition of the confiscation order and, in urgent cases, a period of 48 hours for the recognition and 48 hours for the execution of the seizure orders. The limits can be postponed under strict conditions.</p> <p>Provisions to ensure that victims' rights to compensation and restitution are respected in cross-border cases.</p> <p>The Regulation shall apply from 19 December 2020.</p>
<p>Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA, Official Journal of the European Union L 186/122</p>	<p>national authorities and asset recovery offices shall be granted direct access to bank account information for the purpose of combating serious crime.</p> <p>Aim to improve cooperation between national authorities and financial intelligence units and to facilitate the exchange of information between financial intelligence units.</p>

Source: author data processing form EU official sites cited in the footnote²

²<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001F0500>, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32003F0577>, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005F0212>, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32006F0783>, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007D0845>, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0042>, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32018R1805>, <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32019L1153>, accessed: 28.10.2021

2.2 The EU framework regarding the administration and recovery of assets resulting from crimes

Form the Table 1 it can be observed that confiscation is a strategic priority in the EU's fight against organized crime and, as such, has been reflected in the EU's Internal Action Strategy. The 2017 Commission staff working paper on the comprehensive assessment of EU security policy acknowledged that the legal framework in the area is well developed, but also emphasized the need to improve it. Crucially, substantial efforts have been made at EU level to better track and confiscate revenues from organized crime (European Commission, Press release, 2017).

Regarding the administration and recovery of assets resulting from crimes, at the international, it can be identified two different types of entities can be identified according to their assigned competence (Organización de los Estados Americanos, 2011, pp. 20-23):

- The first type includes all those entities with very broad responsibilities that cover every aspect related to property whatever the crime. These entities investigate the portfolio of assets of individuals accused of crimes in order to identify and locate assets that are the proceeds of criminal activity, and even property of legal origin in the event that an order of forfeiture for equivalent value is issued.
- The second type is of a more restrictive nature and the entity is assigned the exclusive responsibility of administering those assets. The entity is responsible for safeguarding, administering, preserving and disposing of the seized assets according to the provisions of domestic law.

At EU level, through European legislative instruments (analyzed in the Table 1), two types of authorities have been imposed on Member States:

- *Asset Recovery Office (ARO)* authorities established by Decision 2007/845 / JHA;
- *Asset Management Office (AMO)*, created as a result of the transposition of Directive 2014/42 / EU.

3. Overview of the Romanian regulations regarding the administration and recovery of assets resulting from crimes

Provisions on confiscation of goods resulting from crimes can be found in criminal law, specific legislation and the rules for the implementation of EU regulations. Romania, as an EU member states adopted and implemented the EU legislative instruments in the domestic law, by amending the existing laws or by creating new regulations (see Table 2).

Table 2. Transposition of the EU legislative instruments regarding the administration and recovery of assets resulting from crimes

European legal instruments	National transposition
2001/500/JHA: Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime, Official Journal L 182 , 05/07/2001 P. 0001 - 0002	<p>Law no. 263/2002 for the ratification of the European Convention on Laundering, Search, Seizure and Confiscation of the goods from Crime, signed at Strasbourg on 8 November 1990, Official Gazette of Romania, No. 353/ 2002-05-28</p> <p>Law no. 286/2009 on the Criminal Code Official Gazette of Romania; No. 510/ 2009-07-24;</p> <p>Law no. 135/2010 on the Code of Criminal Procedure, Official Gazette of Romania; No. 486/ 2010-07-15</p> <p>Law no. 302/2004 on international judicial cooperation in criminal matters, republished, Official Gazette of Romania, No. 377/ 2011-05-31</p> <p>Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for the establishment of measures to prevent and combat the financing of terrorist acts, republished, Official Gazette of Romania, No. 702/ 2012-10-12;</p> <p>Law no. 300/2013 for the amendment and completion of Law no. 302/2004 on international judicial cooperation in criminal matters, Official Gazette of Romania, No. 772/ 2013-12-11</p>

<p>Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, Official Journal L 196 , 02/08/2003 P. 0045 - 0055</p>	<p>Law no. 135/2010 on the Code of Criminal Procedure, Official Gazette of Romania, No: 486/ 2010-07-15</p> <p>Law no. 302/2004 on international judicial cooperation in criminal matters, republished, Official Gazette of Romania, No.: 377/ 2011-05-31</p> <p>Law no. 300/2013 for the amendment and completion of Law no. 302/2004 on international judicial cooperation in criminal matters. Official Gazette of Romania; No: 772/ 2013-12-11</p>
<p>Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, Official Journal of the European Union L 68/49</p>	<p>Law no. 39/2003 on preventing and combating organized crime, Official Gazette of Romania, No. 50/ 2003-01-29</p> <p>Law no. 535/2004 on preventing and combating terrorism, Official Gazette of Romania; No: 1161/2004-12-08</p> <p>Law no. 286/2009 regarding the criminal code, Official Gazette of Romania, No. 510/2009-07-24</p> <p>Law no. 63/2012 for amending and supplementing the Criminal Code of Romania and Law no. 286/2009 on the Criminal Code, Official Gazette of Romania; No. 258/ 2012-04-19</p> <p>Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for the establishment of measures to prevent and combat the financing of terrorist acts, republished, Official Gazette of Romania, no. 702/ 2012-10-12</p> <p>Law no. 187/2012 for the implementation of Law no. 286/2009 on the Criminal Code, Official Gazette of Romania, No. 757/ 2012-11-12</p> <p>Law no. 255/2013 for the implementation of Law no. 135/2010 on the Code of Criminal Procedure and for amending and supplementing some normative acts that include criminal procedural provisions, Official Gazette of Romania; Number: 515/ 2013-08-14</p>
<p>Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (no longer in force, date of end of validity: 18/12/2020)</p>	<p>Law no. 135/2010 on the Code of Criminal Procedure, Official Gazette of Romania; No. 486/ 2010-07-15</p> <p>Law no. 302/2004 on international judicial cooperation in criminal matters, republished, Official Gazette of Romania, No. 377/ 2011-05-31</p> <p>Law no. 300/2013 for the amendment and completion of Law no. 302/2004 on international judicial cooperation in criminal matters, Official Gazette of Romania; No. 772/2013-12-11</p>
<p>Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field</p>	<p>Government Decision no. 32/2011 on the designation of the Office for Crime Prevention and cooperation with the debt collection offices of the Member States of</p>

<p>of tracing and identification of proceeds from, or other property related to, crime, Official Journal of the European Union L 332/103</p>	<p>the European Union within the Ministry of Justice, as a national office for asset recovery in the field of pursuit and identification of proceeds of crimes or other goods related to crimes, Official Gazette of Romania No.: 51/2011-01-20</p> <p>Government Decision no. 508/2012 amending and supplementing Government Decision no. 652/2009 on the organization and functioning of the Ministry of Justice, Official Gazette of Romania, No. 332/ 2012-05-16</p> <p>Government Decision no. 182/2014 amending and supplementing art. 2 of Government Decision no. 32/2011 on the designation of the National Office for Crime Prevention and Cooperation for the Recovery of goods from Crimes within the Ministry of Justice, as a national office for recovery receivables in the field of pursuit and identification of products arising from the commission of crimes or other goods related to crimes, as well as the Methodological Norms for the application of Government Ordinance no. 14/2007 for the regulation of the manner and conditions of capitalization of the goods entered, according to the law, in the private property of the state, approved by the Government Decision no. 731/2007, Official Gazette of Romania; No. 213/ 2014-03-25</p>
<p>Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, Official Journal of the European Union L 127/39</p>	<p>Law no. 535/2004 on preventing and combating terrorism, Official Gazette of Romania; No. 1161/2004-12-08</p> <p>Law no. 286/2009 on the Criminal Code Official, Official Gazette of Romania; No. 510/ 2009-07-24</p> <p>Law no. 135/2010 on the Code of Criminal Procedure, Official Gazette of Romania; No. 486/2010-07-15</p> <p>Law no. 287/2009 regarding the Civil Code, Official Gazette of Romania; No: 505/ 2011-07-15</p> <p>Law no. 656/2002 for the prevention and sanctioning of money laundering, as well as for the establishment of measures to prevent and combat the financing of terrorist acts, republished, Official Gazette of Romania, no. 702/ 2012-10-12</p> <p>Law no. 255/2013 for the implementation of Law no. 135/2010 on the Code of Criminal Procedure and for amending and supplementing some normative acts that include criminal procedural provisions, Official Gazette of Romania; Number: 515/ 2013-08-14</p> <p>Law no. 253/2013 on the execution of sentences, educational measures and other non-custodial measures ordered by the judicial bodies during the criminal</p>

	<p>proceedings, Official Gazette of Romania; No: 513/2013-08-14</p> <p>Law no. 143/2000 on preventing and combating illicit drug trafficking and consumption, Official Gazette of Romania; No.163/ 2014-03-06</p> <p>Law no. 134 of 1 July 2010 on the Code of Civil Procedure, Official Gazette of Romania;No. 247/ 2015-04-10</p> <p>Law no. 318/2015 for the establishment, organization and functioning of the National Agency for the Management of Seized Assets and for the modification and completion of some normative acts, Official Gazette of Romania; No.: 961/2015-12-24</p> <p>Government Emergency Ordinance no. 18/2016 for amending and supplementing Law no. 286/2009 regarding the Criminal Code, Law no. 135/2010 on the Code of Criminal Procedure, as well as for completing art. 31 para. (1) of Law no. 304/2004 regarding the judicial organization, Official Gazette of Romania; No. 389/2016-05-23</p> <p>Law 142/2018 on drug precursors, Official Gazette of Romania; No. 519/2018-06-25</p> <p>Law no. 58/2019 for the amendment and completion of Law no. 535/2004 on preventing and combating terrorism, Official Gazette of Romania, No. 271/2019-04-10</p> <p>Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing some normative acts, Official Gazette of Romania; No: 589/ 2019-07-18</p> <p>Law no. 228/2020 for the amendment and completion of some normative acts in the criminal field in order to transpose some directives of the European Union, Official Gazette of Romania; No. 1019/ 2020-11-02</p>
<p>Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders, Official Journal of the European Union L 303/1</p>	<p>No transposition measures needed</p>
<p>Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA, Official Journal of the European Union L 186/122</p>	<p>Law no. 535/2004 on preventing and combating terrorism, Official Gazette of Romania; No.1161/2004-12-08</p> <p>Law no. 63/2012 for the amendment and completion of the Criminal Code of Romania and of Law no. 286/2009 regarding the Criminal Code, Official Gazette of Romania; No. 258/2012-04-19</p>

	<p>Law no. 187/2012 for the implementation of Law no. 286/2009 regarding the Criminal Code, Official Gazette of Romania; No. 757/ 2012-11-12</p> <p>Law no. 207/2015 on the Fiscal Procedure Code, Official Gazette of Romania; No. 547/2015-07-23</p> <p>Law no. 318/2015 for the establishment, organization and functioning of the National Agency for the Management of Seized Assets and for the modification and completion of some normative acts, Official Gazette of Romania; No. 961/ 2015-12-24</p> <p>Law no. 56/2018 on the cooperation of the Romanian public authorities with the Europol, Official Gazette of Romania; No. 211/ 2018-03-08</p> <p>Law no. 58/2019 for the amendment and completion of Law no. 535/2004 on preventing and combating terrorism, Official Gazette of Romania; No: 271/2019-04-10</p> <p>Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing some normative acts, Official Gazette of Romania; No. 589/2019-07-18</p> <p>Government Emergency Ordinance no. 68/2019 regarding the establishment of some measures at the level of the central public administration and for the modification and completion of some normative acts, Official Gazette of Romania; No.: 898/2019-11-06</p> <p>Government Emergency Ordinance no. 111/2020 regarding the amendment and completion of Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing some normative acts, for completing art. 218 of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, for the amendment and completion of Law no. 207/2015 on the Fiscal Procedure Code, as well as for completing art. 12 para. (5) of Law no. 237/2015 on the authorization and supervision of the insurance and reinsurance activity, Official Gazette of Romania; No. 620/ 2020-07-15</p> <p>Government Emergency Ordinance no. 153/2020 for the establishment of fiscal measures to stimulate the maintenance / increase of equity, as well as for the completion of some normative acts, Official Gazette of Romania; No. 817/2020-09-04</p> <p>Law no. 102/2021 regarding the completion of art. 49 of Law no. 129/2019 for preventing and combating</p>
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	<p>money laundering and terrorist financing, as well as for amending and supplementing some normative acts Official Gazette of Romania; No. 446/2021-04-27</p> <p>Law no. 101/2021 for the approval of the Government Emergency Ordinance no. 111/2020 regarding the amendment and completion of Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing some normative acts, for completing art. 218 of the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, for the amendment and completion of Law no. 207/2015 regarding the Fiscal Procedure Code, as well as for completing art. 12 para. (5) of Law no. 237/2015 on the authorization and supervision of the insurance and reinsurance activity, Official Gazette of Romania; No. 446/ 2021-04-27</p> <p>Government Ordinance no. 9/2021 on the establishment of measures to facilitate the use of financial information and financial analysis in order to prevent, detect, investigate or prosecute certain crimes, Official Gazette of Romania; No: 831/ 2021-08-31</p> <p>Government Ordinance no. 11/2021 for the amendment and completion of Law no. 207/2015 on the Fiscal Procedure Code and the regulation of some fiscal measures, Official Gazette of Romania; No. 832/ 2021-08-31</p>
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Source: author data processing form EU official websites cited supra

At national level, Romania has opted for the creation of a single national authority, as a result of good practice at this level being designated national office for asset recovery (Asset Recovery Office - ARO), as well as national office for management of frozen assets (Asset Management Office - AMO).

The legal basis is Law no. 318/2015 for the establishment, organization and functioning of the National Agency for the Management of Seized Assets (ANABI). According to the law establishing ANABI is a public institution of national interest with legal personality, subordinated to the Ministry of Justice.

Regarding its role in the procedure of seizure of assets resulting from crimes, we will highlight its role depending on the 2 dimensions it has (see Table 3).

Table 3. Role and powers of ANABI regarding the administration and recovery of assets resulting from crimes

AMO powers	ARO powers
<ul style="list-style-type: none"> • manages movable assets/goods • manages the integrated national computer system for recording receivables from crimes; • supports the judicial bodies for the use of the best practices in the matter of identification and administration of the goods that can be the object of the measures of seizure and confiscation within the criminal process 	<ul style="list-style-type: none"> • facilitates the prosecution and identification of assets arising from the commission of criminal offenses and other assets related to the offenses and which could be subject to a disposition of unavailability, seizure or confiscation issued by a competent judicial authority during criminal proceedings • capitalizes, in the cases provided by law, of the movable goods seized within the criminal process; • coordinates, evaluates and monitors at national level the application and observance of legal procedures in the field of recovery of claims from crimes.

Source: Analysis based on Law no. 318/2015

In order to highlight the role of ANABI in the confiscation procedure, we will highlight below, its phases (both in the special confiscation procedure and in the extended confiscation procedure³) (Transparency International study, 2015):

Phase 1: Identifying the assets resulting from crimes and the measures necessary for their protection and management.

Phase 2: Taking precautionary measures to repair the damage caused by the crime and to ensure the execution of legal costs.

Phase 3: Capitalization of the seized goods

1. Capitalization of assets before a final sentence is given.

1.1. Special cases of capitalization of seized movable assets

During the criminal proceedings, before issuing a final decision, the prosecutor or the court that instituted the seizure may immediately order the capitalization of the seized movable assets, at the request of the owner of the asset or when there is his consent.

1.2. Recovery of movable assets seized during the criminal investigation

During the criminal investigation, when there is no consent of the owner, if the prosecutor who instituted the seizure considers that it is necessary to capitalize the seized movable property, he notifies the judge of rights and freedoms with a reasoned proposal for capitalization of the seized property (Article 2522, para. 2, Code of Criminal Procedure).

1.3. Capitalization of movable seized during the trial

During the trial, the court, ex officio or at the request of the prosecutor, of one of the parties or of the custodian, may order the capitalization of the seized movable assets. To this end, the court shall set a time limit, which may not be shorter than 10 days, for which the parties, as well as the custodians of the property, are summoned to the council chamber when one has been appointed. The participation of the prosecutor is mandatory (Article 2523, para. 2, Code of Criminal Procedure).

2. Capitalization of assets after a final sentence

With regard to real estate, by special law, their destination is provided, as follows: real estate entered, through confiscation, from criminal proceedings, in the private property of the state may be transferred free of charge in the public domain of the state and in the administration of the authorities central public administration, other public institutions of national interest, as the case may be, referred to as *beneficiary entities*, by Government decision, initiated by the Ministry of Public Finance, at the proposal of the the National Agency for the Management of Seized Assets⁴. As previously mentioned, the Law no. 318/2015 for the establishment, organization and functioning of- ANABI, confers on it attributions as national office AMO and ARO.

As stated by the Agency “the final purpose of ANABI is to ensure an increase of the execution rate of the confiscation orders issued in criminal matters, through an efficient management of seized assets that are distributed to the Agency by prosecutors and judges. As a consequence, the incomes brought to the state budget will increase, as well as the ones through which the victim compensation is ensured, including the compensation made to the state, in cases when the state was a civil party in the criminal trial”.⁵

4. Conclusions

The analysis highlights that ANABI, as ARO does not have competences directly oriented on the purpose of precautionary measures and effective recovery of damages and the goods resulted from crimes. The mainly responsibilities are administrative (simple administration of seized assets) and in strictly limited cases possible capitalization of them.

In general, the attributions of ANABI in order to capitalize on the assets are significantly procedural and supportive of other state bodies and authorities. Even where ANABI has a clear competence in early capitalization of frozen movable assets, the law provides the possibility to do so either through its own public auction or through specialized entities or companies, selected in compliance with legal provisions on public procurement; through bailiffs, according to their own procedures; by the fiscal bodies, according to their own capitalization procedures.

³ In Romania, on the Criminal Code and the Code of Criminal Procedure, the confiscation has the 2 forms as categories of safety measures: special and extended confiscation. For the special confiscation the Criminal Code does not explicitly provide a list of crimes, but only provides for those goods that result from crimes. For the special confiscation, the criminal conviction has to be followed not only by the confiscation of the goods associated with a certain crime, but also additional goods, about which the court is convinced that they come from criminal activities.

⁴ Law no. 216/2016 on establishing the destination of confiscated real estate, published in the Official Gazette of Romania, Part I no. 918 of November 15, 2016

⁵ See the official website of the National Agency for the Management of Seized Assets: <https://anabi.just.ro/en/>, accessed: 29.10.2021

Regarding the early capitalization of movable goods, we consider necessary a re-evaluation of the legislation, through which ANABI, can proceed directly to their capitalization in special cases of movable assets on which it was established the seizure, without waiting for the request of the prosecutor, the judge or the agreement of the owner, insofar as such an action would lead to safeguarding the value of the property, and from its early capitalization would lead to obtaining a sum of money as close as possible to the value of that asset.

We also consider it necessary to regulate the possibility of early capitalization of real estate, at the request or with the consent of the owner, and ANABI to acquire legal powers in this regard. Regarding the capitalization of the goods after the pronouncement of a final sentence by a court, we consider that for the movable goods, already in the management of ANABI, they should be capitalized only by ANABI, in order to accelerate in their capitalization.

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