

COUNTRY REPORT

# EXTENDED CONFISCATION PROCEDURE IN ROMANIA

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# **Extended Confiscation Procedure in Romania**

~Country Report~

**Transparency International (TI)** is the global civil society organization that fights against corruption. Through more than 90 national organizations worldwide and an international secretariat in Berlin, TI raises awareness about the harmful effects of corruption and works with partners from governments, the business environment and the civil society to develop and implement effective measures to combat it.

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The general aim of the project is to conduct an activity of research and support for independent monitoring on the part of civil society – with a view to increasing efficiency, accountability and transparency of the European illegal asset confiscation policies and practices.

This study is aimed at obtaining a overview of the national regulations in the field of confiscation procedures, identifying the main confiscation typologies, the criminal offences that trigger the confiscation procedure, the institutions authorised to enforce the procedure as well as the main vulnerabilities in enforcing it.



## FOREWORD

Confiscation is a safety measure stipulated among the provisions of the Code of Criminal Procedure and may be enforced only if a person has committed a criminal act. This measure has the purpose of eliminating the state of peril and to avert criminal acts being committed.

Confiscation affects a person's assets and may, therefore, be considered a safety measure of a pecuniary nature to the benefit of society. The state of peril in the case of confiscation refers to the assets specifically mentioned in the provisions of the Code of Criminal Procedure.

This condition must always be considered in connection with the state of peril constituted by the person of the offender who owns and may circulate the assets. Although some goods are by nature perilous (weapons, drugs etc.), it is essential for the state of peril to be related to the person of the offender.

Likewise, it must be taken into account that some goods, although not perilous in their use present a state of peril because of having been illegally acquired by the offender (e.g. money received by a civil servant as bribe, since the peril in the case of the offender here is that they may commit other criminal acts too in the future).

Confiscation is a criminal law sanction, applied in rem respectively only for those goods which are connected to the crime committed. For this reason it is not subject to time-barring (imprescriptible) and is not affected by the causes which lead to the closing of the criminal process or which remove criminal accountability.

In order to eliminate various states of peril, as a special measure of prevention, the competent bodies may enforce the confiscation procedure, as a means to remove them. Usually, confiscation refers to property that belongs to the offender, and, only in exceptional situations specifically stipulated in the law, may it refer to property that belongs to other people.

Confiscation is a definitive safety measure. It cannot be revoked on the grounds of the cessation

of the state of peril. The confiscated assets become government property or are destroyed. Under exceptional circumstances, should the confiscation measure be wrongly enforced, restitution of the assets or, if the goods no longer exist, of the goods value shall be ordered in accordance with the law.

When considering the swiftest elimination of the state of peril caused by the existence of the items subject to confiscation, the legislator stipulated the possibility for the seizure and retention of the assets subject to confiscation to be performed both during criminal proceedings by the prosecutor and when the matter goes to court by the judge.

Thus, a type of balance is ensured between the two stages of the trial, which comes in completion of the one achieved through the possibility of capitalising the property retained through seizure before an injunction is issued by a civil/criminal court only in accordance with the specific legal provisions.

The current legal framework has certain vulnerabilities regarding the enforcement of the confiscation procedure with respect to the lack of transparency in the management of the assets as well as the way they are capitalised by the competent institutions, the gaps in legislation which provide the offender with the possibility to dispose of their wealth. In practice there is a lack of cooperation among the bodies enforcing the confiscation procedure.

Confiscation is the safety measure stipulated in the Code of Criminal Procedure which consists of including in the state ownership some assets belonging to the offender, thus preventing a new criminal act from being committed. The criminal national law stipulates two types of confiscation: special confiscation and extended confiscation.

It is important to note that at the level of Romanian Law, the confiscation procedure is enforced on the basis of an injunction issued by a criminal or by a civil court or in accordance with Law no. 144/2007 on the establishment, organisation and functioning of the National Integrity Agency with subsequent amendments.

**Relevant definitions stipulated in the Romanian law regarding the enforcement of the confiscation procedure:**

**Confiscation as a result of committing a criminal act/an offence** (as a safety measure): is a safety measure ordered by a court of justice when a criminal act/offence is committed.

This may accompany a main sanction, but it can also be enforced in the case of lack of criminal sanction and consists in permanent dispossession of a category of goods which are connected to the criminal act/offence committed (i.e. assets they were obtained, used or they result from committing a criminal offence).

**Confiscation as a result of contraventional sanction** (as a complementary contraventional sanction): is a measure ordered by a court of justice as a result of committing an offence. It accompanies the application of main offence sanctions (warning, contraventional fine, community service).

The measure of complementary contraventional confiscation is applied to the goods destined for, used or resulted from committing an offence.

**Civil confiscation founded on the Law no. 144/2007** regarding the establishment, organizing and functioning of the National Integrity Agency: it is a civil measure created as a result of the unjustifiable immense difference of 10,000 Euro between revenues earned and expenses incurred by circumstantial subjects within the Law no. 144/2007.

Confiscation occurs either as a direct result of the final report of the National Integrity Agency, or pursuant to a final judgement of forfeiture of the unjustifiable difference.

The subjects of the Law no 144/2007 are dignitaries, magistrates, persons in management and control positions in public institutions, civil servants.

**Illegal wealth.** Illegal wealth shall mean obtaining assets dishonestly, via illegal means, without the possibility of justifying them in relation to the person's lawful income.

It is very important to underline the fact that Romania ratified via Law no. 365/2004 the United Nations Convention against Corruption adopted on 31st October 2003.

In accordance with its provisions "Subject to its constitution and the fundamental principles of

its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income".

Although the fundamental law establishes the unlawfulness of the enrichment as well as the fact that the wealth thus obtained cannot be confiscated, we must emphasize the fact that the regulation of this presumption does not preclude the investigation of the unlawfulness of the enrichment, and the burden of proof lies with the person who invokes the unlawfulness.

If the stakeholder proves that some assets or part of the wealth or the entire wealth of a person has been illegally obtained, confiscation of those assets or of the illegally obtained wealth may be ordered in accordance with the legal provisions.

**A criminal offence** is an act which represents a social peril and it is culpably committed.

**Criminal liability** is a form of legal liability which represents a consequence of disregarding the provisions of criminal law, which consists of a criminal-law relationship of coercion between the state and the offender as a result of a criminal offence having been committed.

Likewise, it should be mentioned that civil liability is of a personal nature (it applies to the culprit only, and not to their successors too, as in the case of civil liability); for this reason, the safety measure of confiscation in criminal matters also applies mainly with respect to goods/assets belonging to the person against whom criminal proceedings are initiated, and it is only under exceptional circumstances that the measure applies also on the assets of a third party (against whom criminal proceedings have not been brought).

**Contravention** is the antisocial act with a lower degree of social perilousness than that of a criminal offence, perpetrated culpably and stipulated in the provisions of civil legislation on contraventions.

**Liability for contraventions** is a form of legal liability which appears as a consequence of disregarding the legal provisions on contraventions, and consists in drafting a judicial contraventional report of coercion between the state and the offender, established pursuant of offence



committed. Likewise, it should be mentioned that liability for contraventions is of a personal nature, and, for this reason, the safety measure of confiscation applies with respect to the goods/assets of the person accused of having committed a contravention. The applicable procedural rules are the ones of a civil trial.

### **Legal and Institutional Aspects Regarding the Confiscation Procedure**

The main regulations at a national level regarding the confiscation procedure are as follows: the Criminal Code of Romania, Code of Criminal Procedure (in the special confiscation and extended confiscation), Government Ordinance no. 2/2001 on the legal framework of contraventions, Law no. 144/2007 on the establishment, organisation and functioning of the National Integrity Agency, the Fiscal Procedure Code, the Code of Civil Procedure (civil confiscation).

In accordance with the legal framework, here are the **typologies of confiscation**:

- Confiscation as a result of criminal offence;
- Confiscation as a result of sanctioning of a contravention;
- Confiscation as a result of enforcing Law no. 144/2007 regarding the National Integrity Agency;

#### **Confiscation as a result of criminal offence.**

The procedure of confiscation as a result of criminal offence can be divided into two types of confiscation: special confiscation and extended confiscation. In accordance with the Code of Criminal Procedure the following assets are subject to special confiscation:

- Assets obtained by perpetration of an offence stipulated in the criminal law;
- Assets which were used in any way to perpetrate a criminal offence, if they belong to the offender or if, in case they belong to a different person, this person was aware of the purpose the assets were used for. This measure cannot be ordered in the case of press offences. If the value of the assets to be confiscated is noticeably disproportionate to the nature and seriousness of the criminal offence, partial confiscation is ordered in a pecuniary form, while taking into consideration the consequences of the offence and the part played by the asset in perpetrating the offence. If the assets cannot be confiscated, since they do not belong to the offender, and the person they belong to was unaware of the purpose they were used for, an amount of money

equivalent to the value of the given assets shall be confiscated;

- Assets produced, modified or adapted with a view to perpetrating a criminal offence, if they were used when committing the offence and if they belong to the offender. Whenever the assets belong to a different person confiscation is ordered if the production, modification or adaptation was performed by the owner or by the offender with the knowledge of the owner. If the assets cannot be confiscated, since they do not belong to the offender, and the person they belong to was unaware of the purpose they were used for, the amount of money equivalent to the value of these assets shall be confiscated.
- Assets offered in order to establish whether an offence was committed or as a reward for the offender;
- Assets obtained due to the perpetration of the offence stipulated in the criminal law, if they are not returned to the injured party and inasmuch as they are not used as indemnification;
- Assets whose ownership is prohibited by the law.

If the assets subject to confiscation are not found, an amount of money as well as other assets shall be confiscated up to their equivalent value. It is possible that the court will not order the confiscation of the asset if it is part of the offender's means to make a living, it is an item of daily use or it is part of the means to practice their profession or of the person the special confiscation measure may impact on.

Extended confiscation. National law regulations on extended confiscation were introduced in 2012 within Law no. 63/2012 on the modification and completion of the Code of Criminal Procedure of Romania and Law no. 286/2009 on the Code of Criminal Procedure, by including article 118<sup>2</sup>. The article defines extended confiscation as the safety measure used to confiscate illegal assets from persons who have committed a certain category of criminal offence and are unable to justify their assets.

Extended confiscation may be enforced whenever the following conditions are met cumulatively:

- If the offender is convicted and sentenced to at least 5 years imprisonment;
- If the value of the assets obtained during a period of 5 years before and, depending on the case, after the offence is committed up to the date when the document instituting the proceedings is issued, noticeably exceeds the income the offender's lawful income;
- The court is convinced that the assets result from the perpetration of the following criminal offences: pandering; offences related to

trafficking of drug or drug precursors; human trafficking offences; offences related to the state borders of Romania; the offence of money laundering offences; offences stipulated in the legislation on preventing and combating pornography; offences stipulated in the legislation on the prevention and fight against terrorism; association with a view to committing offences; the offence of initiating or setting up an organised crime group or of joining or supporting such a group in any way; offences against property; offences related to infringement of the regime on weapons and ammunition, nuclear materials or of other radioactive and explosive substances; counterfeiting of currency or other securities; disclosure of an economic secret, unfair competition, infringement of the provisions on import or export operations, embezzlement, infringement of the provisions on import of waste and residues; offences related to the organisation and operation of gambling; trafficking of migrants; corruption offences, offences assimilated to corruption offences, offences related to corruption offences, offences against the financial interests of the European Union; tax evasion offences; offences related to the customs regime; the offence of fraudulent bankruptcy; offences committed via computer systems and electronic means of payment; trafficking in human organs, tissues or cells.

Likewise, when enforcing the extended confiscation procedure, the value of the assets transferred by the convict or by a third party to a member of the family, to persons with whom the convict has a relationship similar to the one between spouses or between parents and children, if they live with the convict, to the legal entities owned by the convict is taken into consideration.

In accordance with the art 118<sup>2</sup> (Criminal Code) assets will also entail amounts of money. Upon establishing the difference between the legal revenues and the value of the obtained assets the following shall also be taken into account: the value of the goods at the time they were obtained and the expenses incurred by the convict.

If the assets to be confiscated are not found, goods and money shall be confiscated up to their equivalent value. Assets and money obtained from the exploitation or use of assets subject to confiscation are also confiscated.

An appeal may be filed against the injunction ordering the confiscation within the timeframe stipulated in the law (10 days). If, in accordance

with the criminal procedure, no appeal is filed, the confiscation measure may also be challenged via an appeal against enforcement as regulated in the civil procedure.

#### **Confiscation pursuant contravention sanctioning.**

G.O. no. 2/2001 on the legal framework of contraventions stipulates a complementary penalty of confiscating the assets intended or used for or obtained as a result of committing contraventions. The ascertaining authority who finds a contravention, when they take note of the fact that a contravention was committed, shall apply both the main penalty for contraventions (warning, fine, community service, imprisonment) and the complementary penalty of confiscation. The following may act as ascertaining authorities: mayors, officers and authorised non-commissioned officers working within the Ministry of Interior, persons acting as proxies appointed by ministers and other managers of the central public administration authorities, by prefects, by presidents of county councils, by the general mayor of Bucharest, as well as by other persons mentioned in special laws. A complaint may be filed against the record of findings establishing a contravention and the sanction to be enforced for it within 15 days since the record of findings is served or delivered. The injured party can file a complaint only with respect to the indemnification, and the owner of the confiscated assets, who is not the offender, only with respect to the measure of confiscation. The injunction settling the complaint can be appealed within 15 days since it is served.

Confiscation is enforced by the authority who ordered this measure in accordance with the legal provisions. In case the record of findings is annulled or found null, the confiscated assets, except for those whose ownership or circulation is prohibited by law, are immediately returned to the person entitled to this. If the confiscated assets have been capitalised, the court shall order that the person entitled to this receives an indemnity whose amount is established in relation to the market value of the assets.

#### **Confiscation as a result of the enforcement of Law no. 144/2007 on the National Integrity Agency.**

Law no. 144/2007 on the establishment, organisation and functioning of the National Integrity Agency which is an autonomous, operationally independent administration authority whose duty is to verify the assets, conflicts of interest and compliance with the legal regime governing incompatibilities in exercising public office. If the integrity inspectors find a difference which exceeds 10 000 euros between the wealth

obtained and the earned revenues, they refer the matter to the Asset Investigation Committee by the Court of Appeal.

Following verification, it may decide referring the case to the Court of Appeal, classifying the cause or suspending it if there is evidence of a criminal act. The Competent Court may issue an order to confiscate the assets or the part of the assets which were unjustifiably obtained, while enforcing the complementary prohibition to exercise any public office or dignity except for the elective ones for a period of 3 years. The rules which apply here are therefore those of civil procedure; therefore there is no need for a conviction in this sense.

**Necessary procedural stages in enforcing the confiscation procedure** (applicable both in the special confiscation procedure and in the extended confiscation procedure):

- Identification of the assets obtained as a result of offences;
- Seizure/blocking of the assets/values;
- Enforcing precautionary attachment (making the assets unavailable and preserving them).

In accordance with the art.163 of the Code of Criminal Procedure precautionary measures are taken during the criminal proceedings by the prosecutor or by the court and they consist of rendering the movable and immovable assets unavailable by instituting a seizure, with a view to enforcing the special confiscation in order to compensate for the damage caused via the offence, and to guarantee that the penalty in the form of a fine will be enforced.

Precautionary measures aimed at compensating for the damage may be enforced on the assets belonging to the accused or defendant and to the person liable in accordance with the civil law up to the probable value of the damage. Precautionary measures aimed at guaranteeing that the penalty in the form of a fine shall be enforced are applied only on the assets of the accused or defendant.

The bodies that perform the precautionary measures:

- The criminal prosecution authority: the writ instituting the precautionary measure is enforced by the criminal prosecution authority that instituted the measure.
- The bailiff: the court injunction ordering that the precautionary measure be instituted is enforced by the bailiff.

The precautionary measures ordered by the prosecutor or by the court may also be enforced

via the injured unit's own enforcement bodies, if it is one of the units mentioned under Art.145 of the Criminal Code (public authorities, public institutions, the institutions or public interest legal entities).

If the criminal prosecution is carried out by the prosecutor, they can order that the instituted precautionary measure be enforced by the Secretary of the Prosecutor's Office. In accordance with the art.165 of the Criminal Code the authority which initiates the enforcement of the attachment has the obligation to identify and assess the attached assets and likewise to draw up a record of findings comprising all the elaborated documents comprising the detailed description of the attached assets while indicating their value.

The record of findings shall mention the assets exempt from prosecution in accordance with the law and which were found with the person the attachment is enforced upon.

**The procedure for capitalising the movable assets attached during the criminal prosecution.**

During the criminal prosecution, when there is no consent from the owner, if the prosecutor instituting the attachment deems it necessary to capitalise the attached movable assets, a time limit which cannot be shorter than 10 days is set to convene the parties, as well as the custodian of the assets, if a custodian was appointed<sup>1</sup>.

The parties, the custodian as well as any other stakeholders may lodge a complaint against the writ ordering the capitalisation of the attached movable assets with the court that has the jurisdiction over the case as a court of first instance. The complaint against the writ suspends the enforcement.

The hearing of the case is pre-eminent and accelerated, and the judgement of the court with respect to the complaint is definitive.

**Procedure to capitalise the attached movable assets during the trial.**

During the trial, the court may rule on its own or upon the request of the prosecutor, of one of the parties or of the custodian on the capitalisation of the attached movable assets. To this purpose, the court sets a time limit which cannot be shorter than 10 days to summon the parties as well as the custodian of the goods, if one has been appointed.

On the set date the parties will discuss during in a public hearing the capitalisation of the attached movable assets and they are made aware that they are entitled to make observations or requests related to these assets.

<sup>1</sup>Art. 168<sup>2</sup> of the Code of Criminal Procedure

The absence of the summoned parties does not preclude the procedure being carried out. The injunction ordering the attachment may be appealed in the same court, and the ruling of the court may be appealed via a review which will be enforced.

The management of the assets to be confiscated must be taken into account since, at times, part/all of the assets subject to confiscation have a short validity period (perishable goods), become morally/ materially degraded (cars), are subject to rapid degradation (foods) etc.

In the national law, the Code of Criminal Procedure stipulates that the criminal prosecution authority/ the court is entitled (via a writ, or an injunction respectively), to order the immediate capitalisation of the attached assets upon request from the owner of the assets or with their consent even before a conviction injunction is delivered.

In the case of some assets, if there is no agreement on the part of the owner, the assets may be capitalised prior to the injunction being delivered only provided that their value has decreased with at least 40% compared to the value they had at the time the attachment was instituted: animals, poultry, flammable and oil products whose storage and maintenance require expenses which are disproportionate to the value of the assets.

The amounts obtained following the capitalisation of the assets are registered on the name of the accused or of the person liable in accordance with the civil law on a special account at the disposal of the judicial authority which enforced the attachment.

A complaint against the writ issued by the prosecutor ordering the capitalisation may be lodged with the court within 10 days as of the date the writ is served. The complaint suspends the enforcement. A complaint may be filed against the injunction ordered by the judge within 15 days as of the challenged act is carried out.

The legal provisions specifying the concrete manner to carry out the prosecutor's / court's orders on the capitalisation of the assets subject to confiscation do not stipulate the procedural guarantees for the participation or, at least, the

notification of the defence counsel. The current provisions only make reference to the lawful summons of the parties and the presence of the custodian, in case one is appointed.

**Restitution of assets:** In accordance with the Code of Criminal Procedure<sup>2</sup>, if the prosecutor or the court find that the assets seized from the accused or defendant or from any person who received them in order to store them belong to the injured party or have been unjustly removed from their possession or ownership, the restitution of these assets to the injured party shall be ordered.

**Restoration of the previous situation<sup>3</sup>:** The prosecutor or the court may take measures to restore the situation existing prior to the offence being committed, whenever the change in the situation is the obvious result of the offence being committed and the restoration is possible.

**Actual enforcement, via capitalisation of assets:** the safety measure of special confiscation instituted via a writ or an injunction is enforced as follows:

- a) The confiscated assets are turned over to the authorities entitled to take them over or to capitalise them in accordance with the provisions of the law;
- b) Whenever the destruction of the confiscated assets is ordered, it shall be performed in the presence of the prosecutor or of the judge, depending on the case, while a record of proceedings shall be drawn up and included in the case file<sup>4</sup>.

Subsequent to the criminal injunction which convicts the offender and the orders the confiscation measure being delivered, and in accordance with Art.232<sup>5</sup> of the Code of Fiscal Procedure, the confiscation measure is carried out by the authorities who ordered it, namely:

- The National Agency for Fiscal Administration (ANAF),
- Bailiffs
- The enforcement bodies of the public institutions and the capitalisation is carried out by the Ministry of Economy and the Ministry of Public Finance. The confiscated amounts as well as the amounts obtained from the capitalisation of the confiscated assets shall become part of the state budget (or of the local budgets).

<sup>2</sup>Art. 169 of the Code of Criminal Procedure

<sup>3</sup>Art. 170 of the Code of Criminal Procedure

<sup>4</sup>Art. 439 of the Code of Criminal Procedure

<sup>5</sup>Art.439 of the Criminal Code

**Confiscation as a result of contravention sanctioning:** G.O. no. 2/2001 on the legal framework of contraventions stipulates the complementary sanction of confiscation of the assets intended, used for or resulting from committing contraventions.

The authority entitled to determine a contravention enforces both the main sanction for contraventions (warning, fine, community service, imprisonment) and the complementary sanction of confiscation, either by using the same record of findings, by drawing up a new one or by using a different official report.

The sanction of confiscation is enforced by the same authority who orders conforming to the procedure stipulated in the Code of Civil Procedure; however, prior to the enforcement of the sanction, a civil injunction ordering the sanctioning of the given contravention is necessary.

The authorities that may order confiscation when sanctioning a contravention are the following: Ministry of Interior and Administrative Reform when acting as the authority who determines that a contravention has been committed, and the National Agency for Fiscal Administration.

**Persons subject to the confiscation procedure:**

1. The convicted offender, a person upon whom a sanction for contraventions is enforced and persons who fall under Law no. 144/2007 on the establishment, organisation and functioning of NIA.
2. Another person (third party) if:
  - They were aware of the unlawful origins of the asset
  - They were aware of the purpose the assets subject to confiscation had (i.e. committing an offence)
  - The production, modification or adaptation of the asset subject to confiscation was performed by the owner or by the offender with the knowledge of the owner.

**Retroactivity of criminal law: Legal provisions enforced retroactively:** In the criminal national law there can be retroactive enforcement of legal provisions insomuch as these provisions are more in favour of the offender.

With respect to confiscation, the Criminal Code provides for the enforcement of the new law for the offences which have not received a final judgement since it is a safety measure and not a main penalty; therefore, it is not always that the more favourable law is enforced (most of the times

practice has shown that the new law can also be more favourable).

How do amnesty and pardon affect confiscation? Criminal Law specifically stipulates that neither amnesty nor pardon affect the safety measure of confiscation. Likewise, the statute of limitations on the enforcement of the penalty does not affect the measure of confiscation.

In relation to the enforcement of the confiscation procedure, at the level of the national law the following **rights of the citizens** are provided:

*The right to property.* Regarding the enforcement of the confiscation measure, the law stipulates that the right to property be complied with as follows:

- Proportionality between the value of the assets subject to confiscation and the nature and seriousness of the criminal act committed is taken into account, so that whenever they are noticeably disproportionate partial confiscation shall be ordered via an equivalent amount of money;
- The court may not order confiscation if the asset is part of the means to make a living of the offender or of the person the confiscation measure would operate upon;
- Although instituting of precautionary attachment on several assets/values may be ordered, confiscation of these items may be ordered up to the amount constituting the equivalent of the damage caused by the offence.

*The right to exercise remedies* against documents ordering the attachment/confiscation:

- A complaint may be filed at any stage during the criminal proceedings against the writ issued by the prosecutor instituting the attachment, as well as against the injunction issued by the judge;
- The remedies provided in the law against the confiscation measure may be exercised (appeal/review), and subsequent to the completion of the criminal litigation an appeal against enforcement may be lodged in accordance with civil law;
- A complaint against a record of findings for contraventions may be filed within 15 days as of the date it is delivered, and the legal remedies may be exercised against the injunction.

*Presumption of innocence* – any person is presumed innocent until proven guilty, until their culpability is established via a definitive ruling. Regarding the enforcement of the confiscation measure, the presumption of innocence consists of the fact that the

capitalisation of the assets which are presumed to have been obtained from the perpetration of criminal acts/contraventions and which are subject to the attachment measure is carried out prior to the issuance of a conviction injunction, only in accordance with the conditions specifically stipulated in the law, while providing the possibility to prove the non-fraudulent character of the assets via the exercise of the remedies provided by the law. Guarantees for the presumption of innocence:

- The capitalisation of the assets prior to the conviction injunction being issued in the situations specifically provided by the law.
- The exercise of the remedies throughout the criminal proceedings.
- The possibility for the accused to appeal in accordance with the civil law if they have not filed any complaint during the criminal proceedings.

#### **The legislation of the European Union with respect to confiscation, ratified by Romania:**

- Council Framework Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime.
- Council Framework Decision 2005/212/JHA on the confiscation of crime-related proceeds, instrumentalities and property.
- Council Framework Decision 2007/845/JHA 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.

#### **The institutional structure, operational and administrative capacity of the bodies competent in enforcing the confiscation**

##### **Bailiffs <sup>6</sup>**

**When performing their activity, the bailiff has the following duties:** enforcing the civil provisions comprised in enforcement orders; the service of judicial and extrajudicial documents; service of procedural documents; amicable recovery of any debt; enforcement of the precautionary measures ordered by the court; determining some factual circumstances in accordance with the provisions of the Code of Civil Procedure; drawing up records of findings, in the case of a real offer followed by the debtor's writing down the amount, in accordance with the provisions of the Code of Civil Procedure; drawing up a protest for non-payment of bills of exchange, promissory notes and cheques, depending on the case, in accordance with the legal provisions; any other documents or operations that the

law stipulates they are competent in.

**The activity of bailiffs is carried out** in an office where one or several associate bailiffs may operate along with the adequate auxiliary staff.

By becoming an associate in a professional partnership the bailiff does not lose their entitlement to an individual office. The Ministry of Justice via the Specialty Directorate elaborates the records of bailiff offices and the papers with reference to the appointment and the removal of the bailiff from office. The number of bailiffs is established and updated annually by the Ministry of Justice following consultations with the Council of the National Union of Bailiffs in Romania, depending on the local requirements set with reference to the extent of the area, the workload and the number of inhabitants, so that there is at least one bailiff for every 15.000 inhabitants. The number of bailiffs in the territorial jurisdiction of a court shall not be less than 3.

#### **Requirements to be met in order to be appointed bailiff:**

they must have Romanian citizenship and they must reside in Romania; to have the full capacity to exercise their rights; to have a law degree; to have no criminal record and a good reputation; to speak Romanian; to be medically fit to exercise the office; they must have had a 2 year internship as a bailiff and they must have passed the professional certification examination or, depending on the case, to have held an office in a legal specialisation for 3 years and also they must have passed a test or the examination allowing them to enter the profession.

The persons who have held the position of judge, lawyer or prosecutor for 5 years are exempt from sitting the examination, provided they have passed the professional certification examination for the profession they have. The bailiff is appointed by the Minister of Justice in the territorial jurisdiction of a court on the basis of a request on the part of the stakeholder and following the verification of compliance with the abovementioned requirements. The list of bailiffs is drawn up and updated annually by the Council of the National Union of Bailiffs in Romania.

In the territorial jurisdiction of each court of appeal there is a **Bailiffs' Chamber** which is a legal entity. All the bailiffs operating in the territorial jurisdiction of the given court of appeal are part of the Bailiffs' Chamber. The Bailiffs' Chamber is managed by a board of directors made up of a chairman, a vice-chairman and 3-7 members. The board of directors is elected, in accordance with

<sup>6</sup>Law no.188/2000 regarding bailiffs

the statutes, by the general assembly of bailiffs for a period of 3 years from among the members of the given Bailiffs' Chamber. The chairman of the board of directors is the representative of the Bailiffs' Chamber in relation to third parties.

Bailiffs in Romania are brought together within the **National Union of Bailiffs**, a professional organisation with legal personality, made up of all appointed bailiffs. The managing bodies of the National Union of Bailiffs are as follows: the congress, the council and the chairman.

The Congress of the National Union of Bailiffs is made up of delegates of each of the existing Bailiffs' Chambers, in accordance with the rule of representation established in the statutes, the chairmen of the Bailiffs' Chambers and the other members of the Council of the National Union of Bailiffs. The congress of the National Union of Bailiffs takes place annually when it is convoked by the Council. Compulsory enforcement and the other actions which enter the competence of a bailiff are carried out upon request, unless otherwise provided by law. When performing their duties and responsibilities, the bailiff shall draw up orders, records of findings and other procedural documents, with the layout and within the time limits stipulated in the law.

**Bailiff's Office.** The activity of a Bailiff's office consists of: enforcing the civil provisions of enforcement orders, serving judicial and extrajudicial documents, serving procedural documents, amicable recovery of any debt; enforcement of the precautionary measures ordered by the court, determining some factual circumstances in accordance with the provisions of the Code of Civil Procedure; drawing up records of findings, in the case of a real offer followed by the debtor's writing down the amount, in accordance with the provisions of the Code of Civil Procedure; drawing up a protest for non-payment of bills of exchange, promissory notes and cheques, depending on the case, in accordance with the legal provisions.

#### **National Agency for Fiscal Administration**

The National Agency for Fiscal Administration (NAFA) - a specialized body of the central public administration established under the Ministry of Public Finance. Likewise, the following bodies are also organised and operate within NAFA: Financial Guard, National Authority of Customs, county directorates general for public finances and the Public Finances General Directorate of Bucharest. Specialised body of central public administration with responsibilities in charge of the implementation of the tax administration policy, NAFA performs its activity in the field of budget income administration, by means of the procedures of:

management, collection, tax control and development of a partnership relation with the taxpayers. N.A.F.A has the mission to provide the resources for the public expenditures of the society by collecting and managing efficiently the taxes, charges, contributions and other amounts due to the general consolidated budget as well as to provide the fiscal information necessary for drafting the Government's economic policy.

N.A.F.A fulfils its mission acting based on three priority guidelines: encouraging voluntary compliance for the prevention of tax fraud, by diversification and increase of the quality of services and provision of simplified procedures; fighting fraud by promoting quality tax control oriented more towards the sectors with high risk of fraud; increased effectiveness and efficiency in the activity of collecting the taxes, charges and social contributions, in order to guarantee the necessary budget income. In order to optimally fulfil its mission, NAFA continues the improvement of the process of monitoring budget debt collection, thus supporting the Government's social and economic policy.

NAFA as its main objectives: fighting tax fraud, supporting the business environment, modernising services and perfecting procedures, prevention of tax evasion during the collection stage, improving the collection of budget debts

#### **Police**

The Romanian Police is part of the Ministry of Internal Affairs and it is the specialised institution of the state which has responsibilities in defending the fundamental rights and freedoms of the individual, in defending private and public property, preventing and uncovering crimes, monitoring compliance with public law and order in accordance with the legal provisions.

The Romanian Police operates on the following organisational chart: General Inspectorate of the Romanian Police; territorial units operating under the General Inspectorate of the Romanian Police, the General Directorate of Bucharest Police and county police inspectorates; education institutions for continuous training of the staff; other units established in accordance with the law, necessary for the fulfilment of specific police duties.

When performing their activity, the police has responsibilities in the field of determining contraventions and enforcing penalties for contraventions in accordance with the legal provisions.

**The injured unit's own enforcement bodies.** Each institution will appoint via its legal and financial departments the persons in charge of

enforcing the confiscation procedure. An essential condition for a proper and correct activity of the bodies competent in the field of confiscation enforcement is the one regarding the bodies' integrity.

The main regulations in this respect are stipulated in Law no. 161/2003 on certain measures to ensure transparency in the exercise of public dignity, of public office and in the business environment, and to prevent and punish corruption, in addition to the provisions of Law no. 144/2007 on the establishment organisation and functioning of NIA.

The National Integrity Agency (NIA) was established via Law no. 144/2007 in order to guarantee the exercise of public office in an impartial, responsible and transparent manner, through a uniform organisation of the activity of controlling the assets obtained during a term of office or during the period a person holds a public office, the activity of examination of conflicts of interest, and the activity of investigating incompatibilities. Thus, NIA is called upon to establish veracity of the declaration of assets.

**Administrative regulation of the conflict of interests.** In accordance with Law no. 161/2003 conflict de interests shall mean the situation wherein a person in the exercise of a public dignity or a public office has a pecuniary interest which may influence the objective performance of their duties. The principles which underlie the prevention of the conflict of interests: impartiality, integrity, decisional transparency, the primacy of the public interest.

**Regulation of the conflict of interests in criminal law:** In accordance with the Criminal Code, conflict of interests shall mean the action of a civil servant who in the exercise of office duties, commits an act of or participates in taking a decision via which some pecuniary interest is directly or indirectly obtained for themselves or for their spouse, a relative or an in-law up to and including the second degree of kinship or for another person they

had a business or work relationship with during the past 5 years or from whom they used to or still receive some benefit in the form of services or any other advantages is punishable by imprisonment from six months up to 5 years along with the prohibition of holding a public office for the maximum period.

**Declarations of assets.** In accordance with Law no. 176/2010, persons who hold public dignities or a public office persoanele must submit a declaration of assets and a declaration of interests. The declarations are written and under the signatory's own responsibility and they are published on the institution's website as well as on the institution's notice board, within 30 days as of the date they are received.

The declarations of assets and interests must be submitted within 15 days as of the date of appointment or election or as of the date the activity begins.

Public officials must submit or renew their declarations of assets and interests annually, no later than 31st May for the previous fiscal year. In no more than 15 days as of the day the term of office or the activity ends, they must submit a new declaration of assets and interests<sup>7</sup>.

Regarding the declarations of assets, there is no problem with respect to their transparency, but rather with respect to the capacity of the National Integrity Agency to verify their correctness.

In Romania regulations with respect to the declaration of assets and the declaration of interests, respectively, have evolved. However, private data, such as the location of real estates, the signature, banking data or the personal identification number are hidden upon publication.

<sup>7</sup>Art. 42 of Law no. 144/2007



### DEFINING CONFISCATION MODELS

CONFISCATION TYPE	Definitions	Relevant laws/provisions
<b>Classic Confiscation</b>	<b>As punishment provided by the Criminal Code</b>	<b>Law: The Criminal Code</b>
<i>Criminal offense list</i>	<p><b>Crimes:</b> The Criminal Code does not expressly provision a list of criminal offenses, but only provisions those goods which result from criminal offenses.</p> <ul style="list-style-type: none"> <li>• Goods obtained through committing a deed provisioned by the Criminal Law</li> <li>• Goods which have been used, in any way, to commit a crime, should they belong to the perpetrator or, in case they belong to another person, should that person have been aware of the purpose they were used in. This measure cannot be ordered in the case of criminal offenses committed using the press.</li> </ul> <p>Should the value of the goods that are subject to confiscation be obviously disproportioned with the nature and gravity of the crime, partial confiscation can be ordered, through financial equivalent, taking into consideration the consequences of the crime and the contribution the good had in committing it. If the goods cannot be confiscated, as they do not belong to the perpetrator and the person they belong to had not been aware of the purpose they were used for, the financial equivalent of the goods is confiscated.</p> <ul style="list-style-type: none"> <li>• Goods produced, modified or adapted in order to commit a crime, if they have been used to commit the respective crime and if they belong to the perpetrator. When the goods belong to another person, the confiscation is ordered if the producing, modifying or adapting was made by the owner or by the criminal with the owner's knowledge. If the goods cannot be confiscated, as they do not belong to the perpetrator and the person they belong to was not aware of the purpose of their use, their financial equivalent is confiscated.</li> <li>• Goods that had been given in order to encourage the committing of a crime or in order to reward the perpetrator;</li> <li>• Goods obtained through committing the deeds provisioned by the criminal law, if they are not returned to the injured party and as long as they do not serve in compensating the injured party;</li> <li>• Goods whose possession is forbidden by law.</li> </ul>	<p><b>Provisions:</b> art. 118 of the Criminal Code.</p>
<i>Confiscation based on a conviction</i>	<b>Under the civil law</b>	<p><b>Law:</b> Government Ordinance no. 2/2000 concerning the legal regime of contraventions.</p>
<i>List of criminal offenses</i>	<p><b>Criminal offenses:</b> There is no complete list of contraventions.</p>	<p><b>Provisions:</b> art. 5 of Government Ordinance no. 2/2000 concerning the legal regime of contraventions.</p>

CONFISCATION TYPE	Definitions	Relevant laws/ provisions
<b>Classic Confiscation</b>	<b>As punishment provided by the Criminal Code</b>	<b>Law: The Criminal Code</b>
<i>Proving the illegal behaviour</i>	<p><b>Who:</b> The official examiner The prosecutor The court of law</p>	<p><b>Provisions:</b> art. 15 of Government Ordinance no. 2/2000 concerning the legal regime of contraventions. Art 163 of the Code of Criminal Procedure.</p>
<i>The connection between the goods obtained and the illegal behaviour.</i>	Competent authorities must prove the fact that the goods are a result of the offenses.	<p><b>Provisions:</b> Art. 202 of the Code of Criminal Procedure. Art. 287 of the Code of Criminal Procedure Art. 15 of Government Ordinance no. 2/2000 concerning the legal regime of contraventions.</p>
<i>Confiscation based on the lack of a conviction</i>	<p><b>Criminal offenses:</b> The applying of the precautionary measure of confiscation takes place in the situation where the National Integrity Agency inspector finds an unjustified difference between income and expenses.</p>	<p><b>Provisions:</b> Art.13 of Law no. 176 / 2010. Concerning integrity in exercising public functions and dignities, for the amendment and supplementation of Law no. 144/2007 Law no.144/2007 regarding the creation, organization and functioning of the National Integrity Agency</p>
<i>Proving the illegal behaviour</i>	<p><b>Who:</b> The National Integrity Agency inspector</p>	<p><b>Provisions:</b> Art.13 of Law no. 176 / 2010. Concerning integrity in exercising public functions and dignities, for the amendment and supplementation of Law no. 144/2007 Law no.144/2007 regarding the creation, organization and functioning of the National Integrity Agency.</p>
<i>The connection between the goods obtained and the illegal behaviour.</i>	<p><b>Value-based:</b> The confiscation of the value of the goods obtained by the offender as a result of illegal activity, without proving the connection between the contravention and a certain item of property.</p>	<b>Provisions:</b>

<b>CONFISCATION TYPE</b>	<b>Definitions</b>	<b>Relevant laws/ provisions</b>
<b>Classic Confiscation</b>	<b>As punishment provided by the Criminal Code</b>	<b>Law: The Criminal Code</b>
<i>Extended confiscation</i>	A criminal conviction followed not only by the confiscation of the goods associated with a certain crime, but also of additional goods which the court of law is convinced are the result of criminal activities such as those provided under paragraph 1, article 118 of the Criminal Code.	<b>Law:</b> The Criminal Code
<i>List of criminal offenses</i>	<p><b>Criminal offenses:</b></p> <ul style="list-style-type: none"> <li>a) Procuring prostitution;</li> <li>b) offenses regarding the trafficking of drugs and drug precursors;</li> <li>c) offenses regarding human trafficking;</li> <li>d) offenses against the Romania state border regime;</li> <li>e) offenses concerning money laundering;</li> <li>f) offenses comprised within the legislation regarding the prevention and fight against pornography;</li> <li>g) offenses comprised within the legislation regarding the prevention and fight against terrorism;</li> <li>h) association in order to commit criminal offenses;</li> <li>i) the offense of initiating or constituting an organized criminal group or of joining or supporting such a group under any form;</li> <li>j) offenses against property;</li> <li>k) offenses concerning the failure to comply with the regime of weapons and ammunition, nuclear materials or other radioactive materials and explosive matters;</li> <li>l) the counterfeiting of currency or other values;</li> <li>m) the divulging of economic secrets, unfair competition practices, failure to respect dispositions concerning import and export operations, embezzlement, failure to comply with dispositions regarding importing waste and residue;</li> <li>n) offenses concerning the organization and exploitation of gambling;</li> <li>o) migrant trafficking;</li> <li>p) corruption offenses, crimes assimilated to corruption offenses, crimes related to corruption offenses, offenses against the financial interests of the European Union;</li> <li>q) tax evasion;</li> <li>r) offenses related to the customs regime;</li> <li>s) fraudulent bankruptcy;</li> <li>ș) offenses committed by means of computer systems and electronic payment methods;</li> <li>t) human organ, tissue or cell trafficking.</li> </ul>	<b>Provisions:</b> art. 5 of Government Ordinance no. 2/2000 concerning the legal regime of contraventions.

## Assessment of implementation of confiscation rules and regulations

In order to assess the legislative framework and the way it is implemented regarding confiscation, questionnaires were sent to relevant professionals and institutions in Romania: judges, prosecutors, non-governmental organizations, professional associations and media organizations. A specific questionnaire for legal practitioners was applied to judges and prosecutors, while other types of institutions have completed one adapted to relevant stakeholders.

We received the most responses from the judges, 109, thus demonstrating the keen interest of the profession toward confiscation legislation. We received 16 responses from the prosecutors, 8 from NGOs, and five answers from media representatives. The poorest response rate recorded was from professional associations, from which we only received two completed surveys. At the level of the judges, there seems to be a real consensus on the appropriateness of the Romanian legal framework on confiscation and the effectiveness of its implementation in practice.

Thus, 103 of 109 of the judges who completed the questionnaire believes that the list of offenses that trigger the confiscation procedure is sufficient to ensure the effectiveness of the procedure, 90 of them believe that confiscation proceedings are an effective tool in fighting corruption and organized crime, and 57 find that there are difficulties in applying legal provisions for the civil forfeiture procedure.

The majority believes that the list of goods required by law is comprehensive, that third-party regulatory measures are satisfactory, that there is good cooperation between relevant institutions regarding the issue of confiscation and that this legislation provides sufficient guarantees in respect to the protection of human rights. 45 of the respondents think that the confiscation law should not be applied retroactively, while 16 of them think it should be applied retroactively over a period of 5 years and 25 opt for a longer period of 10 years.

Among the judges who have a less optimistic outlook on the confiscation legislation and its implementation, most are dissatisfied with the small number of seizures made so far, compared to the large number of corruption cases prosecuted and convicted, and draw attention to the fact that many of those who commit acts of corruption move illicitly acquired assets to other people's names, in order to hinder locating and confiscating them.

Judges require additional measures aimed at the possibility of canceling the legal documents through which illicitly acquired assets are transferred to another person.

A very similar view to that of judges is shared by prosecutors, who have been asked the same questions. Thus, all 16 respondents agreed that the list of offenses that trigger the confiscation procedure is satisfactory and 15 of them believe that the confiscation procedure, as currently enacted, is an effective tool in fighting corruption and organized crime.

Only one prosecutor questions the effectiveness of this procedure, arguing that confiscation proceedings should be extended and that there should be greater inter-institutional cooperation, including joint access to relevant databases (e.g. databases in ANAF). Most prosecutors do not consider civil confiscation proceedings as more effective than the criminal ones, although they do not identify any of its provisions as being difficult to implement. Almost all prosecutors (15 out of 16) believe that the list of goods provided by law is sufficient, as are the human rights protection guarantees provided by the law.

Moreover, nine of them find regulations on third-parties satisfactory and 12 agree that the relevant institutions in the field of confiscation have a good cooperation. Regarding the retroactive application of the law, opinions are divided, six of the prosecutors considering that such application should not take place, another six opting for retrospective application over a period of five years, and four for a period between 10 and 15 years. Both judges and prosecutors believe that cases of the subject of confiscation proceedings seeking damages in civil proceedings are rare or nonexistent in Romania, probably because the confiscation procedure is a recent one, not many confiscations having been made so far.

The opinions of judges and prosecutors were also surveyed in a group interview in which the issues of confiscation legislation and the implementation thereof were discussed at length. The results of this discussion were capitalized in the vulnerabilities and recommendations section of this report.

The civil society organizations consulted have a low awareness of the issue of confiscation of property derived from unlawful activity, which is understandable in the context that the confiscation legislation is quite recent in Romania, but also the fact that in their day to day activity even legal-oriented organizations don't often encounter this problem.

Regarding which institution should trigger confiscation proceedings, the NGOs opinions are divided, three of the eight organizations surveyed believing that this task should be left to the prosecutor, 3 holding that tax authorities would be more suitable, and one organization each opting for confiscation offices, the customs authorities or the judge. Although most of the respondents (4) found that anonymous whistle blowing procedures should not trigger the confiscation procedure, the score is a tight one, three NGOs taking the contrary view.

The same situation exists for the ideal duration of time in which confiscation offices must identify the assets: three organizations believe that they should be longer, 2 think it should be shorter and the others do not have enough knowledge on the subject.

Also, regarding property preservation periods, two NGOs believe that they are too long, and two consider them, on the contrary, too short. Although all of the three organizations that gave their opinions on this topic that considered asset management ineffective, and 4 of 5 organizations are unhappy with the level of transparency of confiscation offices, most NGO respondents felt that there was not sufficient information to assess the integrity and accountability of these offices.

The same applies in the case of items aimed at the degree of cooperation between relevant institutions or known number of cases in which subjects asked for compensation for confiscation damage. However, respondents could give us some information about the obstacles they perceive in the way of the enforcement of confiscation orders and sentences. Among these are: the lack of effective mechanisms for the implementation of existing legislation, loopholes, the excessive public focus on sentencing offenders and less on initiating the confiscation procedure, and the difficulty in identifying illicit proceeds due to their transformation to being the property of another person. Corruption and lack of good will or fear of public officials have also been identified as factors in this situation.

Media representatives are in a situation similar to that of non-governmental organizations regarding the low level of awareness of confiscation legislation, but also in terms of the possible reasons behind it. Just as in the case of NGOs, the majority of journalists surveyed said that the task of triggering the confiscation procedure should belong to the prosecutor, only one of the five respondents believing that it should belong to the fiscal authorities. Similarly, four of the five journalists said the trigger should not be due to an anonymous denunciation.

Regarding the questions on the ideal timing of identification and preservation of assets, in each case, one person found the terms too long and one too short, other respondents stating that they do not have enough information to answer. Only two journalists gave opinions on the efficiency of confiscation offices, finding that they are ineffective, while 4 out of 5 respondents agreed that the offices are not sufficiently transparent nor accountable enough and that the relevant confiscation institutions cooperate weakly with each other. On the issue of the integrity of confiscation offices only one journalist gave an opinion, who believes that the offices' integrity levels are inadequate. The main obstacle perceived by the media as being in the way of the enforcement of confiscation orders and sentences was the widespread corruption in the Romanian society .

Professional associations, having little contact with the issue of confiscation, had a very low involvement in our study. Only two such organizations agreed to complete the questionnaire, and those that have completed it did not have enough information to assess the efficiency of the confiscation procedure, the transparency and efficiency of confiscation offices in managing the assets and re-allocating their activity or the level of cooperation between relevant institutions.

Regarding which the institution the responsibility of triggering the confiscation procedure should belong to, an association opted for the prosecutor, and another for another type of institution. None of the organizations think that confiscation proceedings should be triggered as a result of an anonymous denunciation. Regarding the ideal period of time for identification and preservation of the assets, the only association who gave an opinion believed that they should be shorter . One of the associations also believes that the integrity of the confiscation offices is too low. Obstacles identified by professional associations as being in the way of the enforcement of confiscation orders and sentences were procedural, as they considered the deadline for giving a definitive solution in a case to be too long.

## Assessment Toll for Transparency, Accountability, Integrity, Effectiveness

	Identification of assets (1)	Preservation of assets (2)	Enable confiscation (3)	Enforce confiscation (4)	Management of confiscated assets (5)
<b>Transparency</b>					
<b>Provided in Law</b> <i>Please cite article</i>	<b>Very good</b> Art. 118 of the Penal Code; Art. 100, art. 107 & art. 165 of the Penal Procedure Code	<b>Good</b> Art. 109 & art. 110 of the Penal Procedure Code	<b>Very good</b> Art. 118, art. 118 <sup>2</sup> , art. 99, art. 100, art. of the Penal Procedure Code; Art. 15 of O.G. no. 2/2001	<b>Good</b> Art. 439 & art. 164 of the Penal Procedure Code; art. 41 of O.G. no. 2/2001; art. 232 of the Fiscal Procedure Code	<b>Satisfactory</b> Art. 109, art. 110, art. 168 indice 1-4, art. 165 of the Penal Procedure Code; art. 41 of O.G. no. 2/2001; art. 232 of the Fiscal Procedure Code
<b>Provided in Statute</b> <i>Please cite article</i>	<b>Poor</b>	<b>Poor</b>	<b>Poor</b>	<b>Poor</b>	<b>Poor</b>
<b>Implementation*</b>	<b>Poor</b>	<b>Poor</b>	<b>Poor</b>	<b>Poor</b>	<b>Poor</b>
<b>Accountability</b>					
<b>Provided in Law</b> <i>Please cite article</i>	<b>Very good</b> Art. 15 & art. 31 of O.G. no. 2/2001; art. 168, 1684 of the Penal Procedure Code.	<b>Very good</b> Art. 165 & art. 168-168 <sup>4</sup> of the Penal Procedure Code; art. 15 & art. 31 of O.G. no. 2/2001	<b>Very good</b> Art. 163 of the Penal Procedure Code; art. 31-36 of O.G. no. 2/2001;	<b>Very good</b> Art. 164, art 169 & art. 170 of the Penal Procedure Code; art. 31-36 of O.G. no. 2/2001;	<b>Very good</b> Art. 168 <sup>4</sup> of the Penal Procedure Code
<b>Provided in Statute</b> <i>Please cite article</i>	<b>Satisfactory</b> Art. 43-65 of Law no. 188/2000 Art. 205-210 of the Fiscal Procedure Code	<b>Satisfactory</b> Art. 43-65 of Law no. 188/2000 Art. 205-210 of the Fiscal Procedure Code	<b>Satisfactory</b> Art. 43-65 of Law no. 188/2000 Art. 205-210 of the Fiscal Procedure Code	<b>Satisfactory</b> Art. 43-65 of Law no. 188/2000 Art. 205-210 of the Fiscal Procedure Code	<b>Satisfactory</b> Art. 43-65 of Law no. 188/2000 Art. 205-210 of the Fiscal Procedure Code
<b>Implementation*</b>	<b>Poor</b>	<b>Poor</b>	<b>Poor</b>	<b>Poor</b>	<b>Poor</b>

	Identification of assets (1)	Preservation of assets (2)	Enable confiscation (3)	Enforce confiscation (4)	Management of confiscated assets (5)
<b>Integrity</b>					
<b>Provided in Law</b> <i>Please cite article</i>	<b>Very good</b> Art. 1-8 of the Penal Procedure Code; art. 5-23 of the Civil Procedure Code	<b>Very good</b> Art. 1-8 of the Penal Procedure Code; art. 5-23 of the Civil Procedure Code	<b>Very good</b> Art. 1-8 of the Penal Procedure Code; art. 5-23 of the Civil Procedure Code	<b>Very good</b> Art. 1-8 of the Penal Procedure Code; art. 5-23 of the Civil Procedure Code	<b>Very good</b> Art. 1-8 of the Penal Procedure Code; art. 5-23 of the Civil Procedure Code
<b>Provided in Statute</b> <i>Please cite article</i>	<b>Good</b> Art. 8 of HG no. 520/2013; Art. 5 & 6 Of Law no. 188/2000	<b>Good</b> Art. 8 of HG no. 520/2013; Art. 5 & 6 Of Law no. 188/2000	<b>Good</b> Art. 8 of HG no. 520/2013; Art. 5 & 6 Of Law no. 188/2000	<b>Good</b> Art. 8 of HG no. 520/2013; Art. 5 & 6 Of Law no. 188/2000	<b>Good</b> Art. 8 of HG no. 520/2013; Art. 5 & 6 Of Law no. 188/2000
<b>Implementation*</b>	<b>Poor</b>	<b>Poor</b>	<b>Poor</b>	<b>Poor</b>	<b>Poor</b>
<b>Effectiveness</b>					
<b>Provided in Law**</b> <i>Please cite article</i>	<b>Satisfactory</b> Art. 8 of HG no. 520/2013	<b>Satisfactory</b> Art. 8 of HG no. 520/2013	<b>Satisfactory</b> Art. 8 of HG no. 520/2013	<b>Satisfactory</b> Art. 8 of HG no. 520/2013	<b>Satisfactory</b> Art. 8 of HG no. 520/2013
<b>Provided in Statute**</b> <i>Please cite article</i>	<b>Satisfactory</b> Art. 8 of HG no. 520/2013 Art. 109 <sup>5</sup> of the Fiscal Procedure Code	<b>Satisfactory</b> Art. 8 of HG no. 520/2013 Art. 109 <sup>5</sup> of the Fiscal Procedure Code	<b>Satisfactory</b> Art. 8 of HG no. 520/2013 Art. 109 <sup>5</sup> of the Fiscal Procedure Code	<b>Satisfactory</b> Art. 8 of HG no. 520/2013 Art. 109 <sup>5</sup> of the Fiscal Procedure Code	<b>Satisfactory</b> Art. 8 of HG no. 520/2013 Art. 109 <sup>5</sup> of the Fiscal Procedure Code
<b>Implementation***</b>	<b>Poor</b>	<b>Poor</b>	<b>Poor</b>	<b>Poor</b>	<b>Poor</b>

\* The assessment was based on responses to the questionnaire on the institutional framework (Research Instrument 4), the ratings given being: **very good, good, satisfactory, poor**.

\*\* Whether an obligation for inter-institutional co-operation is provided

\*\*\* The evaluation was conducted based on the questionnaire regarding statistics on confiscated property (Research Instrument 6 and Research Instrument 7), the ratings given being: **very good, good, satisfactory, poor**.

## Statistics on the value of confiscated assets\*

Assets	Year	Value of assets claimed by the ARO in millions EURO (seized) 1	Value of assets confiscated as of end of prosecution or sentence/court decision 2	Absolute value of confiscated assets (% of 1 & 2)
<b>Money</b>				
	2012	N/R	N/R	N/R
	2011	N/R	N/R	N/R
	2010	N/R	N/R	N/R
<b>Tangible Assets</b>				
	2012	N/R	N/R	N/R
	2011	N/R	N/R	N/R
	2010	N/R	N/R	N/R
<b>Intangible Assets</b>				
	2012	N/R	N/R	N/R
	2011	N/R	N/R	N/R
	2010	N/R	N/R	N/R
<b>Movable Assets</b>				
	2012	N/R	N/R	N/R
	2011	N/R	N/R	N/R
	2010	N/R	N/R	N/R
<b>Immovable Assets</b>				
	2012	N/R	N/R	N/R
	2011	N/R	N/R	N/R
	2010	N/R	N/R	N/R
<b>Limited Rights</b>				
	2012	N/R	N/R	N/R
	2011	N/R	N/R	N/R
	2010	N/R	N/R	N/R
<b>Stocks</b>				
	2012	N/R	N/R	N/R
	2011	N/R	N/R	N/R
	2010	N/R	N/R	N/R

\* In order to obtain the statistical information necessary to complete the instrument above, requests for information were sent to the following relevant institutions: the High Court of Cassation and Justice, the Public Ministry, the General Anticorruption Directorate, the Ministry of Finance, the Ministry of Justice. Formal responses were received from: the General Anticorruption Directorate, the Ministry of Justice and the Public Ministry. Informal (telephone) responses were also received from the other institutions contacted. In all cases, the institutions indicated that they do not have such statistics, most often because they are not collected. Non-collection of relevant statistical data in order to measure the efficiency and effectiveness of the institutions responsible for the implementation of the confiscation procedure is a worrying phenomenon, showing a lack of concern for transparency and performance in this sensitive area.



**The response received from the Public Ministry in response to the statistical data request is the following:**

A. From the Ministry of Justice – the currency used is RON, not Euro

Stage	2010	2011	2012
Amount of <b>the prejudice</b> retained in the indictment	2.445.158.577	3.227.646.119	3.426.362.917
Value of <b>sequestered</b> assets	371.646.024	1.024.979.707	1.869.681.989
Value of <b>confiscated</b> assets according to the notifications sent by ANAF	7.053.914	21.582.411	34.821.415

B. The response received to the request for statistics from the National Office for the Prevention of Crime and Recovery of the Proceeds of Crime within the Ministry of Justice, specifying that they do not have statistical data as requested by Transparency International Romania. However, the institution has provided the data they had on this matter, which was provided to them by specialized institutions (e.g. the Public Ministry, the National Agency for Fiscal Administration)

\* amounts are expressed in RON

PERIOD	DAMAGES CAUSED BY CRIMINALS SENT TO BE TRIED		VALUE OF ENSURANCE MEASURES (IN RON)
	RON	EURO	
2010	2.338.346.652	106.811.925	371.646.024
2011	2.172.092.270	249.074.742	1.024.979.707
2012	2.650.349.502	174.150.228	1.869.681.989

**Statistics on ARO Effectiveness**

	Proceedings to identify assets of criminal origin	Decisions to file a reasoned motion to impose precautionary measures on assets	Proceedings for the forfeiture of assets	Court decisions on forfeiture of criminal assets
2012				
Number	N/R	N/R	N/R	N/R
Value	N/R	N/R	N/R	N/R
2011				
Number	N/R	N/R	N/R	N/R
Value	N/R	N/R	N/R	N/R
2010				
Number	N/R	N/R	N/R	N/R
Value	N/R	N/R	N/R	N/R

\* Regarding the research instrument above, responses from relevant institutions have not been received.

## Best practice, weaknesses, recommendations and stakeholders

### Best practice:

- The confiscation procedure is enforceable not only in the case of a criminal conviction.
- The legislation provides for a wide range of offences whose proceeds are subject to confiscation following the introduction of the extended confiscation procedure.
- There is a reasonable number of remedies in accordance with the criminal and with the civil procedures.

### Vulnerabilities:

- Lack of transparency in the management of confiscated assets.
- Lack of transparency in the capitalisations of confiscated assets.
- The authorities competent in the field of confiscation are reluctant to provide information with respect to confiscated amounts. There is no publishing of all the data, no continuity of the procedure to provide the civil society with the possibility to monitor the cases.
- Lack of human and logistic resources of the bodies enforcing the confiscation procedure.
- Legal gaps providing the offender with the possibility to dispose of their assets.
- The cooperation among the authorities enforcing the confiscation procedure isn't a proper one. Statistical data regarding the confiscation procedure isn't transferred from one competent authority to another.
- Specialized training for judges and prosecutors so that they can ensure equilibrium between combating corruption and organized crime and respecting civil human rights. This is particularly necessary due to the fact there is not yet jurisprudence in the field of extended confiscation, and in the field of special confiscation we are only at the beginning.

### Recommendations:

- Promoting among citizens of the confiscation procedure (the special and the extended one provided in the Criminal Code) and the recovery of the assets obtained following the perpetration of offences and raising awareness among the Romanian mass-media with respect to this topic, with a view to making known the legal aspects related to the domain of confiscation and asset recovery;
- Developing and implementing efficient instru-

ments and mechanisms at the level of the authorities competent in this field.

### References and sources:

- 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 in the exercise of public dignity, of public office and in the business environment, and to prevent and punish corruption.
- Law no. 144/2007 on the establishment, organisation and functioning of the National Integrity Agency
- National Integrity System of Transparency International, 2012
- The National Agency for Fiscal Administration, [www.anaf.ro](http://www.anaf.ro)
- The National Union of Bailiffs in Romania, <http://www.executori.ro>

### Recommendations for civil monitoring indicators:

- Relevant institutions should publish in a transparent and timely manner relevant statistics with regard to confiscations
- Periodically consulting relevant stakeholders with regard to issues connected to confiscation
- Involving civil society in identifying optimal guarantees for respecting human rights.
- Relevant authorities should prove consistent in dispositions from one case to the other
- Constancy and reasonableness of the necessary time-frame required for the start and development of the confiscation procedure.