

ENHANCING INTEGRITY AND EFFECTIVENESS OF ILLEGAL ASSET CONFISCATION – EUROPEAN APPROACHES

Project implemented by Transparency International Bulgaria, in partnership with Transparency International Italy and Transparency International Romania

Summary

There are three types of asset forfeiture procedures in Romania. Forfeiture of proceedings from a criminal activity, confiscation ordered by a court of law as a preventive measure against criminal offence or when offence is committed and civil confiscation based on Law no. 144/2007 establishing the National Integrity Agency.

Romania does not have a specialized law regarding confiscation. The provisions regarding confiscation are spread out over several normative acts, among which the Constitution of Romania, the Code of Civil Procedure, the Criminal Code, the Code of Criminal Procedure, Government Ordinance no. 2/2001 on the legal framework regarding contraventions, the Code of Fiscal Procedure, Law no. 161/2003 on certain measures to ensure transparency and integrity of public officials, fair business environment and corruption prevention, as well as Law no. 144/2007 establishing the National Integrity Agency.

Romania does not have a single institution responsible for asset forfeiture. The confiscation procedures are part of the competences of several public institutions and authorities, namely: bailiffs, the National Agency for Fiscal Administration, the police, the National Integrity Agency (NIA) and the institutions protecting victims of crimes. Once the confiscation procedure is ordered, these institutions are responsible for its implementation, depending on the specifics of each case. Cooperation between these institutions is, however, not efficient, despite the existence of regulations intended to prevent such deficiencies.

The necessary procedural stages in enforcing the confiscation procedure, applicable both in the special confiscation procedure and in the extended confiscation procedure, are the following:

- Identification of the assets acquired as a result of criminal activity;
- Seizure/blocking of the assets/properties;
- Enforcing precautionary attachment (making the assets unavailable and preserving them);
- Managing and liquidating the confiscated assets.

The main vulnerabilities identified were, among others, lack of transparency in the management and the liquidation of confiscated assets, the lack of cooperation among the authorities enforcing the confiscation procedure, and the fact that the authorities competent in the field of confiscation are reluctant to provide information with respect to confiscated assets.

Among the recommendations issued are the development and implementation of efficient instruments and mechanisms to be used by authorities working in the field such as: competent institutions should publish in a transparent and timely manner relevant statistical data with regard to confiscations as well as hold regular consultations with relevant stakeholders regarding issues related to confiscation.

