

ILLEGAL ASSET CONFISCATION

TRANSPARENCY INTERNATIONAL – BULGARIA

MANAGEMENT OF CRIMINAL ASSETS IN BULGARIA: HOW TO IMPROVE THE CURRENT MODEL

MONITORING REPORT

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Forfeiture of property acquired through or used for criminal activity is instrumental in counteracting the perpetration of serious crimes that generate economic benefits for the perpetrators or for any natural or legal persons, entities or bodies associated with them. The proper application of such a mechanism is an expression of a radical crime prevention policy resulting from the perception that there exists a high risk of wider and deeper adverse impact of serious crime on any country’s governance and development.

Given that this is a specialised policy, which should respond to the growing risk of “state capture”, it is expected to restrict the margins of manoeuvre and operational scope for organised crime and heavy corruption, as well as to take away any resources, which are of a nature to jeopardize the public interest.

The issue of asset forfeiture is subject of regulation at European Union level as well. Several framework decisions have been adopted in the area of freezing and confiscation of criminally acquired property, which identify, but also differentiate the roles of the EU and of the Member States in their fight to trace, seize and ultimately confiscate criminally derived assets.

The principle set forth in the framework decisions, as adopted by the EU, stipulates that asset forfeiture should transpire in the context of criminal proceedings upon order of a competent criminal court following a final conviction for a criminal offence and in respect of property acquired through crime. The legal provisions laid down in two framework decisions, of 2001 and 2005, respectively, have been enhanced by **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**. By referring to the specific EU acts dealing with the areas of crime specified in Article 83, paragraph 1 of the Lisbon Treaty, the Directive defines the scope of criminal offences whose proceeds are subject to freezing and confiscation under its provisions.

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 was published in the Official Journal of the European Union on April 29, 2014 and entered into force on the 20th day following that of its publication. The Directive introduced measures aiming to make it easier for national authorities to confiscate and recover the profits that criminals make from cross-border and organised crime. The United Kingdom decided not to take part in the adoption of this Directive and is therefore not bound by it in its entirety or subject to its application. Corrigendum to Directive 2014/42/EU was published in the Official Journal of the European Union on May 13, 2014 which provides as follows:

- Article 12 (Transposition): Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 4 October 2016, and not by 4 October 2015.
- Article 13 (Reporting): The Commission shall, by 4 October 2019, and not by 4 October 2018, submit a report to the European Parliament and the Council, assessing the impact of existing national law on confiscation and asset recovery, accompanied, if necessary, by adequate proposals.

According to Article 10 of the Directive, **Management of frozen and confiscated property:**

“1. Member States shall take the necessary measures, for example by establishing centralised offices, a set of specialised offices or equivalent mechanisms, to ensure the adequate management of property frozen with a view to possible subsequent confiscation.



2. Member States shall ensure that the measures referred to in paragraph 1 include the possibility to sell or transfer property where necessary.

3. Member States shall consider taking measures allowing confiscated property to be used for public interest or social purposes.”

Taking account of these provisions, Bulgaria needs to take adequate legislative measures to transpose the Directive’s provisions into national law. The conclusions drawn from activities carried out in the context of this project should also be taken into account in the preparation of the relevant legislative amendments.

In view of the Bulgarian model of frozen and confiscated property management and the provisions of Article 10, the conclusions presented in the National Report “Forfeiture of Illegal Assets: Challenges and Perspectives of the Bulgarian Approach” ought to be taken into consideration as well¹.

The Forfeiture of Illegal Asset Act (FIAA) lays down rules governing the method of acquiring title to property by the State as well as rules for the proper management and disposal of forfeited property. Forfeited property management comprises all activities pertaining to preserving and deriving benefits from state-owned property and relates to its safekeeping.

MANAGEMENT OF FROZEN PROPERTY

Problems relating to safekeeping and management of forfeitable property are addressed as early as at the forfeiture proceedings phase. Under Article 81 of the Forfeiture of Illegal Asset Act (FIAA), property frozen with a view to possible subsequent confiscation may be left for safekeeping with the person being investigated, or with the person holding such property at the time of entry into force of the freezing order. The FIAA imposes on keepers obligations to preserve the property in safety exercising due diligence and acting in good faith. Incidental costs associated with the safekeeping and maintenance of frozen assets are borne by the Commission for Illegal Asset Forfeiture (CIAF). Under the FIAA, a keeper is required to inform the CIAF of any property damage, of any legal proceedings concerning the property, of any possible actions relating to transfer of property rights or creation of third party rights over the property, as well as of any danger of damage to or the destruction of the property. The FIAA provides also for the replacement of a keeper by a competent court of law in the event they have failed to fulfil their safekeeping obligations.

Such approach seems reasonable considering that at this stage of the asset identification and freezing procedures as provided for by the FIAA, the property has not yet been transformed, nor has it been acquired by the State. It does, however, pose certain risks, too, arising, on the one hand, from a possible lack of interest on the part of the person being investigated, or even an intent to destroy the property in issue, and, on the other hand, from the lack of a public authority empowered to supervise and keep the property in safety at this stage of the forfeiture proceedings.

The provisions of Article 83 of the FIAA are also apposite and serve the public interest. It provides that forfeited illicit items with a special status and placed under a special regime, are to be kept by specialised institutions and the expenses are to be met through the State budget. Such a mechanism is realistically applicable, too, considering the functions and capabilities of the institutions referred to in the FIAA. Thus, movable objects of particular cultural and historical value are to be kept at the National Museum of History

¹ The national report “Forfeiture of Illegal Assets: Challenges and Perspectives of the Bulgarian Approach” is available at: <http://www.confiscation.eu/site/wp-content/uploads/2014/04/FORFEITURE-OF-ILLEGAL-ASSETS-CHALLENGES-AND-PERSPECTIVES-OF-THE-BULGARIAN-APPROACH.pdf>.



or in another museum, while items of scientific value are to be left for safekeeping either with the National Library, or with the respective institute of the Bulgarian Academy of Sciences, or with an appropriate university. Articles of precious metals and gemstones are to be stored at the Bulgarian National Bank. The Ministry of Culture is vested with safekeeping works of art, i.e. items with artistic, antiquarian, or numismatic value. What is at issue here is the interaction and cooperation between said institutions and the CIAF. We consider it necessary that specific rules of procedures should be laid down regarding the organisation and coordination in their interrelations in connection with the safekeeping of chattel property of a special nature. It is necessary also to lay down additional legal provisions on the competence of these institutions as regards the management of forfeitable property left with them for safekeeping. Currently, there is no relevant regulation in place.

Furthermore, the FIAA provides for mechanisms to dispose, as early as in the course of forfeiture proceedings, of forfeitable movables liable to depreciate significantly over the safekeeping period, or whose maintenance and preservation is very costly, as well as of perishable items. Notwithstanding the absence of a title in the name of the State, with a view to preserving the property and protecting the interests of both the person being investigated and the State, the FIAA provides for the sale of said movables. The sale is carried out by permission of the competent court of law at the request of the CIAF by an enforcement officer (bailiff, enforcement agent), within a short period of seven (7) days from the receipt of the request. Disposal methods for forfeited or seized assets include open-outcry (English) auction or sale by a trader at a retail store, a consumer goods market, or an exchange specified by the CIAF. It should be borne in mind that allowing the owner of a forfeitable chattel to bid at an auction is inconsistent with the FIAA objectives. Such an option would legitimise the transfer of illicitly derived property to the patrimony of the person being investigated under the FIAA, thus casting doubt on the preventive and socioeconomic impacts of the FIAA. The amounts received from the sale of forfeitable assets are kept in a special bank account of the CIAF until the competent court of law has issued a ruling upholding the forfeiture of the illicit property that has been converted into money.

It is imperative that the above legal provisions are further developed to cover as a rule, and not as an exception, vehicles, IT equipment, major appliances (white goods, white ware), phones, technology, etc., whose prolonged storage results in technical obsolescence (desuetude) and unusability at a later stage of the forfeiture proceedings under the FIAA. Experiences with the implementation of the now repealed Forfeiture of Criminal Asset Act have shown that long-time stored vehicles are practically wrecked and rendered unusable after the court’s decision to confiscate them has become final. Thus the meaning and the purposes of the Forfeiture of Illegal Asset Act to take criminal wealth out of circulation by transferring it to the patrimony of the State and using it for public interest or social purposes, as well as for compensating victims of crime as per Article 22, paragraph 1 of the FIAA, remain unaccomplished.

MANAGEMENT OF FORFEITED PROPERTY

After the court’s decision has become final and enforceable, the management of property forfeited to the State is entrusted to a special authority, the Interdepartmental Board for Forfeited Assets Management, established by virtue of the Forfeiture of Illegal Assets Act. The Board is a body composed of Deputy Ministers designated by the Minister of Justice; the Minister of Finance; the Minister of Economy, Energy and Tourism; the Minister of Labour and Social Policy; and the Minister of Regional Development, respectively. It is chaired by a Deputy Minister of Finance.



The Board is administratively supported by the administrative staff of the Ministry of Finance. The Interdepartmental Board is an intermediate body tasked with administering information on confiscated property. The Board is required to put forth proposals to the Council of Ministers to adopt decisions on either assigning confiscated property to public sector organisations and municipalities to be used in the performance of their functions, or authorising the National Revenue Agency (NRA) to sell forfeited assets under the provisions of the Tax and Social Insurance Procedure Code. Realisation of seized and confiscated property in such cases is carried out under the rules laid down in the National Revenue Agency Act (NRAA). More specifically, Article 3 and Article 4 of the NRAA provide that sales of state-owned property shall be carried out under the provisions of the Tax and Social Insurance Procedure Code (TSIPC). Sales are carried out by NRA employees designated by the Agency’s Executive Director or by other persons authorised by him or her. Said employees are not public bailiffs (enforcement agents) since the performance of their job functions relates to the management and disposal of state-owned property and not to enforcement proceedings for the purpose of satisfying public creditors' claims. Where all sales methods provided for in the TSIPC have been exhausted and confiscated assets have not yet been sold, the NRA sends the case file back to the Interdepartmental Board for a subsequent decision on the management and disposal of the property. Where confiscated property is assigned to a public sector organisation or a municipality to be used and managed, the assignees are required to reimburse NRA for all costs incurred in connection with the management, safekeeping, and sale of such property. Under the current seized property management model, the functions of the NRA vis-à-vis property forfeited under the FIAA are limited to the disposal of such property alone. In the area of seized property management, the functions of the NRA have been taken, rather unsuitably, by the Interdepartmental Board. Furthermore, given the lack of legal personality, laying down rules of interaction between the NRA and the Interdepartmental Board, by means of Guidelines within the meaning of Article 26 of the NRAA, is not possible either. **Said form of management and disposal of forfeited property requires the involvement of at least four authorities, i.e. the CIAF, the Interdepartmental Board, the Council of Ministers, and the NRA, which poses risks as to the promptness, availability, lack, or loss of information and the preservation of state-owned property.**

It could be questioned whether assets acquired by the State as a result of forfeiture are indeed being managed. On the one hand, the Interdepartmental Board for Forfeited Assets Management is not a permanent body with its own administration tasked with implementing obligations under the FIAA alone. The Board consists of members who are not permanent as they are political appointees and thus are frequently replaced. This results in insufficient commitment and the Board’s inability to adequately fulfil its functions. On the other hand, the Interdepartmental Board is not really a confiscated property management authority. It acts as a mediator advising and assisting the Council of Ministers in the management of forfeited property. Even if there is some further development of the legal framework underpinning the Board’s power and administrative support, the efficiency of this model remains open to doubt.

Experiences with the implementation of the Forfeiture of Illegal Asset Act show that from 2012, when the Interdepartmental Board was first established, until 2014 no rules of operation were adopted. The meetings of the Board, which by law should be convened once every two months, had been rather irregular and in actual fact had not been even held at all. Following its setting up in 2012, the first meeting of the Board was held in March 2014 and in June 2014 a proposal was put forth to the Council of Ministers to assign forfeited property to State and municipal authorities, as well as to authorise the NRA to sell property



under the provisions of the TSIPC. Analysis of said Decision no. 367, dated 4 June 2014, indicates that the Council of Ministers assigned the following pieces of property:

- To the municipality of Novo Selo — two (2) plots of land, one of them zoned as green belt;
- To the municipality of Gorna Oryahovitsa — one (1) apartment;
- To the Ministry of Agriculture and Food — seventeen (17) plots of land, including fields, pastures and vineyards, comprised in the State Land Fund.

Currently, assets forfeited as per ninety eight (98) final and enforceable court decisions are earmarked for sale by the NRA. An asset identification and preparation process is underway so that said assets can be sold under the terms of the TSIPC.

As regards the nature of confiscated property, most of it does not fall within the category of state-owned property useable for public interest or social purposes. Being uncharacteristic of state-owned property, it could not be fully used for the purposes it is intended to serve. Furthermore, it is unclear who is in charge of safekeeping and managing forfeited property during the period of time following its initial seizure until the decision on how to dispose of it is finally rendered. An analogous situation occurs during the process of asset identification and preparation with a view to selling confiscated property under the terms of the TSIPC.

It follows from the above that the system for managing seized and forfeited assets of illicit origin is, in actual fact, dysfunctional. This results in squandering away the added value of decisions on the disposal of such property and the enforcement of the FIAA. Indeed, the very existence of a legal framework to support the government's ability to seize and forfeit illicitly derived property is a step towards social justice meant to achieve a preventive, educational and repressive effect. However, insufficient publicity and lack of adequate and efficient measures vis-à-vis the management of seized and forfeited property raise serious doubts regarding the existence of the mechanisms provided for in the Forfeiture of Illegal Assets Act.

The effectiveness of the Forfeiture of Illegal Asset Act would be far better if there existed a **single authority, competent in the management and disposal of forfeited assets, equipped with adequate human and material resources, capable to provide full information to the public about seized and forfeited property, e.g. by means of a public register, as well as to manage seized and forfeited property in a more efficient manner, i.e. at less cost and ensuring better use.** It should also be borne in mind that the type and nature of seized and forfeited property require different approaches to its safekeeping, preservation, and management. Commercial real estate, for instance, such as hotels, stores, and manufacturing enterprises constitutes property uncharacteristic of state-owned property. Their management therefore requires skills and expertise different from the typical administrative capacity of the State.

In this context, it is necessary to seek ways of including also private partners in the process of seized property management by laying down special public procedures for selecting seized property managers who would be entitled to acquire the property in issue at concessional terms. This will allow the State to preserve its property at negligible cost and even benefit from criminal property by turning it into a source of budget revenue. The State needs to show more flexibility in making decisions relating to pieces property, which are uncharacteristic of state-owned property and which in most cases would prove unsaleable anyway.

The actual seizure of illicitly derived property does not suffice to achieve the ultimate goal of the Forfeiture of Illegal Assets Act, i.e. to protect the public interest and to restore law and justice. Seized property needs



to be properly managed, while its value and economic functions are well preserved. This is the only way it can be used efficiently in serving the needs of the public and the State, and in remedying harm and damage caused by the criminal activities such property was derived from.

In this regard, the key issue, right next to the issue of asset forfeiture, relates to the proper administration and management of seized property both during forfeiture proceedings and after the court has handed down the confiscation order. The lack of an overall concept concerning the process of seized asset management, and also with regard to building preconditions for its safekeeping and preservation in the course of the proceedings, gives rise to uncertainties as to the achievement of the overall goals of this activity, namely:

- The purpose of seized asset management is to keep them preserved and maintained until they are confiscated or returned to their owner, as the case may be. Should the preservation of seized assets prove impossible, they should be liquidated in order to preserve their value.
- Seized asset management should comprise both the period of time while assets are frozen and the period following confiscation.
- The absence of rules to govern seized asset management over the period from the entry into force of the confiscation order till the State takes possession presents a serious problem.
- The provisions on frozen and seized assets management set forth in the Forfeiture of Illegal Asset Act are extremely laconic and do not in fact lay down any rules on frozen asset preservation and maintenance. **They fail also to provide for the establishment of a special authority** vested with the powers and duties of frozen assets management and supervision. In essence, said provisions reproduce the general rules on frozen asset management laid down in the Civil Procedure Code, which are woefully inadequate.
- Oftentimes, the practical effects of the absence of adequate legal framework for the management of frozen and seized assets are dissipation and despoliation, or drop in value by the time of final confiscation.
- Another shortcoming of the current legislation is the lack of provisions on liability for damages to frozen and seized property resulting from an act or omission of the safekeeper.
- **The State acquires title to forfeited property at the time of entry into force of a final confiscation order. However, there is no authority in charge of its effective preservation.** At the time of entry of a final confiscation order (and in actual fact, even before that) the former owner holds no interest in the forfeited property and has no motivation or incentive to preserve his or her former property. It could take anywhere from two to more than six months from the final confiscation order’s entry into force until the State takes possession. During that time the confiscated property is left with no supervision at all. At the time the State takes possession (and frequently even as early as at the time of entry of the final confiscation order into force) the forfeited property is most often despoiled, completely devalued or destroyed, and in any case not in a condition to be used for its intended purpose or sold.
- In order to ensure the preservation and better management of forfeited property, it would be appropriate to allow also, *de lege ferenda*, for the sale of forfeitable movables that are not perishable or liable to depreciate significantly, should the costs involved in their safekeeping are equal to or more than their value.
- It is irrational to vest the powers and duties pertaining to forfeited asset management to different agencies and bodies. This is an impediment to efficient and effective seized asset management. **The**



Forfeiture of Illegal Asset Act should place all powers in relation to the administration and management of forfeitable assets in the control of just one authority as early as at the time of freezing the assets.

- Another shortcoming of the FIAA is its failure to lay down an explicit obligation on the Interdepartmental Board to assign forfeited property or, where such property has been sold, the cash equivalent thereof, to be used and managed by organisations committed to helping victims of crime or to remedying harm and damage caused by criminal activity, as well as the absence of clear criteria for making decisions on the use of confiscated property.
- Unsuccessful sales experiences highlight the need to provide for more flexible statutory mechanisms for sale of forfeited assets in order to overcome the factors, currently impeding successful sale completion.
- It can be concluded that the process of managing and preserving frozen and forfeited assets' value is in bad need of a thorough rethinking and an overhaul both because of serious gaps in the legal framework and because of its inappropriate underlying principles.

In view of the above and taking account of the provisions of Article 10 of **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, Management of frozen and confiscated property:**

1. “Member States shall take the necessary measures, for example by establishing centralised offices, a set of specialised offices or equivalent mechanisms, to ensure the adequate management of property frozen with a view to possible subsequent confiscation.” It should be noted that a centralised office does exist in Bulgaria. It is the NRA. **There is no need to set up new authorities. What needs to be done is to set up a special revenue fund (Forfeiture Fund) within the NRA into which proceeds from the sale of forfeited property could be deposited.** Under the current seized property management model, the functions of the NRA vis-à-vis property forfeited under the FIAA are limited to the realisation of such property alone while in the area of seized property management, the NRA functions have been taken, rather unsuitably, by the Interdepartmental Board. As mentioned earlier, given the lack of legal personality, introducing rules of interaction between the NRA and the Interdepartmental Board, by means of Guidelines as provided for in Article 26 of the NRAA, is not possible. It is recommended that the NRA be vested with powers and functions in the area of seized property management. Thus, there would be, in effect, just one centralised office vested with a range of statutorily defined functions pertaining to the management of property frozen with a view to possible subsequent confiscation. The NRA is a legal entity, an “administrative authority” within the meaning of the Administrative Procedure Code, directly attached and responsible to the Minister of Finance. It is authorised to participate in EU projects and programmes in its field, and required to interact and collaborate with other government agencies. Accordingly, it would be necessary to disband the Interdepartmental Board for Forfeited Assets Management on grounds of its ineffectiveness. The next step would be to devolve to the NRA rights, responsibilities, and powers pertaining to seized assets management. The Agency would sign also agreements on inter-institutional cooperation and exchange of information with the CIAF and other government authorities. This would set up effective mechanisms to ensure interaction and collaboration.

A procedure should be laid down, which allows to ‘outsource’ activities pertaining to the management of forfeited assets that are uncharacteristic of the NRA, to NGOs and private companies in keeping with current legislation and with a view to preserving the public interest. Accordingly, it is necessary to delegate some powers and functions related to the management of forfeited assets and the proceeds



from the sale of such assets to NGOs for public interest and social purposes while exercising strict control in such a way as to ensure transparency and publicity.

2. “Member States shall ensure that the measures referred to in paragraph 1 include the possibility to sell or transfer property where necessary.” The current Forfeiture of Illegal Asset Act (FIAA) in Bulgaria also sets forth rules on the sale of forfeited property. All functions related to such sales are vested in the National Revenue Agency. The NRA is empowered to realise any realisable property under the provisions of the Tax and Social Insurance Procedure Code. In order to achieve greater public awareness about the methods used to acquire state-owned property, it is necessary to ensure that prospective buyers are reasonably well informed during sales presentations of the illicit origin of the property. This fact should be publicised in sale notices as well as by attaching stickers along the same line to the property itself. It is imperative that legal provisions be further developed to allow for expedited sale of vehicles, consumer electronics, appliances, and other goods and chattels liable to perish, be consumed or rendered worse by the keeping (perishable property).

3. “Member States shall consider taking measures allowing confiscated property to be used for public interest or social purposes.” Under the current legal framework, control and management of seized property is exercised solely by assigning confiscated property to public sector organisations, government authorities, and municipalities to be used in the performance of their functions. We therefore consider it necessary that new rules should be laid down to provide for increased use of public-private partnerships and for outsourcing activities related to the management of commercial enterprises and establishments, which are uncharacteristic of the public administration. **All functions related to the management and disposal of seized illicit assets should be vested in just one authority.** A special revenue fund (Forfeiture Fund) needs to be set up within said authority. All monies in this Fund should be expended solely for public interest or social purposes.

SEIZED ASSET MANAGEMENT PRACTICES IN EU MEMBER STATES

EU Member States can be grouped into two categories according to the typology of reuse of confiscated assets:

- **Institutional reuse:** Confiscated assets are absorbed within the State budget, such approach is, in practice, difficult and inefficient to apply in Bulgaria due to the lack of administrative capacity of Bulgarian institutions.
- **Social reuse:** Confiscated property is used for public interest or social purposes.

Currently there are two models of social reuse of confiscated assets in the EU:

- Direct reuse: confiscated assets are directly used for social purposes;
- Indirect reuse (a more flexible approach, hence a less expensive system): the reuse of proceeds of the confiscated assets through established specialised funds/programs that invest these proceeds for fighting drug trafficking or crime prevention, including for **public interest or social purposes.**

EU Member States applying the direct reuse approach include Belgium (Flemish region) and Italy. Member States applying the indirect reuse of confiscated assets include France, Luxembourg, Spain, and the UK (Scotland).



WHAT SOCIAL REUSE MODEL SHOULD BE ADOPTED FOR BULGARIA?

It is possible to consider a mixed model, using the good practices and aspects of the two models above. The current rules do actually provide for direct reuse, as they allow assignment of confiscated property to public sector organisations and municipalities to be used in the performance of their functions. The second model of indirect social reuse (more flexible, less expensive), as is the practice, for instance, in Luxembourg, would require that additional rules be laid down on more flexible actual management of seized and confiscated property. It would also require that a specialised Forfeiture Fund be set up as a government institution attached to the NRA, which would receive the proceeds from the management and sale of forfeited assets. With strict rules in place, the Forfeiture Fund would be used in a targeted manner and the monies in it would be expended to:

- finance social activities (non-governmental sector stakeholders, apart from the National Association of Municipalities in the Republic of Bulgaria, who are represented everywhere, should in any event be involved as well);
- finance projects with social aim for prevention and treatment of drug addiction, or fight against drug trafficking (Ministry of Labour and Social Policy, Ministry of Health, Ministry of Education and Science);
- finance programmes for drug addiction prevention, assistance to drug addicts and their social and occupational rehabilitation;
- promote and improve measures to prevent, investigate, prosecute and repress drug related crimes;
- promote interinstitutional, national, and international cooperation on such matters.

In order to ensure transparency of procedures and activities related to the management and sale of confiscated property, there have to exist clear-cut rules for the operation of the Forfeiture Fund. Furthermore, the NRA and the Fund should be required to produce reports regarding all activities listed above. Given that the NRA is a second-level spending unit to the Minister of Finance performing functions relating to the implementation of the budgetary policies of the State, we believe that the Minister of Finance has a significant role to play in exercising control over the Forfeiture Fund and the reuse of financial resources generated from the management and sale of forfeited assets.

RECOMMENDATIONS

In light of the above, the following areas are in need of legislative and regulatory changes:

- Establish rules governing the involvement of private legal entities in the safekeeping and management of seized assets, as well as the outsourcing of certain activities outside the public sector administration. Develop clear criteria for private entity selection. Introduce registration regime and a public register to prevent any abuse by former owners of confiscated assets.
- Lay down transparency and disclosure rules to keep the public well informed of the illicit origin of seized assets in the process of their management and realisation. Introduce special property reporting requirements, as well as requirements for using ‘Seized Property in Crime Cases’ stickers to indicate seized assets’ illicit origins.
- Set up a public register of assets forfeited to the State.



- Lay down provisions to allow for expedited sale, as early as in the course of forfeiture proceedings, of seized vehicles, consumer electronics, appliances, and other articles liable to perish, waste, or greatly depreciate in value, whose storage results in technical obsolescence and unusability, or whose value is less than the costs involved in their safekeeping.
- Ban owners of seized assets from bidding in public sales. Lay down rules to ensure that buyers do not have a criminal record and are not linked to organised crime groups.
- Adopt regulations setting forth procedures for destruction of assets that are obsolete or unfit for use, and for liquidation of unprofitable commercial businesses.
- Establish an electronic system to maintain updated lists of seized assets suitable to be assigned for management by public sector organisations. Set up a mechanism for exchange of information between public authorities and municipalities about their needs.
- Repeal provisions governing the establishment and functioning of the Interdepartmental Board for Forfeited Assets Management. Devolve to the NRA functions related to seized and forfeited property management. A special directorate or unit should accordingly be established for that purpose, which should be involved in no activity other than control and management of illicitly derived assets forfeited to the State.
- Set up a specialised Fund within the NRA. The monies in the Fund, accrued from the management and sale of seized assets, would be used in a targeted manner to finance social activities. Lay down rules on keeping the public informed of seized and confiscated assets (e.g. by virtue of a public register).
- Lay down rules to ensure publicity and transparency in the management and use of seized assets and the Forfeiture Fund. Introduce well publicised special property reporting rules. Publish reports on the activities of the NRA and the Forfeiture Fund.

The suggestions and proposals for legislative and regulatory changes above are meant to help enhance the effectiveness of the legal and institutional framework underpinning the activities pertaining to the management and disposal of seized and forfeited assets. These changes will strengthen and improve the current system. They do not require setting up new structures and/or additional operational funding. In this context, it should be taken into account that currently the NRA is the authority tasked with safekeeping, storage, management and sale of all abandoned, seized and confiscated assets. The Agency therefore has the organisational and structural units necessary to implement these functions.

