



**THE AIRE CENTRE**  
Advice on Individual Rights in Europe



**REGIONAL  
ANTI-CORRUPTION  
INITIATIVE**

# **Combating Corruption in the Western Balkans: strengthening regional cooperation in the field of asset recovery**



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**For publishers:**

Biljana Braithwaite – Director, Western Balkans Programme, AIRE Center  
Vladan Joksimović – Head of RAI Secretariat

**Editor:**

Desislava Gotskova

**Author:**

Jill Thomas

**Contributors:**

prof. dr.sc.Eldan Mujanović, (Bosnia and Herzegovina)  
Mirjana Lazarova Trajkovska, PhD (North Macedonia)  
Radmila Dragičević Dičić (Serbia)  
Ledina Mandia, PhD (Albania)  
Aleksa Ivanović (Montenegro)  
Ganimete Ismajli (Kosovo\*)

**Translation and proofreading:**

Will Ferris (English);  
Adelina Albrahimi (Albanian);  
Duška Tomanović (BCMS)  
Zoran Gavriloski (Macedonian)

**Design**

Kliker Dizajn

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# **Combating Corruption in the Western Balkans: strengthening regional cooperation in the field of asset recovery**

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**The AIRE Centre and Regional Anticorruption Initiative**

Report on Asset Recovery and International  
Cooperation in the Western Balkans

2<sup>nd</sup> Edition



# Contents

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<b>Foreword .....</b>	<b>7</b>
<b>Executive Summary .....</b>	<b>9</b>
<b>Abbreviations .....</b>	<b>18</b>
<b>1. Introduction .....</b>	<b>21</b>
<b>2. Methodology (scope and period) .....</b>	<b>23</b>
<b>3. Definitions .....</b>	<b>24</b>
<b>4. International and European Standards on Asset Recovery .....</b>	<b>28</b>
4.1 UN Conventions .....	28
4.2 FATF Recommendations .....	28
4.3 Council of Europe .....	29
4.4 European Union .....	29
<b>5. Overview of Jurisdictions .....</b>	<b>32</b>
5.1 Albania .....	32
5.2 Bosnia and Herzegovina .....	41
5.3 Kosovo* .....	47
5.4 Montenegro .....	53
5.5 North Macedonia .....	58
5.6 Serbia .....	65
<b>6. The Impact of the COVID19 Pandemic on     Asset Recovery in the Western Balkans .....</b>	<b>73</b>
<b>7. Conclusions and Recommendations .....</b>	<b>77</b>
<b>8. Annex .....</b>	<b>89</b>



# Foreword

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This report concludes the two-year regional project “Strengthening the anti-corruption in the South East Europe through improving asset seizure measures” which was implemented by the AIRE Centre (Advice on Individual Rights in Europe) and the Regional Anti-Corruption Initiative Secretariat (RAI). The project was funded by the UK Government and further support was provided by the Konrad Adenauer Foundation.

Corruption is one of the most widespread and intransigent challenges to the rule of law. In South East Europe and across the world it puts up barriers to business and individual opportunity, saps the strength and authority of justice systems and leaches from the state coffers, diverting money from productive and beneficial use towards criminal enterprise. Effective asset recovery measures are crucial for combating corruption and all forms of crime. Such measures serve to protect the legitimate economy, bolster tax revenue, generate assets for the public good, assist in upholding the rule of law and undermine criminal incentives and deter illicit activities.

The AIRE Centre and RAI’s project aimed to strengthen the capacity of key institutions (in particular prosecutors’ offices, courts, judicial training centres, law enforcement agencies and asset management agencies) to effectively implement asset recovery measures in cases of corruption and organised crime and to foster regional cooperation in asset recovery cases.

The project specifically focused on the following jurisdictions: Albania, Bosnia and Herzegovina, Kosovo\*, Montenegro, North Macedonia and Serbia. The scope of the project also extended at times to other areas of South East Europe, involving professionals from Bulgaria, Croatia, Moldova and Romania.

Over its two year lifespan the project established areas of strength and weakness in all of the jurisdictions involved; produced three region specific publications on asset recovery; laid the groundwork for a regional Alumni Network to ensure that those who have participated in the project remain connected and up to date with developments in legislation, policy and procedures; conducted a series of practical trainings on areas where increased capacity was needed; convened two technical practitioner-focused study visits to the United Kingdom and Romania; established the foundations for a regional approach to statistical collection and analysis; and contributed to the establishment of asset-recovery as a region-wide policy objective.

Over the last two years the AIRE Centre and RAI’s work has assisted jurisdictions across South East Europe with developing the skills and capacity to develop effective asset recovery regimes and integrate their work with the continent’s international network of anti-corruption measures. The progress contained in this report is a

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\* This designation is without prejudice to the positions on status, and is in line with UNSC 1244 and the ICJ opinion on the Kosovo Declaration of Independence



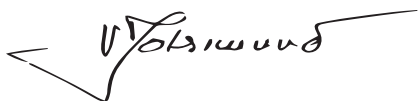
testament to the work of the AIRE Centre and RAI but most of all to the commitment, application and optimism of all our participants and partners in the region.

The report was written by Ms. Jill Thomas, international asset recovery expert, who has extensive experience in the region. Further contributions were made by project national coordinators prof. dr.sc. Eldan Mujanović (Bosnia and Herzegovina); Ledina Mandia PhD (Albania), Ganimete Ismajli (Kosovo\*), Aleksa Ivanović (Montenegro), judge Mirjana Lazarova Trajkovska (North Macedonia) and judge Radmila Dragičević-Dičić (Serbia). As part of the drafting and consultation process, relevant Ministries of Justice from the region were provided with the report's final draft so that it could benefit from their comments and feedback. We would like to thank all national institutions from the South East Europe region and especially the judicial training centres, prosecutors' offices and courts for their ongoing support and cooperation.

The AIRE Centre and RAI would also like to thank the UK Government for its commitment to the project, substantive financial support and its guidelines on the fight against corruption and organised crime in the Western Balkans region. Thanks are also extended to the Konrad Adenauer Foundation for providing the financial support that made the participation of additional beneficiaries from the region possible.

Finally, we would like to acknowledge the dedication, professionalism and commitment of all judges, prosecutors and asset recovery practitioners who took part in the project and contributed so valuably to its successful conclusion.

**VLADAN JOKSIMOVIC**



Head of Secretariat,  
Regional Anti-Corruption Initiative

**BILJANA BRAITHWAITE**



Director,  
Western Balkans Programme  
AIRE Centre



# Executive Summary

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This report seeks to assess the progress and developments made in the Western Balkan jurisdictions of Albania, Bosnia and Herzegovina, Kosovo\*, Montenegro, North-Macedonia and Serbia, during the lifetime of the AIRE Centre and RAI regional project on asset recovery: “Strengthening anti-corruption in the South East Europe through improving asset seizure measures”<sup>[2]</sup> which was funded by the UK government and supported by the Konrad Adenauer Foundation. Its focus is on both domestic and international asset recovery, and specifically asset recovery policy; asset seizure; management; confiscation; disposal; international cooperation and the collection of asset recovery statistics. The report also includes a review of financial investigation capacity, specifically in relation to tracing assets that may later become, or already are subject to, a freezing, seizure or confiscation order.

The following AIRE-RAI regional project publications were relied on throughout this assessment:

## **AIRE-RAI Publication Asset Recovery in the Western Balkans: A Comparative Analysis of Legislation and Practice (2018)**

This publication sets the scene for asset recovery in the region, providing commentary on capacity to conduct asset recovery in each jurisdiction, international asset recovery cooperation, knowledge of financial investigation techniques and the recording of statistics.

## **AIRE-RAI Handbook on Effective Asset Recovery in Compliance with European and International Standards (2019)**

This publication is a response to recommendations in the Comparative Analysis of Legislation and Practice (2018) report. It provides a unique in-depth and comprehensive description of the asset recovery process and legislation in each WB jurisdiction. In particular, it focuses on ‘extended confiscation’ and the region’s attempts at application of this new approach.

## **AIRE-RAI Tools and Best Practices for International Asset Recovery Cooperation Handbook (2019)**

This publication is specifically designed to support authorities engaged in international asset recovery. It aims to strengthen the knowledge and capability of law enforcement agencies, prosecution services and judicial bodies to apply international cooperation instruments in asset recovery cases, when seeking to identify and subsequently seize and confiscate assets located outside their own jurisdictions.

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[2] 2-year period from October 2018 – October 2020, extended until April 2021

## **AIRE-RAI Report on Effective Implementation of Asset Recovery Measures in the Western Balkans: an overview of a regional monitoring methodology, key benchmarks and case studies of good practice (2020)**

In response to conclusions in the ‘Comparative Analysis of Legislation and Practice (2018)’ publication, this report focuses on the approach and stage at which each WB jurisdiction is at with the collection of asset recovery statistics, in line with new EU standards in this area. In addition to this unique analysis, the publication presents case studies on a number of other asset recovery related areas.

The report had the following objectives:

- » To review the current situation in terms of legislation, policy, institutional frameworks and practice in the area of domestic and international asset recovery in each Western Balkans jurisdiction against existing European and international standards and best practice and recommendations and identified priorities emanating from the project activities.
- » Using the four AIRE-RAI publications<sup>[3]</sup> as a baseline, to outline the current situation by providing a comprehensive assessment of progress, focusing in particular on areas of project intervention (implementation of European and international standards and international cooperation).
- » To explore any initial indications of the impact of the COVID-19 pandemic on asset recovery and identify possible areas of intervention/support which could be provided by the project or by a follow up project.
- » To provide recommendations, based on the findings and conclusions of this assessment and the impact of the COVID19 pandemic of asset recovery in the region.
- » To provide guidance for future regional capacity building and strengthening of links between national practitioners in the region.

Understanding asset recovery terminology in an international context can be challenging. Chapter 3 therefore provides a list of asset recovery words and terms, together with a practitioner’s explanation of their meaning and the related definitions from the UN, FATF, CoE and EU where they exist.

Chapter 4 contains a reference to the international and European standards in asset recovery previously referenced in AIRE-RAI Publications, in addition to new relevant standards adopted during the project period. In this context, specific reference is made to *Directive (EU) 2019/1153 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA*. This new instrument is particularly relevant to national asset recovery offices (AROs) as it

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[3] AIRE-RAI Asset Recovery in the Western Balkans, A Comparative Analysis of Legislation and Practice’ (2018); AIRE-RAI Handbook on Effective Asset Recovery in Compliance with European and International Standards (2019); *AIRE-RAI Tools and Best Practices for International Asset Recovery Cooperation Handbook* (2019); AIRE-RAI Report on Effective Implementation of Asset Recovery Measures in the Western Balkans: an overview of a regional monitoring methodology, key benchmarks and case studies of good practice (2020).

provides the rules for obtaining and using financial information during investigations, including the tracing of assets for the purpose of confiscation. Under this Directive, EU jurisdictions are obliged to provide AROs access to their national centralised bank account registries.

Chapter 5 contains a country-by-country overview of the current situation in terms of legislation, policy, institutional frameworks and practice in the area of domestic and international asset recovery, highlighting progress, focusing in particular on areas of project intervention.

To assist in identifying the areas requiring further support, the overview of developments in each jurisdiction in Chapter 5 and the section on conclusions and recommendations in Chapter 7 are divided into the following topics:

- » Asset Recovery as a Policy Objective
- » Asset Recovery Legal provisions for freezing, seizure and confiscation
- » Extended Confiscation
- » Non-Conviction Based, Civil or Administrative Confiscation
- » Financial Investigation
- » Asset Management
- » The Re-Use of Confiscated Assets
- » International Cooperation
- » Measuring Effectiveness and Collective Statistics
- » Training

Chapter 6 is an initial review of the impact of the COVID19 pandemic on asset recovery in the Western Balkans.

Chapter 7 presents conclusions on the current situation by topic and recommendations for future development needed in the region.

## SUMMARY OF KEY FINDINGS

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### Asset Recovery as a Policy Objective:

International standards<sup>[4]</sup> advocate that, in order for jurisdictions to effectively target and reduce criminal activity through the use of asset recovery, it must be a specific focus for Ministers, policy makers, legislators and practitioners across all agencies. This can only fully happen if asset recovery is a *policy objective*. It follows that, unless all agencies involved are working towards a common goal, change will not happen. Ensuring asset recovery is a *policy objective* requires firm political will. Asset recovery is on the policy agenda in all judications in the region. However, it is contained as an aspect within a mixture of strategies and not a specific focus. This report suggests raising the policy profile of asset recovery

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[4] FATF Recommendation 2, AML/CFT Policies and Coordination - Countries should have national AML/CFT policies, informed by the risks identified, which should be regularly reviewed, and should designate an authority or have a coordination or other mechanism that is responsible for such policies

by appointing a national asset recovery coordinator at senior level to drive policy across the different strategies.

### **Asset Recovery Legal provisions for freezing, seizure and confiscation:**

The Western Balkans has made huge progress in legislating for asset recovery. Many jurisdictions have already amended their Criminal Codes and Criminal Procedural Codes or are in the process of or planning to do so. Notably, the majority of jurisdictions have established separate asset recovery legislation which contains varying provisions relating to asset recovery but is mostly driven by the adoption of 'extended confiscation' legislation brought on by European standards. This is a progressive step for the region and should be commended.

The application of extended confiscation provisions continues to challenge investigators, prosecutors and judges. Financial investigation skills required to link assets to owners and particular offences, show disproportionate wealth and satisfy the court to the criminal standard that assets are illegal are among the key problems. Amending legislation to reduce the evidential standard on the legality of the asset to the civil 'balance of probabilities' standard and introducing automatic 'assumptions' the court may draw that the assets are the proceeds of crime would assist with the application of the law. A lack of training and mentoring on the application of extended confiscation provisions is also a barrier to its successful use. Excellent examples of successful cases do exist, some of which are included within the *AIRE-RAI Report on Effective Implementation of Asset Recovery Measures in the Western Balkans: an overview of a regional monitoring methodology, key benchmarks and case studies of good practice* (2020). These cases should be shared both domestically and within the region, both at intra-government level and amongst public forums and civil society organisations, to assist in changing any negative public perception of the fight against corruption and organised crime. This report recommends the continued monitoring of case law and decisions around extended confiscation and further training and mentoring.

### **Non-Conviction Based Civil or Administrative Confiscation**

The legislative framework of jurisdictions in the WB region still does not provide for the confiscation of criminally derived assets, without a conviction, in civil or administrative *in-rem* (rather than *in-persona*) proceedings. Legislators are currently focused on the successful application of extended confiscation, which could be seen as an interim step to introducing full 'NCB civil confiscation' or 'civil unexplained wealth' provisions. However, it is recommended that WB jurisdictions still consider adopting NCB civil forfeiture in the future.

### **Financial Investigation**

Previous AIRE – RAI reports have concluded that capacity to carry out financial investigations by both law enforcement and prosecutors is low. In general, and unsurprisingly given the short time since the inception of the project, this remains the case. In analysing the information within the AIRE-RAI Handbooks, it is apparent that the problem is not with legislation, which adequately provides for investigative techniques

and defines the conditions and objectives of financial investigation. The issues are around capacity and skills, not only within specialised units but across all criminal investigative and prosecutorial agencies. This change requires political will to include mainstreaming of financial investigation, which is currently lacking. Within the duration of the project, national coordinators reported that financial investigation capacity has increased within specialist units, special prosecution offices and financial investigation units but in all cases it was stated that this is still insufficient to tackle the level of work. This report therefore again recommends the mainstreaming of financial investigation across all prosecutorial and investigation units and further asset recovery specific training.

### **The Asset Recovery Office**

This is another area where great progress has been made in the project period. There is a clear recognition at political level for the need to officially designate a national asset recovery office and jurisdictions have this firmly as a focus, albeit at varying stages. Designating an ARO is only the start and jurisdictions will still require support in bringing these offices to a good level of capacity and effectiveness. More work is needed, for example in the case of BiH and the recommendation for AROs to be designated at entities and state level, as is the case in entity Republika Srpska (RS). This other related recommendations are included in this report.

### **Asset Management**

The management of assets across the complete asset recovery cycle is a separate but integral part of the process, which impacts on investigators, prosecutors and the courts, in addition to any national asset management office that has been established. It is important that, while responsibility for the management of assets should sit firmly with the national asset manager, prosecutors need to be aware of their obligations in relation to the process. Jurisdictions within the region are at various stages of development but are considerably further on than many regions in the world in terms of asset management legislation and capacity. The initial AIRE-RAI report of 2018 highlighted problems in the valuation of assets. This report concludes that capacity to value assets does exist within the designated asset management offices, however these offices are not legally mandated to provide valuation support to prosecutors until after the court has issued its order for sequestration. Asset recovery legislation and processes should therefore be amended to ensure asset management offices provide essential pre-seizure advice, in the form of pre-seizure planning.

Asset Managers within asset management offices (AMO) are required to be aware of the stages of a case in order to prepare to further manage case related assets or sell them. This is best done when the AMO, the prosecutor and the courts are connected electronically. None of the Western Balkan AMOs are connected in this way, relying mainly on the standard mail, email or telephone to receive notification of changes in freezing and seizure orders, for example after appeal. Further work is therefore required to digitalise both the asset management process through the introduction of asset registers and systems that electronically link agencies involved in the asset cycle.



## Re-Use of Confiscated Assets

The re-use of confiscated assets not subject to victim compensation for social or judicial purposes is a growing practice globally and has been included within the most recent EU instrument on Freezing and Confiscation<sup>[5]</sup>. Social and state re-use of assets is an opportunity and aspect of the process that is often overlooked by government. Although not all jurisdictions in the region have structured and legislated systems in place for re-use, there are some excellent examples (Albania and Serbia) and these should be referred to by jurisdictions wishing to adopt a re-use system.

## International Cooperation

During the period of the AIRE-RAI regional project, prosecutors reported international asset recovery cooperation as being one of their biggest challenges, in particular for investigation and asset tracing during extended confiscation proceedings. A lack of knowledge around the possibilities for pre-treaty-based cooperation and asset recovery related Mutual Legal Assistance (MLA) drafting prompted the AIRE-RAI regional project to deliver a course on international cooperation towards asset recovery training. A reference Handbook on Tools and Best Practices for International Asset Recovery produced in conjunction with the training has been circulated to practitioners within the region. In addition, two technical practitioner-based study visits were convened to the United Kingdom and Romania. These visits enhanced practical level international cooperation between the region and the UK. Also, on a strategic level, UK asset recovery experts were able to explain the UK approach to civil NCB confiscation and unexplained wealth orders. National coordinators reported that both the training, related Handbook and the study visits have been highly welcomed and useful, requesting that the same training be delivered to a wider number of prosecutors.

With a view to enhancing regional cooperation in asset recovery further, project beneficiaries have proposed the creation of an AIRE-RAI Regional Alumni Network at both national and regional level. This network will consist of participants from project training activities and study visits and will be established in each beneficiary jurisdiction to ensure the sustainability of project results. At national alumni meetings conducted by project National Coordinators (NCs), the alumni have already identified a number of practical problems which could be addressed on a regional level.

## Measuring Effectiveness and Collating Statistics

A key factor in measuring the effectiveness of any asset recovery system is statistics. In recognising this, the EU has included the recording and reporting of statistics in the most recent EU asset recovery instruments. However, accurate, comprehensive and standard recording of asset recovery statistics is notoriously difficult to achieve. It was no surprise therefore that the inception AIRE-RAI publication, Asset Recovery in the Western Balkans: A Comparative Analysis of Legislation and Practice (2018)

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[5] EU Directive 2014/42/EU art. 10, para. 3 Member States shall consider taking measures allowing confiscated property to be used for public interest or social purposes.

p.73<sup>[6]</sup> reported a lack of monitoring and collection of asset recovery statistics in the region. This is not unique to the Balkans as the EU are still grappling with comparing statistics on seizures, confiscations and their values among EU Member States (MS). In a direct response to this, the project has completed unique research to map the situation in each WB jurisdiction, and compare it to the most important standards derived from international sources, in particular from the European Union, culminating in the publication of the *AIRE-RAI Report on Effective Implementation of Asset Recovery Measures in the Western Balkans: an overview of a regional monitoring methodology, key benchmarks and case studies of good practice*. This is a ground-breaking piece of research. This report concludes that the only way of ensuring that the relevant statistics are accurately collected is to employ one common system across all the agencies involved in sequestration and confiscation. In order to measure asset recovery effectiveness across the region through the collection of statistics, a standard model for collection of statistics should be encouraged, based on the baseline described in the AIRE-RAI Report. Future capacity building projects are encouraged to build on the initial research conducted by the AIRE-RAI project through individual funding and specialist mentoring, aimed at producing a system able to produce statistics in line with the required standards.

## Training

There is still a noticeable lack of specialized domestic education and training for law enforcement officers regarding financial investigation to trace and identify assets which may later be subject to confiscation. Forensic financial investigation for both police and prosecutors, training in the presentation of financial evidence for court purposes and further training in international cooperation is still required and requested. It is recommended that further capacity building projects analyse the training needs of individual jurisdictions before embarking on generic training that may be interesting but not particularly useful.

The AIRE-RAI regional project has delivered excellent training in the last two years to prosecutors and judges, across a variety of asset recovery related topics. The innovative approach of using experts from the region together with international specialists has been highlighted as a good practice, with regional practitioners responding well to training from regional experts. It is clear that further capacity building is needed on asset recovery in the region. Without this continued support, confiscation of criminal proceeds in the region will remain at the unacceptably low levels they are now.

## Key Outcomes:

1. The AIRE-RAI has played a unique role in the development of asset recovery capacity in the Western Balkans region. The elaboration of three regional specific publications on asset recovery has provided jurisdictions with a

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[6] The study established a “need for the collection of specific datasets which would enable a better assessment of the effectiveness and efficiency of the asset recovery process, as well as fulfilling international obligations of data collection in the field of seizure and confiscation of assets”.



comprehensive domestic breakdown of asset recovery law and procedures, the methodology for international asset recovery cooperation and the approach to apply when collecting asset recovery statistics. It is strongly recommended that jurisdictions make use of the clear descriptions of legislation, institutions and procedures outlined in the AIRE-RAI publications prior to and in order to assist with the adoption of new asset recovery provisions and institutional structures.

2. The establishment of an Alumni Network at both national and regional levels has been a key proposal during the project. Ensuring that practitioners in the region remain connected through the development of legislation, policy and procedures relating to the often technically and legally challenging topic, and the exchange of a good practice and relevant case-law, is essential to increasing asset recovery in the Western Balkans. This AIRE-RAI Regional Alumni Network represents a valuable resource for perpetuating the regional action on asset recovery and international cooperation, even beyond the project.
3. To ensure that asset recovery remains a policy objective, driving the change necessary to increase asset recovery, jurisdictions should, in accordance with their domestic legislation or constitutional arrangements, develop a specific asset recovery strategy, action plan and working group. A prominent expert in asset recovery should be appointed to Chair the working group and drive policy and practice in asset recovery across all relevant agencies.
4. A regional program of support to national Asset Recovery Offices should be developed to assist in peer learning. In addition, domestic AROs would benefit from further mentoring to ensure full effectiveness, in-line with EU legislation, best practise and effectiveness indicators.
5. The Western Balkans have made huge progress in the area of asset management, not only during the project period but in the years before that, especially in building institutional capacities, particularly in establishing specialised agencies and Directorates. However, it is recommended that further capacity building is needed in the area of asset management in the form of laws and bylaws, pre-seizure planning and the establishment of registers for seized and confiscated assets which would be interoperable with judicial databases on asset recovery.
6. In order to measure asset recovery effectiveness across the region, a standard model for collection of statistics should be encouraged, based on the baseline described in the AIRE-RAI Report. Good examples of electronic registers do exist in the region (AASCA's RSCA in Albania, Prosecutorial and Judicial Register within HJPC-CMS in Bosnia and Herzegovina and the Central Register in Serbia) but jurisdictions still need support with this.
7. Further training to increase investigation skills to trace assets, present asset ownership and disproportionate wealth to the court, assist judges and prosecutors as well as police staff in financial investigation units, in understanding circumstantial evidence during extended confiscation proceedings and in international cooperation is needed. It is recommended that further capacity building projects analyse the training needs of individual jurisdictions before embarking on generic training that may be interesting but not particularly useful.

8. At the request of beneficiary jurisdictions, the AIRE-RAI Regional Project has supported an initial discussion on the development of a Western Balkan regional multi-lateral asset sharing agreement between three jurisdictions. This will provide a legal basis for assets and their value that have been seized and confiscated in one jurisdiction, on behalf of the prosecuting jurisdiction, to be shared between the jurisdictions involved in the case. This is an excellent best practice model for other similar agreements concluded in the region.

# Abbreviations

<b>AIRE</b>	Advice on Individual Rights in Europe
<b>AML</b>	Anti-money laundering
<b>AMO</b>	Asset Management Office
<b>AASCA</b>	Agency for the Administration of Seized and Confiscated Assets (Albania)
<b>AMSCA</b>	Agency for the Management Seized and Confiscated Assets (Kosovo*)
<b>AMSP</b>	Agency for the Management Seized Property (Republic of North Macedonia)
<b>ARO</b>	Asset Recovery Office
<b>ASP</b>	Albanian State Police
<b>BAMIN</b>	Balkan Asset Management Inter-agency Network
<b>BD</b>	Brčko District (Bosnia and Herzegovina)
<b>BiH</b>	Bosnia and Herzegovina (Bosnia and Herzegovina)
<b>CARIN</b>	Camden Asset Recovery Inter-agency Network
<b>CC</b>	Criminal Code
<b>CFD</b>	Council Framework Decision
<b>CFT</b>	Counter Financing of Terrorism
<b>CoE</b>	Council of Europe
<b>CPC</b>	Criminal Procedure Code
<b>DoCM</b>	Decision of the Council of Ministers
<b>ECHR</b>	European Convention on Human Rights
<b>ECtHR</b>	European Court on Human Rights
<b>EUROPOL</b>	European Police Office
<b>ENU</b>	Europol National Unit
<b>ETS 141</b>	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime
<b>ETS 173</b>	European Criminal Law Convention on Corruption
<b>ETS 182</b>	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters
<b>ETS 24</b>	European Convention on Extradition
<b>ETS 30</b>	European Convention on Mutual Assistance in Criminal Matters Additional
<b>ETS 99</b>	Protocol to the European Convention on Mutual Assistance in Criminal Matters
<b>EU</b>	European Union
<b>FATF</b>	Financial Action Task Force
<b>FBiH</b>	Federation of Bosnia and Herzegovina (Bosnia and Herzegovina)
<b>FIU</b>	Financial Intelligence Unit

<b>GIZ</b>	The Deutsche Gesellschaft für Internationale Zusammenarbeit
<b>GRECO</b>	Group of States against Corruption
<b>HJPC</b>	The Higher Judicial and Prosecutorial Counsel
<b>INTERPOL</b>	International Criminal Police Organisation
<b>JHA</b>	Justice and Home Affairs
<b>KPC</b>	Kosovo* Prosecutorial Council
<b>LCPC</b>	Law on the Confiscation of Criminal Proceeds
<b>MLA</b>	Mutual legal assistance
<b>MONEYVAL</b>	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
<b>MS</b>	Member States
<b>NCB</b>	Non-conviction based
<b>RAI</b>	Regional Anti-Corruption Initiative
<b>RS</b>	Republika Srpska (Bosnia and Herzegovina)
<b>RSCA</b>	Register of Seized and Confiscated Assets
<b>SEE</b>	South East Europe
<b>StAR</b>	Stolen Asset Recovery Network
<b>UN</b>	United Nations
<b>UNCAC</b>	United Nations Convention Against Corruption
<b>UNODC</b>	United National Office of Drugs and Crime
<b>UNTOC</b>	United Nations Convention against Transnational Organised Crime
<b>WB</b>	Western Balkans



# 1. Introduction

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Similar to other regions of the world, asset recovery has been a specific focus for jurisdictions in the Western Balkans over the last 15 years. As such, the region has received a considerable level of support from external donor funded projects. The AIRE Centre and the Regional Anti-Corruption Initiative (RAI) have played a substantial role in this support. Together with its own political will to change, the region has already achieved substantial success, to varying degrees in the different jurisdictions, in adopting asset recovery legislation, given consideration to its institutional structures and policy, and encouraged good practice through training, bringing it in-line with the majority of international standards. Achieving an international standard does not necessarily mean that a jurisdiction has an effective asset recovery system and the fact remains that levels of confiscation in the region are low.

As a response, The AIRE Centre and RAI joined forces in 2017 to support Western Balkan jurisdictions in intensifying and consolidating their efforts at regional level in the area of asset recovery. The first step of this initiative was to conduct a comparative analysis of legislation and practice in the Western Balkans jurisdictions. The findings, recommendations and identified priorities of this analysis are documented within the report 'Asset Recovery in the Western Balkans, A Comparative Analysis of Legislation and Practice' published in 2018. Using the recommendations and identified priorities from this report as a guide, the AIRE Center and RAI have partnered to implement a 2-year regional project entitled "Strengthening anti-corruption work in the Western Balkans through improving asset seizure measures" (the Regional Anti-corruption Project). Throughout this period, a number of activities have been conducted in the region, and reports published by the project, with the aim of enhancing asset recovery capability. The project has been funded by the British Government. The following jurisdictions have been covered by the project: Albania, Bosnia and Herzegovina, Kosovo\*, Montenegro, North Macedonia and Serbia. Thanks to the support provided by the Konrad Adenauer Foundation and the RAI Secretariat, participation in certain activities has also been available to professionals from Bulgaria, Croatia, Moldova and Romania. The initial 2018 AIRE Centre and RAI study concluded that, although jurisdictions in the SEE region had to a large extent adopted the necessary regional and international standards on asset recovery, implementation of these standards was 'weak'. This report aims to build on the excellent work carried out by the project and continue momentum in the development of asset recovery capabilities in the region, resulting in an increase in confiscation of criminal proceeds.

In addition, the report will explore any initial indications of the impact of COVID-19 on asset recovery e.g. COVID related fraud typologies, increased corruption risk and misuse of public funds and the ability of the authorities to combat these crimes.

The report is focused both domestically and regionally, providing the current situation of Albania, Bosnia and Herzegovina, Kosovo\*, Montenegro, North Macedonia and Serbia, as well as the SEE region as a whole. Conclusions and recommendations

are presented by asset recovery phase and topic, referring to individual jurisdictions when appropriate.

The report is aimed at informing:

1. High level national policy and decision makers involved in criminal justice reform
2. The National Asset Recovery Coordinator
3. Domestic legislators and policy makers
4. Judges
5. Domestic asset recovery practitioners within both prosecutorial and law enforcement agencies, in particular the CARIN, BAMIN and StAR contacts in each jurisdiction
6. Heads of National Asset Recovery Offices and Asset Management Offices
7. Existing and future external donor funded projects involved in asset recovery capacity building in the Western Balkans (AIRE-RAI, EU, CoE, UNODC, GIZ)



## 2. Methodology (scope and period)

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This report assesses asset recovery developments in the region over a period from October 2018 – October 2020.

An initial a desk review of existing regional and international legislation and best practice in asset recovery was conducted, serving to provide the standards against which each jurisdiction will be compared. These standards are set out at the beginning of the report, indicating the introduction of new standards since the inception report in 2018.

A review of all project publications was then conducted, providing a baseline against which developments in the region can be assessed and identifying any priority areas that have been set.

Following this, an examination of the developments in each jurisdiction since the initial report was written. A standard 'template country report' was devised to serve as a collection plan. This was distributed for population by AIRE-RAI project national coordinators. All available information sources were used by the national coordinators to populate the country reports, including existing domestic legislation and policy documents, local knowledge gathered throughout the duration of the project, case studies, and information from the relevant agencies, ministries and organisations.

Information contained in the 'template country reports' was compared against the findings, conclusions and priorities identified in the initial report, to assess the level of development in each jurisdiction throughout the duration of the project. This was compared against the current international and regional standards and best practice.

The overall findings are presented with conclusions and recommendations both regionally and for each individual jurisdiction.

This report is also not an impact assessment of the AIRE - RAI regional project, however where the project activities have progressed practice in asset recovery this is mentioned.

# 3. Definitions

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The following is a list of asset recovery words and terms, together with a practitioner explanation of their meaning and the related definitions from the United Nations Convention Against Corruption (UNCAC) and Council of Europe (CoE) Warsaw Convention, where they exist.

## Asset Recovery

This Report uses the term ‘asset recovery’ to describe all phases of the process to deprive criminals of their illegally obtained wealth<sup>[7]</sup>, including asset tracing and identification, freezing and seizure, asset management, confiscation and the return and disposal of assets.

## Assets

Assets include property used to commit crime (instrumentalities) and the proceeds of crime. Proceeds are often described as the profit or material benefit of crime. Proceeds can be divided into the direct proceeds of crime, also referred to as the object, and the indirect proceeds of crime. Using the example of an armed bank robbery, the instrumentalities would be the gun used to threaten the bank staff and the get-away car, the direct proceeds would be the cash taken from the bank and the indirect proceeds would be the real estate purchased using the cash.

The international and regional instruments describe assets in the following way:

“instrumentalities” mean any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences (CoE Warsaw Convention A. 1(c))

“property” shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets (UNCAC A. 2(d); CoE Warsaw Convention A. 1(b))

“proceeds of crime” shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence (UNCAC A. 2 (e))

“proceeds” mean any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any property as defined in this article. (CoE Warsaw Convention A. 1 (a))

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[7] The 2005 United Nations Convention Against Corruption uses the term asset recovery to refer to the reparation of assets stolen through corruption only.

## Asset Tracing and Identification

The tracing and identification of assets involves the process of criminal and financial investigation to find or locate assets, either within the jurisdiction that is carrying out the criminal investigation, or in another jurisdiction which would involve an international request to trace assets. Asset identification aims to reveal the owner or controller of the asset.

## Freezing, Seizure and Restraint

After tracing and identifying the asset, and once the case moves to the overt phase of the investigation, the asset should be subject to freezing, seizure or restraint, in order to prevent it from moving in the period prior to any final judgment, pending confiscation. If assets are not frozen or seized, the suspected perpetrator of the offence may move the asset in an attempt to conceal or dispose of it. Freezing and seizure is applied by way of an order from the court. When an asset is subject to a freezing order, it remains where it is, for example a bank account would be frozen. When an asset is subject to a seizure order it is taken into the possession of the state, for example a car could be seized. Freezing and Seizure is also described as “sequestration”.

The term restraint is used to describe temporarily prohibiting the transfer, conversion, disposition or movement of property owned by a particular person, also by way of an order from a court. In this case, the asset usually remains with the owner. A restraint order is placed on an individual not on an asset, although property will be described as being “restrained” or subject to a restraining order.

“Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority (UNAC A. 2 (f); CoE Warsaw Convention A. 1(g)).

## Confiscation and Forfeiture

Confiscation is the process of permanently depriving the perpetrator of the proceeds, after the final judgment. Forfeiture is commonly used to describe the process of permanently depriving the perpetrator of the instrumentalities or any illegal assets such as drugs or firearms, either prior to or after the final judgment. However, the words confiscation and forfeiture are used interchangeably in some jurisdictions. The word forfeiture may be used instead of confiscation and *vice-versa*.

“confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority (UNCAC A. 2 (g))

“confiscation” means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property.

## Non-Conviction Based Confiscation

Non-conviction based confiscation is the process of confiscating assets without convicting any particular person of a criminal offence in relation to those assets. It can take place in both criminal and civil proceedings. The following are four examples of non-conviction based confiscation:

- a) Confiscation of criminal proceeds and instrumentalities during a criminal prosecution, in circumstances whereby the case is proven but a conviction is not possible due to either the death, absence or mental illness of the perpetrator, or for other reasons preventing a final conviction.
- b) Extended confiscation:  
Extended confiscation is where assets are also confiscated that are not subject of the offence for which the criminal is before the court. In this case, confiscation is 'extended' to assets that are not the instrumentalities, direct or indirect proceeds of the crime being prosecuted. Extended confiscation applies not only to the benefit of the particular offence for which a perpetrator is convicted but is extended to include the entire benefit received from criminal activity in general. Authorities are not required to establish a connection between suspected criminal assets and the specific criminal conduct for which the person is charged with. Confiscation can instead be based on circumstantial evidence or inference. An imbalance between a person's assets and their lawful sources of income and/or general evidence of engagement in profitable criminal conduct could be part of the justification to 'extend' the confiscation to other assets (e.g. a pattern of convictions, evidence in participation in a criminal organisation). As many of these terms are very much based on perception, countries often try to fit them around their own legislation or practices. Therefore, in addition to the above, certain countries also class taxing the proceeds of crime as a form of extended confiscation.
- c) Civil forfeiture:  
Civil forfeiture is an *in rem* action requiring proof that the asset is an instrumentality of crime or criminal proceeds but does not require the establishment of an individual's guilt beyond reasonable doubt.
- d) Unexplained wealth:  
Unexplained wealth is where a person owns or enjoys a level of wealth that they could not have legally earned or that cannot be explained by any other means, such as inheritance, a lottery win or a gift.

## Object Based Confiscation

Object based confiscation is the confiscation of the exact, actual property found to be the proceeds or instrumentalities of crime.

## 'Value Based' or 'Value Substitution' Confiscation

Value based confiscation is where a convicted person is ordered to pay an amount of money equivalent to the value of their criminal benefit. The court or competent authority calculates the 'benefit' to the convicted offender for a particular offence.

The confiscation order is made in the sum of that value. In this case the court does not concern itself with the actual instrumentalities (unless they are illegal assets such as a firearm or drugs) and proceeds but focuses on a sum of money equivalent to the criminal benefit. The confiscation order can be satisfied or 'paid' by the perpetrator using any means available to them, including legal assets.

Often, the actual instrumentalities or proceeds are no longer in the possession of the convicted perpetrator when the time comes to make order the confiscation order. Value substitution allows the determination of the value of proceeds and/or instrumentalities of crime and applies an equivalent value to be confiscated in 'substitution' for the actual instrumentalities or proceeds.

## **Realising Assets**

Assets are realised when they are converted from assets, goods or services into cash through a sale.

## **Asset Disposal**

Asset disposal is the process of selling or destroying an asset.

## **Asset Sharing Agreement**

An asset sharing agreement is a document laying down the agreement between two or many states on the division of assets, in cases whereby assets relating to the investigating or prosecuting state are restrained and managed by another state. For example, states may decide to split the criminal proceeds 50/50 between two states involved.

## **Law on the Confiscation of Criminal Proceeds (LCPC)**

The Law on the Confiscation of Criminal Proceeds and its abbreviation LCPC is a generic term used throughout this publication and within the *AIRE-RAI Handbook on Effective Asset Recovery in Compliance with European and International Standards (2019)* to describe secondary legislation adopted specifically for asset recovery, the names of which vary. For example, for BiH the abbreviation LCPC is used to denote the FBiH LCPC law called the Law on the Confiscation of Proceeds of Crime (*Zakon o oduzimanju nezakonito stečene imovine krivičnim djelom*); the RS LCPC is called the Law on the Confiscation of Proceeds of Crime (*Zakon o oduzimanju imovine koja je proistekla izvršenjem krivičnog djela*); and the BD LCPC is called the Law on the Confiscation of Unlawfully Acquired Property (*Zakon o oduzimanju nezakonito stečene imovine*). The LCPC in Albania is the Anti-Mafia Law and in Montenegro the LCPC is called the Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activities.



## 4. International and European Standards on Asset Recovery

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This chapter provides an overview of international (UN, FATF) and European (CoE, EU) standards developed to ensure effective asset recovery at domestic and international level.

### 4.1 UN Conventions

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There are two UN conventions which address asset recovery: the United Nations Convention against Transnational Organized Crime (UNTOC)<sup>[8]</sup> from 2000 and the United Nations Convention against Corruption (UNCAC)<sup>[9]</sup> from 2005. All Western Balkans jurisdictions except for Kosovo\* have joined both conventions. Apart from tackling corruption and transnational organised crime (OC) both conventions are also concerned with international cooperation provisions relating to the tracing and identification of illicit assets as well as on the freezing, seizing, confiscating and disposing of those assets. The UNTOC already addressed international cooperation related to financial investigations including the recovery of illicit assets (Art. 12-13), the disposal of confiscated proceeds (Art. 14), and related mutual legal assistance (Art. 18) or joint investigations (Art. 19). Crimes in relation to corruption are specifically addressed by the UNCAC. For these crimes the concept of ‘asset recovery’ was specifically mentioned and further elaborated in Chapter V – Asset recovery (Art. 51-59). Articles 53 to 55 of the UNCAC deal with the recognition of confiscation orders, even without criminal conviction. The return and disposal of confiscated assets is covered by Article 57.

### 4.2 FATF Recommendations

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The FATF (or GAFI<sup>[10]</sup> in French) is an inter-governmental organisation founded in 1989 and currently concerned with preventing and combatting money laundering, terrorist financing and other financial crimes related to those activities. Standards set by this globally recognised policy-making body also aim at international cooperation (Recommendations 36 to 40 of the initial FATF 2012 Recommendations, Update 2019).

In particular Recommendations 4 and 38 and their interpretative notes cover mutual legal assistance in relation to freezing and confiscation of illicit assets. In fact, guidance is provided for the asset recovery process as such and also includes non-conviction based confiscation.

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[8] UNGA Res. 55/25, United Nations Convention against Transnational Organized Crime, UN Doc. A/RES/55/25 (8th January 2001)

[9] UNGA Res. 58/4, United Nations Convention against Corruption, UN Doc. A/RES/58/4 (21st November 2003)

[10] Groupe d'action financière (GAFI).

## 4.3 Council of Europe

A number of multi-lateral treaties and recommendations of the CoE are concerned with or important for the asset recovery process. Those include the European Convention on Mutual Assistance in Criminal Matters (MLA Convention) from 1959, and its Additional Protocol from 1978 and the Second Additional Protocol from 2001<sup>[11]</sup>; Recommendation No. R (88) 18 adopted by the Committee of Ministers of the CoE from 1988 on the liability of enterprises for offences<sup>[12]</sup>; the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg Convention) from 1990<sup>[13]</sup>; the European Criminal Law Convention on Corruption from 1999 (1999 Strasbourg Convention) and its additional protocol from 2003<sup>[14]</sup>; and the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism from 2005 (Warsaw Convention)<sup>[15]</sup>.

With the exception of Kosovo\* and Bosnia-Herzegovina<sup>[16]</sup> (BiH) all Western Balkans jurisdictions have adopted and ratified the CoE treaties.

In 1999 the CoE also established the Group of States Against Corruption<sup>[17]</sup> (GRECO), the Council's anti-corruption monitoring body. Membership is not limited to CoE members. Main objective of GRECO is to improve their members' capacity to combat corruption by examining whether members comply with the CoE's anti-corruption standards. This is achieved through a dynamic monitoring process of mutual evaluations. The asset recovery process and the implementation of the relevant standards and instruments are also included.

## 4.4 European Union

The EU has issued substantial legislation in relation to the asset recovery process since 1998, often building upon or improving elements of existing international legislation<sup>[18]</sup>. While the Western Balkans jurisdictions are not EU Member States the legislation described in the following is not binding for them. Nonetheless, apart from setting new standards for the asset recovery process in general, all Western Balkans jurisdictions are candidates for EU membership and in different accession stages. Importantly, the implementation of EU legislation is a requirement of becoming an EU Member State.

**Therefore, the following legislation needs to be adopted by all Western Balkans:**

[11] European Treaty Series (ETS) No. 30, 99 & 187.

[12] <https://rm.coe.int/16804c5d71>

[13] ETS 141.

[14] ETS 173 & 191.

[15] Council of Europe Treaty Series (CETS) 198, updating the Strasbourg Convention as far as the asset recovery process is concerned.

[16] Kosovo\* is not a CoE member; BiH did not sign or ratify the Additional Protocol to the MLA Convention (ETS 99).

[17] <https://www.coe.int/en/web/greco>

[18] Council Framework Decision 2001/500/JHA for example further enhanced the effectiveness of the CoE's ETS 173 (Asset Recovery in the Western Balkans, RAI 2018).



Joint Action 98/699/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime. This should enable Member States (MS) already in the early stages of investigation to identify and trace the proceeds and instrumentalities of crime at the request of another MS;

Council Framework Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime. This includes two main elements. Firstly, MS are required to implement value-based confiscation systems not only for domestic proceedings but also for foreign ones. Second, MLA requests in relation to asset recovery are required to have the same priority as domestic ones;

Council Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence. This introduced the principle of mutual recognition of freezing and seizing orders. Importantly this Decision also allowed for direct contact between judicial authorities, not unlike the Schengen regulations;

Council Framework Decision 2005/212/JHA on confiscation of crime-related proceeds, instrumentalities and property. This provided for the confiscation of assets transferred to a third party as well as extended confiscation;

Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders. This introduced said principle for confiscation orders;

EU Council Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of asset tracing and identification of proceeds of, or other property related to, crime (ARO Council Decision). This introduced an obligation for EU MS to establish an ARO;

Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union. This, to some extent, simplified the Council Framework Decisions from 2001 and 2005. It also further developed provisions for value based and extended confiscation and introduced provisions for criminal non-conviction based confiscations where the accused has absconded or cannot be prosecuted due to illness. It also introduces, for the first time, a requirement to gather asset recovery statistics centrally and send them annually to the EU Commission;

Regulation (EU) 2018/1805 ("2018 Regulation") on the mutual recognition of freezing orders and confiscation orders. This replaced the Council Framework Decisions from 2003 and 2006 between Member States bound by the Regulation with a view to easier and faster recognition of court orders. The regulation also includes provisions for the management and disposal of frozen and confiscated property, the restitution to and compensation of victims, and the collection of statistics on international requests to enforce freezing, seizure and confiscation orders. The regulation excludes non-conviction based confiscation of a civil or an administrative nature. It came into force as of December 19<sup>th</sup>, 2020;

Directive (EU) 2019/1153. This lays down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repeals Council Decision 2000/642/JHA providing the rules for obtaining and using financial information during investigations including the tracing of assets for the purpose of confiscation. Through this Directive AROs have access to the national centralised bank account registries. Europol will only have indirect access through the Europol National Units (ENUs).

# 5. Overview of Jurisdictions

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Both RAI - AIRE publications *Asset Recovery in the Western Balkans: A Comparative Analysis of Legislation and Practice* (2018), and *The Handbook on Effective Asset Recovery in Compliance with European and International Standards* (2019) provide detailed commentary on the legal framework of WB jurisdictions and their conformity to the required regional and international standards. This chapter provides a summary of these provisions, highlighting any developments since the beginning of the AIRE-RAI regional Project.

## 5.1 Albania

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### Asset Recovery as a Policy Objective

Although there is currently no specific national asset recovery strategy<sup>[19]</sup>, committee or action plan, the recovery of criminal assets is addressed through a number of national strategies and action plans. Firstly, the 2008-2013 Cross-Cutting Strategy for the Prevention of the Fight against Corruption for a Transparent Governance, was subsequently replaced by the 2015-2020 Cross-Cutting Strategy against Corruption, approved by Decision of the Council of Ministers (DoCM) No. 247, of 20 March 2015, which was still in force at the time this report was written. In addition, the Cross-Cutting Strategy for Fighting Organized Crime, Illicit Trafficking and Terrorism, approved by DoCM No. 663, of 7 July 2017, also remains in force. Further, the National Strategic Document on the Investigation of Financial Crime for the period 2009-2015 also mentioned asset recovery.

The 2020-2030 Action Plan, approved through the implementation of the Cross-Cutting Anti-Corruption Strategy and adopted on 30 April 2020, sets out among its objectives measures relating to: (i) the preventive approach, such as: strengthening the electronic infrastructure of public institutions; analysing corruption trends; improving statistics on the activities of law enforcement agencies against corruption; collection, processing and streamlining of statistical data on corruption; collection and streamlining of statistical data on assets seized and confiscated by Court decisions for the criminal offenses of corruption and organized crime and their forwarding to the European Commission; (ii) the punitive approach, such as: monitoring and reporting statistical data related to seizures; establishing statistical reporting and data collection formats; establishing specific mechanisms to develop the fight against corruption in the administration and management of seized and confiscated assets arising from corruption through the establishment of a Working Group for drafting of bylaws in the implementation of Law 34/2019 On the Administration of Seized and Confiscated Assets; establishing an electronic register for the maintenance and

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[19] The EU Commission Staff working Document, Albania 2019 Report, Accompanying the document, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2019 Communication on EU Enlargement Policy, of 29 May 2019, suggests that a national asset recovery strategy is currently being drafted.

reporting of seized and confiscated assets; as well as identifying public bodies or entities eligible to access the AASCA Portal/e-Services; registering leased assets and assets under the administration process; consolidating investigative capacity by strengthening investigation structures and the use of legal instruments, both for the criminal procedure aspect and the intelligence aspect; improving cooperation between law enforcement agencies involved in criminal prosecution and criminal punishment of corruption through the signing of new cooperation agreements/reviewing existing agreements entered into between law enforcement institutions and institutions in charge of fighting corruption; further increasing access to databases and state electronic records for conducting investigations through the interfacing of systems; drafting of standard procedures and mechanisms of cooperation between the State Police, NBI and SPAK; improving the legal framework for the prosecution of economic and financial crime; and improving International Judicial and Police Cooperation in the fight against economic and financial crime.

The Cross-Cutting Strategy for Fighting Organized Crime, Illicit Trafficking and Terrorism, approved by DoCM No. 663, of 7 July 2017, which is still in force, aims to develop appropriate policies to further improve the security standards in the country, where, *inter alia*, objectives and strategic policies are targeted at increasing investigative capacities and orienting these structures towards intelligence and increasing efficiency in the field of prosecution, detection, seizure, confiscation and recovery of assets established by proceeds of crime.

Despite asset recovery being firmly on the policy agenda, it has been concluded by Transparency International in its 2019 report that seizures and confiscations of criminal assets in cases relating to corruption are not systematically ordered or carried out in Albania. The European Commission's Report on Albania for 2019 outlines, under its Fight against corruption section, that Albania should: (i) make further progress towards establishing a solid history of seizures and confiscations of criminal assets derived from criminal activities/offences related to corruption and organized crime and further increase the use of financial investigations; (ii) complete procedures for the establishment of specialized anti-corruption bodies, composed of the Special Prosecution Office Against Corruption and Organized Crime (SPAK), the National Bureau of Investigation (NBI) and the Court to address high-level corruption cases; provide resources and ensure cooperation between these new structures; (iii) continue to improve access to national electronic records for law enforcement authorities.

### **Asset Recovery Legal Provisions for Freezing, Seizure and Confiscation**

A detailed analysis of asset recovery legal provisions for Albania is contained within AIRE-RAI Publications *Asset Recovery in the Western Balkans: A Comparative Analysis of Legislation and Practice (2018)* pp. 50-54 and the Handbook on Effective Asset Recovery in Compliance with European and International Standards, pp. 51-65. This section contains a summary of this analysis.

The Legal provisions for seizure and criminal confiscation in Albania are contained within the CC (2017) and the CPC (2017). The CPC (2017) divides seizure into 3 categories, evidential, preventative and conservative seizure, which together provide

the basis for seizure of instrumentalities, direct objects of crime and criminal proceeds. Article 36 of the CC sets out provisions for criminal confiscation. In addition, the Law no 10192 of 3 December 2009, on Preventing and Combating the Organised Crime, Trafficking and Corruption Through Preventive Measures Against the Property, the so-called 'Anti-Mafia Law' (AML), as amended in 2017 and recently with the Law 85/2020, dated 2.07.2020, sets out provisions for preventative seizure and confiscation, also providing extended confiscation possibilities within the Albanian system. The AML, in its art. 12, allows for value based seizure and confiscation, stating that assets other than those subject to seizure or confiscation, even those of legal origin, may be subject to seizure and confiscation, in case their legal owner disposes of the asset or on agreement between the prosecutor and the legal owner of the asset. The introduction of the AML can be seen as a key success story for Albania, leading, for example, to an increase by 2.1-fold of the value of assets seized in its first year of existence, compared to 2010. Provisions provided for in the AML are, however, reported to be more widely used than the 'classic' criminal confiscation laws pursuant to Article 36 of the Criminal Code, which is mandatory and applies to all criminal offences<sup>[20]</sup>. Further work is needed to mainstream seizure and confiscation across all criminal prosecutions, in addition to those falling within the scope of the AML.

The CPC, article 352, provides for the confiscation of assets in the absence of the defendant or when the offender is declared 'not found'.

Under Article 3 of the AML, the court may order seizure or confiscation even after the death of the suspect, his relatives or natural or legal persons under his control. Their assets can be confiscated from their legal successors.

## Extended Confiscation

The AML, complemented by CPC (2017), provides Albania with extended non-conviction-based confiscation provisions. The two main criteria for applying extended confiscation in Albania are participation in criminal activity and unjustified economic status. The burden of proof that the assets are derived from criminal activity is initially with the prosecutor, after which the suspect has a right of reply, with the burden of proof to show the legality of the asset shifting to the defendant. Law enforcement officers and prosecutors continue to face challenges with the application of extended confiscation laws within the AML. Further trainings on this were planned within the curriculum of the Judicial Council, in the first half of 2020, but were postponed due to the COVID19 pandemic.

In a positive move to improve the proactive focus of criminal and financial investigation, a special multi-disciplinary 'task force' has been established under the 'Power of Law' Action Plan. Specifically, since the initiation of the AIRE-RAI regional project, a Council of Ministers Normative Act, nr. 1, of 31 January 2020 *On Preventive Measures in the Framework of Strengthening the Fight against Terrorism, Serious*

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[20] EU Commission Staff working Document, Albania 2019 Report, Accompanying the document, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, 2019 Communication on EU Enlargement Policy



*Crimes and Consolidation of Public Order and Security* was adopted as a legal tool for the task force. This has led to the seizure of assets in a high number of cases. These provisions have a temporary effect and shall apply up until 31 December 2020.

A further package of amendments to the laws in Albania is currently in progress, including amendments to the asset recovery provisions. Amendments to the asset recovery legal and institutional framework was proposed by the Council of Ministers on 6 February 2020, with a focus on the organization and functioning of the ASSCA and the soon to be established asset recovery office. The asset management Law 34/2019 on the Management of Seized and Confiscated Assets, which was approved on 17 June 2019 and entered into force 30 days after its publication in the Official Journal, has been amended by Law 19/2020 on Supplements and Amendments to Law 34/2019 on the Management of Seized and Confiscated Assets, approved on 5 March 2020.

The AML law has been amended by Law 85/2020 dated 2.07.2020. The other part of the package covering amendments of the CC and CPC has not yet been adopted. Until the recent amendments of the AML have entered into force, it has not been possible to apply the amendments of the Law 34/2019 for the activities of the AASCA. The package was proposed on 6 February 2020 and was adopted the same day. This has been useful for the asset recovery cases currently ongoing under the legal framework in force, including the Normative Act no.1, dated 31.01.2020 which has temporary power until the end 2020.

### **Financial Investigation**

Previous AIRE-RAI reports have concluded that, in general, capacity to carry out financial investigations by both law enforcement and prosecutors is low. There are not enough persons with the skills to carry out financial investigation dedicated specifically to asset recovery. The EU reported in 2019 that law enforcement structures and prosecution offices should be given further training in financial investigation techniques to improve their capacity to investigate unjustified wealth.

Parallel financial investigations are not yet systematically conducted in criminal proceedings involving assets derived from organised and serious crime, and their effectiveness is limited. The establishment of the Power of Law task force has however improved inter-agency cooperation, between the ASP and the prosecution authorities.

Another vital factor in effective financial investigation to trace and identify assets is the ability to quickly and directly access relevant data bases and other sources of information. Police and prosecutors have been granted access to additional national registries (40 in total). However, the monitoring report for January – June 2020 of the Crosscutting Strategy Against Corruption 2015-2023 indicates that they still lack direct access to some key national registries.

A further key institutional change in Albania is the establishment of the Special Anti-Corruption and Organised Crime Structure (SPAK), which consists of the Special

Prosecution Office and the National Bureau of Investigation. As yet, a National Asset Recovery Office has not been established although this is under discussion and included within both national strategies.

### **The Asset Recovery Office (ARO)**

Albania has not yet formally designated a national central asset recovery office, in line with EU standards<sup>[21]</sup> and global best practice. According to the 2020-2023 Action Plan, approved on 30 April 2020, pursuant to the Cross-Cutting Anti-Corruption Strategy, objectives under B3 stipulate that during 2020, a Working Group consisting of representatives from the Ministry of Justice, Ministry of Finance, Ministry of Public Order, General Prosecutor's Office, Agency for the Administration of Seized and Confiscated Assets will be established, with the task of assessing the needs and requirements for an ARO, issuing recommendations, and preparing final documents for the review of the legal framework and a project proposal for the establishment of the Albanian ARO.

For 2019, the target was the selection of the institution where the ARO will be established and the drafting of standard operating procedures. This indicator was not achieved in 2019 and was therefore shifted to 2020. To achieve the targets outlined in the action plan 2020-2023, the following activities (3) and measures (3) are foreseen:

“3.2 Legal basis of the ARO (host institution and standard operating procedures) drafted by the proposed institution

3.3 Approval on the establishment and implementation of the activities of the ARO

3.4 Awareness raising activities in the framework of combating economic and financial crime”

The target for 2020 is the drafting of the legal basis for the ARO and the identification of the institution where it will be located. For 2021, the target is to agree on the framework for the functioning of the ARO and the compiled list of criminal offenses for which confiscation is possible. For 2022, the target is to achieve a fully functioning ARO and notification of the establishment of the ARO to the EU Commission. For 2023, the target is the appointment of specialized prosecutors solely dedicated to the tracing and recovery of assets.

The measures are expected to be implemented through activities carried out during the first 6 months of 2021, the first 6 months of 2022, and the first 6 months of 2023.

In summary, the Albanian ARO is expected to be established and fully functional by December 2023.

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[21] COUNCIL DECISION 2007/845/JHA of 6 December 2007, concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime



## The Asset Management Office (AMO)

The Albanian asset management office – The Agency for the Administration of Seized and Confiscated Assets (AASCA) – was established in 2010 and now functions within the framework of Law 34/2019, as amended by Law 19/2020 On the Management of Seized and Confiscated Property. Initially established under the Ministry of Finance, it has since moved over to the Ministry of Public Order and Safety (Albania's Interior Ministry). Law No. 34/2019 and its amendment and supplements define the rules, procedures and administrative structure for the management of assets seized and confiscated by the judiciary and state police and subsequently, under the order of the Minister for Public Order and Safety, their return to the community and/or to compensate victims of crime.

Similar to all other jurisdictions in the region, Albania established its asset management office before its asset recovery office. The jurisdiction has made significant progress in setting out legislation, policy and procedures in the area of asset management, in comparison to many of its neighbours in the Western Balkans region. During the period of the AIRE-RAI regional project, a great deal of focus has been placed on developing the AASCA, including amendments to Law 34/2019 and the adoption of a number of Council of Ministers Decisions relating to the evaluation, use and sale of confiscated assets, salaries and wages and the establishment of and access to the Register of Seized and Confiscated Assets. Importantly, the agency's mandate has been amended to include the management of a broader scope of assets, not only those that fall within the framework of the AML (2017). Article 4 of Law 34/2019, as amended, lists the legislation from which the Agency is required to manage assets. The necessary package of amendments has considerably increased the workload and responsibility of the Agency. Increasing the effectiveness of AASCA is a key aspect of the Anti-Corruption Strategy and 2020-2030 Action Plan, adopted on 1 July 2020, through DoCOM no. 516 of 1.7.2020. The action plan, among its objectives sets out measures relating to the collection of asset recovery statistics, establishing an electronic register of assets under management and developing the AASCA law and by-laws through the establishment of a Working Group. Eight bylaws are being drafting, pursuant to law no. 34/2019, and are in different stages of development:

- » Draft DCM “On determining the evaluation criteria, ways and procedures for the use and alienation of confiscated assets”
- » Draft DCM “On the limits of salaries or remuneration of staff”
- » Draft DCM “Criteria, measures and manner of use of immovable property and those that serve for commercial economic activity”
- » Draft DCM “Rules on the content, form of registration of sequestered and confiscated assets, as well as on the determination of public bodies or entities that have access to its information” which has been recently adopted through the DCM no 835 dated 28.10.2020.
- » Draft instruction “On the procedures for the collection and administration of revenues, rules on and the manner of keeping and recording expenses, and limits for performing expenses”
- » Draft order “On the criteria and rules for compiling the list of property administrators, at AASCA”

- » Draft order “On the approval of the structure and organic composition of the structure of the agency of sequestrated and confiscated assets”.
- » Draft DCM for the creation of the electronic register, for the keeping, form and reporting of sequestrated and confiscated assets.

The mandated functions of AASCA are provided for under Article 8 of Law No. 34/2019, as amended by Law No. 19/2020 and include:

- » the organisation, function, budgeting, responsibilities and powers of the AASCA;
- » the receipt of assets into AASCA management by court or administrative order;
- » the release of assets from AASCA management (sale);
- » management by external (non-AASCA) persons;
- » how assets may be used in the pre-judgement and post judgement phase;
- » how assets can be transferred to the state or a third person post judgement;
- » return of assets to the original owner when seizure orders are revoked;
- » how income may be generated by the management of assets and what happens to this income;
- » the costs involved in the management of assets and how these costs are met;
- » the establishment, purpose, administration and allocation of access rights to the ‘Electronic Register’ of assets.

Increasing the mandate of AASCA has been important for its effective functioning. This development should continue in relation to the involvement of the agency throughout the duration of the asset cycle. Currently, the Agency is not mandated to manage assets until the court has made a decision on the asset by way of a court order. AASCA is therefore not involved in any pre-seizure activities, including valuation and advice on seizure tactics at the investigatory stage of an operation. The Prosecution Office has acknowledged that it would be useful in all cases for experts to make an evaluation of assets in a case at the investigation stage, in order to have a preliminary assessment of the assets that are required to be seized or confiscated. This additional change would require further amendments to the AASCA Law.

### **Re-Use of Confiscated Assets**

A separate fund into which the money from confiscated assets is held, for potential use in state and social community projects is provided for under Article 37 of Law 10192 of 2009, as amended in 2017, and recently through law 85/2020 called *The Special Fund for Crime Prevention*. The monies collected from the implementation of this Law are contributed to a special fund for the prevention of crime and for legal education. The special fund and its amount are determined in the Annual Budget Law.

This fund serves to: (a) improve operation of criminal justice, by assigning assets under the management of the General Prosecutor’s Office, the Special Prosecution Office against Corruption and Organised Crime (SPAK) and the Ministry for Security and Public Order; (b) improve crime prevention, preliminary criminal investigations on acquisitive organized crime or other crimes, and develop programs to protect witnesses and collaborators of justice by assigning assets under the management of the Ministry for Security and Public Order; c) provide assistance to victims of organized crime, as

well as promote social programs for these categories, by assigning assets under the management of the Ministry responsible for social issues; ç) compensate victims of organised crime and trafficking to the extent specified in the court decision; d) for the reimbursement of the difference in value that may arise through the management of assets which, through a court judgment, will be returned to the owner of the frozen or confiscated assets ( as amended through law 85/2020 (art 16) ).

In addition to central government institutions, beneficiaries may also be: a) local government departments, in the geographical location of the confiscated real estate; b) non-profit organisations whose scope of activity is social, cultural and health rehabilitation for persons in need. This includes specifically those affected by crime, or at risk of crime, therapeutic organisations and centres, substance abuse rehabilitation and treatment centres, and rehabilitation centres for victims of human trafficking, all of which have been conducting their activities for at least three years since the submission of the request. Requirements for project financing, according to Article 37 of the AML, are set by the Inter-Institutional Committee of Experts on Measures Against Organized Crime, which determines the criteria for financing of projects, whereas its ongoing implementation and use is overseen by the Agency. According to the new law 85/2020 (art. 16) the Committee, through a decision, determines the financing of projects and the modalities of using funds destined to the applicant. Funds destined for the prevention of crime that are not used in one financial year will be transferred to the following budgetary year of the Agency.

### **International cooperation**

Albania has a full set of legal provisions for international cooperation in relation to asset recovery. Law No.10192 of December 3, 2009 on jurisdictional relations with foreign authorities in criminal matters (MLA Law) prescribes the arrangements regarding requests to Albania for seizure and confiscation (Articles 1, 22 & 23). Following a request, seizure and confiscation takes place in accordance with the CC and CPC. International letters of request to enforce seizure and confiscation are not directly enforced in Albania and must be presented to the relevant district court for a 'favourable decision' to be granted (Article 506 CPC). Issues around appeals (Articles 274 – 276 CPC) also apply to assets seized on behalf of a foreign jurisdiction and may result in assets being returned within weeks of seizure.

In addition, article 10 of the AML includes provisions for international legal assistance during a trial, stating that international agreements to which Albania is signatory, together with the respective procedural provisions, shall apply.

International standards also stipulate that jurisdictions should be able to respond to foreign requests to investigate, seize and confiscate, based on non-conviction based proceedings, at a minimum in the case of death, flight or absence of the defendant, or if the suspect is unknown. The Albanian MLA Law provides Albanian authorities the ability to confiscate following a foreign request using the provisions of the CPC (Article 516-518) that permit recognition and enforcement of foreign judicial sentences. If the request for this is based on a criminal procedure, then Albania should be able to respond. However, as civil NCB confiscation does not rely on a conviction,

and therefore no sentence is present, Albanian authorities cannot legally enforce a request to seize or confiscate based on civil provisions under this article of the CPC.

Albania has been a member of the Camden Asset Recovery Inter-Agency Network (CARIN) since 2006. Its law enforcement contact, located within the Directorate for Economic and Financial Crimes, Department for Organised and Serious Crimes of the Albanian State Police, has been the face of law enforcement within CARIN for several years, placing him and Albania at the centre of international asset tracing cooperation globally. The prosecutorial CARIN contact for Albania is currently located within the General Prosecutors Office. With the establishment of the new national ARO, the prosecutorial CARIN contact may need to change, depending on the Ministry under which the ARO will be placed. Albania is already well placed within the informal asset management network BAMIN, as AASCA has been a member since it was created in 2014. Albania holds the Presidency of BAMIN in 2020.

### **Measuring Effectiveness**

There is currently no one central system for the collection of statistics on seized and confiscated assets and their value. However, work is in progress in this area.

The 2020-2030 Action Plan, approved in order to implement the Cross-Cutting Anti-Corruption Strategy, adopted on 1 July 2020 through DoCOM no. 516, sets out a number of measures for the collection and streamlining of statistical data on assets confiscated and seized by court decision, for the criminal offenses of corruption and organized crime (as outlined in the Monitoring of the Action Plan on the implementation of the Strategy on Corruption, dated January to June 2020). These statistics should then be forwarded to the European Commission. The Agency for the Administration of Seized and Confiscated Assets (AASCA) plays a key role in this area. Following amendments to the Agency Law, it is now mandated to establish and manage an electronic register of seized and confiscated assets (RSCA), to which other public authorities or entities shall have access to. The introduction of the RSCA will place AASCA in a central position nationally to collate statistics on seized and confiscated assets and their values. Reference here may be made to DoCM no.512 dated 1.7.2020 on the determination of rules for the organization and functioning of State data for information against the organized crime, serious crimes and terrorism and also DoCM no.835 dated 28.10.2020 on the “Rules on the content, form of registration of sequestrated and confiscated assets, as well as on the determination of public bodies or entities that have access to its information”.

Although a great amount of research and preparation has already been carried out, certain aspects of the RSCA are still being discussed. For example, it is not yet clear how the data will be obtained for cases referred to or prosecuted by the Police, or the Prosecution Office, for which there is no seizure or confiscation decision by the court. It is anticipated that by-laws on the register should clarify this matter.

In addition, among the current strategic and political objectives, is the establishment of the Asset Recovery Office, which may also in the future have a comprehensive role of information and data gathering, and coordination of data from the Police,



Prosecution Offices, Courts, and the Agency. Clear roles will need to be established between the ARO and the AASCA (AMO) of the collection of data to avoid duplication and maximise efficiency. One or either will also be expected to conduct full studies regarding the increase of effectiveness of the asset recovery system.

In the meantime, all authorities engaged in asset recovery report to the Ministry of Justice, which is responsible for the publication of the annual statistics on court cases. So far, with the establishment of the SPAK, the Special Prosecution Office has reported to the General Prosecutor's Office regarding the data, which have been entered into the Annual Report of the General Prosecutor's Office. The AASCA has so far kept its own register and has reported to the Prime Minister's Office. Finally, EU standards also require the collection of statistics on incoming and outgoing international requests to enforce freezing, seizure and confiscation. Further information on this is available within the document 'Monitoring of the Action Plan on the implementation of the Strategy on Corruption' dated January to June 2020. The current situation with regards to the collation of, specifically, formal treaty based international requests, sent and received, to enforce orders to freeze, seize and confiscate assets is unclear.

## **5.2 Bosnia and Herzegovina**

### **Asset Recovery as a Policy Objective**

In Bosnia and Herzegovina, there are many strategic documents created at different levels of government (state level of BiH, entities, Brcko district and cantons) which contain specific measures related to asset recovery (i.e. National strategy for fight against organized crime, National Anti-corruption strategy, Anti-terrorism strategy, Strategy to combat trafficking in persons, etc). From this, it could be concluded that asset recovery is indeed an important part of public criminal policies in the country. There is currently no one national structure that could effectively host and drive policy for the country. However, asset recovery should feature on the policy agendas at individual state and entity levels. There are signs of this emerging. For example, the Federation of BiH, is one of two entities in the decentralized constitutional framework that has a specific law on asset recovery, which stipulates that the Federal Asset Management Agency shall prepare and send to Parliament a Strategy and Action plan in the area of asset recovery, albeit that this document is not yet developed. Asset recovery strategies, committees and action plans are often contained within national organised crime, anti-corruption or financial investigation strategies, and this could also work for the four jurisdictional areas in BiH. However, currently none of four jurisdictions has developed or adopted a unique asset recovery strategy (even the Federation of BiH where this is prescribed by the Law). Further support is therefore recommended for the four areas, in order to reinforce the need for asset recovery policy to be owned and driven by one particular authority, bringing it in line with this international standard.

### **Asset Recovery Legal Provisions for Freezing, Seizure and Confiscation**

Both AIRE-RAI publications Asset Recovery in the Western Balkans: A Comparative Analysis of Legislation and Practice (2018) pp. 55-58, and The Handbook on

Effective Asset Recovery in Compliance with European and International Standards (2019) pp.68-83, provide detailed commentary on the legal framework of BiH and its conformity to the required regional and international standards. This section provides a summary of these provisions and any developments since the AIRE-RAI publications.

The constitutional law system of Bosnia and Herzegovina (BiH), comprises of four criminal law systems. Asset recovery is governed at state level by the Criminal Code (CC) and the Criminal Procedure Code (CPC) plus regulations on the enforcement procedure. In the entities of the Federation of Bosnia and Herzegovina (FBiH) the Republic of Srpska (RS) and the Brčko District (BD) asset recovery is governed both by their CCs and CPCs and their individual Laws on the Confiscation of Proceeds of Crime (LCPCs).

In all four jurisdictions, the freezing, seizure and confiscation of instrumentalities, direct objects and proceeds of crime are provided for within the CC, CPC and individual LCPC. For FBiH, RS and DB, the adoption of a LCPC offers more detailed clarity as to the intention of the provision, *i.e.* removing the wealth of criminals through the confiscation of the proceeds of crime. The similarities and differences are comprehensively described in AIRE-RAI Handbook on Effective Asset Recovery in Compliance with European and International Standards (2019), pp 73-83.

#### Non-Conviction Based Confiscation

Although different procedures governing confiscation are in place in the country, 'ordinary' or classic criminal confiscation following a conviction is catered for in all four jurisdictions. Provisions for non-conviction based confiscation, prior to a conviction but in criminal proceedings, in cases where an offender dies, is mentally unfit for prosecution, absent or for other reasons preventing a final conviction, are available but vary in form and type from entity to entity. NCB confiscation is foreseen at FBiH and BD level when specific conditions of the law are met (death of the perpetrator; in case of absence of the perpetrator due to escape; and when there is an imminent danger of the statutes of limitation running out). The recent legislative developments in the Republika Srpska entity also introduced NCB confiscation in the case of death, absentia etc., and these provisions are very similar to those in the Federation of BiH and Brčko District.

The EU standard, as contained within the EU Directive 2014/42/EU, art. 4 para. 2<sup>[22]</sup>, ensures that jurisdictions can confiscate instrumentalities and proceeds in the case of at least illness or the absconding of the suspected or accused person, whereas the FATF also includes their death in its standard. It is recommended that BiH ensures that it brings its legislation in-line with at least the EU standard.

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[22] Where confiscation on the basis of paragraph 1 is not possible, at least where such impossibility is the result of illness or absconding of the suspected or accused person, Member States shall take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial.



## Extended Confiscation

Extended confiscation does exist in all BiH legislations, to varying degrees. Amendments to the BiH, FBiH and BD Criminal Codes in 2010 put in place substantive law grounds for extended confiscation, but the procedure itself relies on meagre regulations on seizure. The BiH Federation and the Brčko District have since also enacted their own laws on the confiscation of the proceeds of crime (in 2014 and 2016 respectively), however apart from some minor inclusions, extended confiscation has remained mostly unaddressed in these jurisdictions. The RS is the only exception as its LCPC is fully devoted to extended confiscation. An analysis of the legislation in place, as outlined in *The AIRE-RAI Handbook on Effective Asset Recovery in Compliance with European and International Standards (2019)*, concludes that BiH legislators are not fully clear on which specific circumstances must be proven when establishing a link between the property subject to extended confiscation and the crimes it allegedly derived from. The provisions in RS law and indirect interpretation of the BiH, FBiH and BD criminal law provisions, however, suggest that the perpetrator's property, the size and value of which cannot be reasonably explained by comparing it with his legal income, is subject to extended confiscation. However, if the legislator is unsure, it certainly follows that the practitioners applying the legislation (judges and prosecutors) will be unsure, resulting in a low level of use.

## Non-Conviction based Civil or Administrative Confiscation

Non-Conviction based civil or administrative forfeiture or confiscation is not part of the legislative framework to target assets derived from crime in BiH.

## Financial Investigation

Although not explicitly mentioned as 'financial' investigation, legislation providing for financial investigation is contained within the CPC of all four jurisdictions. For those entities that have adopted an LCPC, provisions are provided for financial investigation but only for the offences covered within the scope of the LCPCs. The Handbook, pp 69-73, provides a detailed commentary on the legal possibilities for financial investigation.

In summary, within all the jurisdictions of BiH, the CPCs and LCPCs (where they exist) entitle the prosecutors to initiate and conduct financial investigations. The provision of legislation is only one component of effective financial investigation. Investigators with the appropriate skills, inter-agency operability and quick (direct if possible) access to relevant data are also major factors. These aspects are still a 'work in progress'. In FBiH, for example, some institutions are designated as 'key partners' with prosecution offices in implementing financial investigations (FBiH Tax Administration, FBiH Securities Register, FBiH Securities Commission). However, a great deal more needs to be done for the relevant investigative authorities to have quick and direct access to sources of information for effective financial investigation, especially bank records of natural persons. This means that another area requiring greater focus is access to bank and other financial information. International and

regional standards<sup>[23]</sup> advocate the establishment of national central bank account registers, providing direct access to these by national asset recovery offices. To date, BiH does not have a national register of bank accounts of natural persons. These checks are carried out by way of a lengthy process of contacting individual banks. In a positive direction, RS has established a specialised police unit which operates as an asset recovery office for RS and has benefited from specialised training on financial investigation. However, in the main, this is rare in the country. Previous AIRE-RAI reports have concluded that, capacity to carry out financial investigations by both law enforcement and prosecutors is low. There are not enough persons with the skills to carry out financial investigations dedicated specifically asset recovery. In general, this remains the case in BiH.

### **The Asset Recovery Office (ARO)**

The structure in terms of establishing an effective well-functioning national asset recovery office is far from solved in BiH and further capacity building, with external support from experts who work in the international asset recovery field is still needed in this vital area. In order to work effectively, AROs require a broad access to the databases available in their geographical area. The State Investigation and Protection Agency (SIPA), is a police agency established at the state level of BiH, which serves as the national FIU and provides assistance in international cooperation, with the assistance of police agencies from other levels of government. This office could perform a coordinating role for the overall BiH ARO structure. However, this would only work effectively if it was well connected to regional asset recovery offices within the Federation of BiH, Republic of Srpska and Brčko District. These offices need to be staffed with trained investigators for the identification, tracing and recovery of assets.

In terms of specialisation, some prosecutors and law enforcement officers across the country have gained specific training and expertise in this area, but they are not formally designated as special prosecutors for asset recovery and are not supported by a system of incentives, rewards and evaluations for their asset recovery work as they are for criminal prosecutions.

It is recommended that, as first step, a good start would be to designate or establish an ARO within each of the entities of FBiH, BD and at state level of BiH, similarly to the ARO in RS. The jurisdiction will need support from external international partners and projects to implement this recommendation.

### **The Asset Management Office (AMO)**

As with the situation for establishing an ARO in BiH, the decentralized structure of the country does not currently allow for a centralized asset management office. Functioning asset management systems do exist in FBiH, BD and RS. The LCPCs also established two Asset Management Agencies in the FBiH and in RS. In September

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[23] The 5<sup>th</sup> Money Laundering Directive & EU Directive 2019/1153 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA

2020, the Ministry of Justice of Republika Srpska entity adopted a new bylaw on the “Rules of procedures for Asset Management”, providing the RS Asset Management Agency with a comprehensive legal framework to efficiently manage all types of property subject to temporary seizure or permanent confiscation. This bylaw was developed with the support of a UK Government- financed project. A similar bylaw has been prepared for the FBiH entity, but not yet adopted.

The CPCs do not specify the procedure that ensues after the adoption of a judgment or a ruling on confiscation. This means that the general provisions on court post-judgment actions apply (the certified copies of the judgment are served on the parties, defence counsel, the injured parties, the persons whose items had been seized [where applicable] and the owner of the property subject to confiscation in the event that person is not the defendant. The respective LCPCs lay down different provisions on the system in place with regards to management of assets. On final judgement, the property may be sold, while works of art and other items of cultural or historical significance may be given to art galleries, museums and cultural institutions for safekeeping and use. A key objective of an asset management agency is to preserve the value of assets pending final judgement and to achieve the highest possible sale value on final judgement. This can only be achieved with the adoption of asset management procedures contained in laws and especially bylaws which clearly regulate each mode of management for specific forms of property, regardless of the status in the proceedings (seized or confiscated). Asset recovery expertise has grown in this area over the past 10-15 years, with best practice on legislation and procedures continually being developed within practitioner groups such as BAMIN. BiH is in an excellent position to take advantage of this knowledge and start to develop laws and bylaws, as it has been a member of BAMIN since 2014. Also, FBiH has, in the absence of an ARO, taken on a leading role in asset recovery policy for the jurisdiction. RS has developed greater detail in its legislation within the LCPC. However, there are gaps in the systems. For example, none of the 4 jurisdictional areas within BiH have established a separate fund into which the money from confiscated assets is held, for potential use in state and social community projects. Issues such as the sale of seized assets in the pre-judgement phase and the use of assets by state institutions or for social purposes will also need legislation and will certainly require detailed regulation and oversight. I am sure the practitioners working in this field would agree that more still needs to be done in this area.

## **International Cooperation**

Formal incoming and outgoing mutual legal assistance requests relating to BiH all pass through the state level Ministry of Justice International Cooperation Department and from here are sent to the relevant regions of BiH for execution. The recording of statistics related to asset tracing or the enforcement of seizure and confiscation orders is currently under development as HJPS has developed a new statistical module within the centralized Court Management System. This system is developed with strong EU-IPA financial support and British Embassy expertise.

The operational benefits of a country being connected to the international network of asset recovery practitioners (CARIN, BAMIN and StAR) cannot be overstated. In

particular, for a country with internal cooperation challenges such as BiH, nominating a law enforcement CARIN contact and a prosecutorial CARIN contact for each entity is essential. There is currently one law enforcement contact within the RS police office performing the function of its ARO and one prosecutorial contact within the FBiH. The latter was identified as a direct result of AIRE-RAI training on international cooperation and is a major breakthrough for the country. BiH is already well placed within the informal asset management network BAMIN.

Nominating additional CARIN contacts in all entities of BiH and at state level would greatly increase the possibilities of effective international asset recovery across all phases of the process, bringing with it additional strategic benefits for BiH in developing its legislation, structures and procedures. Assistance should be sought from the international community with this.

## **Measuring Effectiveness**

The collection of data in relation to the recovery of assets was previously described as weak in Bosnia and Herzegovina. The Higher Judicial and Prosecutorial Counsel (HJPC) have responsibility at state level for the judicial recording of cases from the courts. From 1 January 2020, the HJPC of BiH introduced a special module within the Court Management System, that will selectively record and maintain statistical data on seized and confiscated assets. At the time of publication, it is reported that this system will provide necessary data on the number of cases in which assets are seized and confiscated, and the number of seizures, confiscations and value of assets under management in a comprehensive effective manner. In order to be an effective tool for measuring effectiveness, the system should provide data that could inform an initial benchmarking process against which future progress could be measured. In order to meet this need, many jurisdictions have introduced asset management systems within their (national) asset management agencies which, along with recording statistics on assets seized, confiscated and their value, provide a case management system for each asset, from the beginning of its management by the state, through to disposal or use. The special module within the Court Management System of the HJPC will currently not fill this need. However, the LCPCs for RS and FBiH provide powers to collect statistics on seized and confiscated assets (FBiH), and to keep records of and process the assets they manage (RS). Both agencies are working hard, together with the HJPC, to connect their own registries with the new system. EU standards now also require jurisdictions to monitor the number of international asset recovery related incoming and outgoing requests in order to monitor and measure effective international asset recovery. It is not clear how BiH would achieve this within either the HJPC system or the Agency systems. A third system may need to be established within the state MoJ International Cooperation Department dealing with MLA requests.

The AIRE-RAI report on Regional Monitoring Methodology very concisely concluded that asset recovery in BiH is not managed in a unified, centralized and harmonized manner due to very complex constitutional arrangements and a lack of coordination between different levels of government. Although no mechanisms are in place currently for the exchange and aggregation of data on assets seized and



confiscated, this is being worked on. The newly established special module within the Court Management System is a positive step for BiH and should significantly improve the situation in this field, bringing BiH in line with EU Directive 2014/42. This paves the way for further work to collate all relevant statistics across BiH, including international requests.

## 5.3 Kosovo\*

### Asset Recovery as a Policy Objective

Kosovo\* has focused on the recovery of assets at government level, through various stages of its consolidation and strengthening of the rule of law. At the beginning of the AIRE-RAI regional Project, in 2018, the Ministry of Justice, in coordination with international partners, undertook a functional review to harmonize legislation and principles within the responsible institutions, in order to establish a framework for strengthening the foundations of the justice system. This process was designed in three phases and focused on six pillars including, criminal justice, anti-corruption measures and inter-institutional cooperation and coordination. The objective of the Criminal Justice pillar is to improve the legal and institutional framework in the fight against organized crime and high-level corruption; to ensure integrity of the Kosovo\* Police in the treatment of high-level crime and establish an Anti-Corruption Task Force in the Kosovo\* Police and to improve the legal and institutional framework for the execution of criminal sanctions. The objective of the Anti-Corruption pillar is to establish an institutional and legal framework in the fight against corruption, to improve the rules/framework for the acceptance of gifts and the assets declaration system, and to provide for the criminalization of illicit enrichment.

The third phase of the Functional Review included drafting a strategy for the Rule of Law Sector for the period of from 2020 to 2025. An action plan to implement the strategy will also be drafted. The drafting process ends with the approval of the strategy by the Government Steering Committee. The process, which is ongoing, is being conducted in cooperation with the Kosovo\* Judicial Council (KJC), Kosovo\* Prosecutorial Council (KPC) and other institutions, including international partners. From June 2020, Kosovo\* has a new Minister of Justice. The ensuing strategies, objectives and action plans are therefore expected in the coming months.

Kosovo\* has a national coordinator for Combating Economic Crime whose mandate includes asset recovery. It does not yet have a specific national strategy, committee or action plan for asset recovery.

### Asset Recovery Legal Provisions for Freezing, Seizure and Confiscation

Both AIRE-RAI publications *Asset Recovery in the Western Balkans: A Comparative Analysis of Legislation and Practice* (2018) pp. 58-60, and *The Handbook on Effective Asset Recovery in Compliance with European and International Standards* (2019) pp. 95-104, provide detailed commentary on the legal framework of Kosovo\* and its conformity to the required regional and international standards. This section provides a summary of these provisions and any developments since the AIRE-RAI publications.

The confiscation of the proceeds of crime is governed in Kosovo\* by the Criminal Code (CC, 2019) and the Criminal Procedure Code (CPC), as well as the Law on Extended Powers for Confiscation of Proceeds (LCPC 2019).

Asset Recovery legislation has been amended recently, as a result of the objectives of the second phase of the functional review process, bringing it in line with international and European standards. The LCPC No. 06/L-087 was approved in 2018 and entered into force in 2019, while the new CC No. 06 / L-074 entered into force in 2019. During 2019, work has been carried out to draft a new CPC. Its voting was scheduled to take place in early 2020, but it has not yet been approved.

Both the new CC and the LCPC provide for the value equivalent to the asset to be confiscated, the possibility to freeze, seize and confiscate from 3<sup>rd</sup> parties and the protection of *bona fide* third parties.

Non-Conviction based confiscation of assets owned by the accused or a third person is possible under the LCPC (2019), in the case of death, absconding or mental illness or incapacity.

Kosovo\* has not yet adopted legislation allowing for non-conviction based civil confiscation. However, the former Government's Minister of Justice had proposed a new civil-based law for the confiscation of assets established from proceeds of crime, without a conviction, in May 2020. This new law would enable the confiscation of property without a prior indictment. The draft concept document has been published for public consultation. Given that a new Minister is now in power, it is not yet known whether this initiative will go ahead.

## Extended Confiscation

Like other jurisdictions in the region, Kosovo\* has included extended confiscation provisions within its newly amended LCPC (2019). A key difference of the extended confiscation provisions for Kosovo\*, in relation to other, similar, laws in the region, is that assets may be subject to confiscation based on the assumption that, on the 'balance of probabilities' standard, the assets are the proceeds derived from criminal activity. The LCPC also includes a broader scope of crimes to which it applies, rather than simply a reference to the those contained in the CC; a revised list of definitions in line with the new provisions; and extended confiscation provisions allowing the prosecutor to make an application within the timeframe of statutory limitations up to five years. As many jurisdictions have found with new extended confiscation laws that provides a contemporary solution to an ongoing problem, the main challenge is in the application of the law. Kosovo\* has used its extended confiscation provision successfully. In February 2020, the Court of Appeal ruled in a money laundering case in favour of confiscation of the offender's property, with a value of approximately 1 million Euros. Also, the supplementary sentence imposed by the Basic Court in Pristina for the confiscation of the proceeds of the criminal offense in the amount of 946,820.84 euros was also upheld by the Court of Appeal. This is a positive step not only for Kosovo\* but the region and lessons learned from this case should be shared with the other WB jurisdictions.



## Financial Investigation

The following institutions are competent for asset recovery in Kosovo\*:

- 1) The Agency for the Administration of Seized or Confiscated Assets – Ministry of Justice
- 2) The Office of the National Coordinator for Combating Economic Crime – State Chief Prosecutor, KPC
- 3) The Kosovo\* Police - Department for Economic Crimes - Office for Asset Recovery – Ministry of Interior
- 4) The Customs officials and Tax Administration employees
- 5) The Financial Intelligence Unit (FIU) - Law No. 05/L-096 On the Prevention of Money Laundering and Combating Terrorist Financing
- 6) The Anti-Corruption Agency – an independent institution established by Law No. 03 / L-159 *On Establishment of the Anti-Corruption Agency*

Previous AIRE-RAI reports have concluded that, in general, capacity to carry out financial investigations by both law enforcement and prosecutors is low. There are not enough persons with the skills to carry out financial investigation dedicated specifically asset recovery. Kosovo\* still does not have financial investigators dedicated only to tracing and identifying assets that may later become subject to seizure or confiscation, either within law enforcement, the prosecution authority, the asset recovery office or the asset management agency. Neither has it dedicated specialist asset recovery prosecutors within the Special Prosecution Office or the Anti-corruption Agency whose role is to focus only on asset freezing, seizure and confiscation. However, within the context of the Kosovo\* Prosecutorial Council, namely the Office of the State Prosecutor, there is a National Coordinator for Economic Crimes, who is a prosecutor dealing with cases involving the freezing, seizure and confiscation of assets.

The current legislation provides that both police and state prosecutors may initiate and carry out investigations (for example the current Criminal Procedural Code art. 6). However, financial investigation for the specific purpose of tracing assets for confiscation purposes is not defined. The amended extended confiscation law within the LCPC (2018) fully covers the need for financial investigation for the purpose of conducting a confiscation investigation. This is initiated by a state prosecutor in order to identify property that may be subject to a property verification application and can be initiated at or during all phases of the criminal investigation and up to five years after the judgement becomes final. The current Criminal Procedural Code provides investigative powers to obtain financial information, information from financial institutions, and other relevant bodies.

The LCPC introduced new investigatory and restraint powers not available in the previous LCPC (2013). For tracing and the identification of assets, the LCPC (2018) and CPC contain adequate provisions for accessing financial information and databases both by law enforcement and by prosecutors, including the covert monitoring of bank accounts. Specific investigatory actions taken before criminal proceedings, pursuant to Article 84. paragraph 1 of the CPC, may be authorized by the State Prosecutor, or

the latter may request from the pre-trial judge the authorization to undertake covert or technical investigative actions, in accordance with Articles 86-100 of CPC, if the prosecutor has reasonable suspicions that the criminal offense under Article 90 of the CPC has been committed, is being committed, or is likely to be committed. In order to present evidence based on financial information, the Prosecutor must have access to all institutions where the property is registered, after the issuance of the order by the pre-trial judge (e.g. Banks, Tax Administration, Cadastre Office, etc.). Monitoring or control of bank accounts is part of these covert measures.

Customs officials and employees of the Tax Administration of Kosovo\* (TAK) have similar attributions of a “financial police” body. According to the CPC, they have the competence, responsibility and obligation to investigate and detect criminal offenses. In terms of money laundering and terrorist financing (*Law On Amendments and Supplements of the 2013 Law on Prevention of Money Laundering and Terrorist Financing*), the same officials are competent to investigate these criminal offences, under the supervision of the State Prosecutor. Customs and the Tax Administrator appoint a mediating officer with the Special Prosecution Office and other Prosecution Offices to ensure effective inter-agency cooperation.

As a specific investigative mechanism, the Kosovo\* Financial Intelligence Unit (FIU) is an independent national institution responsible for investigating, collecting and analysing potential money laundering and terrorist financing information, according to the *Law On Amendments and Supplements to Law On Prevention of Money Laundering and Terrorist Financing* (2013).

The Special Anti-Corruption Department (DSAK) - The Anti-Corruption Task Force - was a specialized unit within the Investigation Department of the Kosovo\* Police. It was established in 2010 and worked together with the Special Prosecution of Kosovo\* to investigate and prosecute offences of corruption. Although this office was disbanded in September 2020, any ongoing cases currently existing will continue to be investigated by the responsible police investigators and prosecutors and, where evidence exists of corrupt activity, prosecuted through the courts.

### **The Asset Recovery Office (ARO)**

In 2018, the Director of Kosovo\* Police designated the Economic Crime Department of the Kosovo\* Police as the national asset recovery office. Although available for international cooperation through the CARIN network, the mandate, scope, powers, roles and responsibilities of this office are still under development. Following the future appointment of a new Director of Police, the international community should ensure this office is fully functional through the provision of external technical assistance support and capacity building.

### **The Asset Management Office (AMO)**

The Agency for the Management of Seized and Confiscated Assets (AMSCA) was established at the end of 2010 and became operational in early 2011. It operates within the framework of Law No. 03/L-141 *On the Management of Seized and*

*Confiscated Property*, which was supplemented and amended by Law No. 05 / L-049 *On the Management of Seized and Confiscated Assets* in 2016, in order to increase the Agency's effectiveness and efficiency. This law defines the Agency as a national central body within the Ministry of Justice.

In order to fulfil its obligations as prescribed in the law, the Agency:

- » Manages seized and confiscated property used for, or derived from a criminal offense, including the proceeds of terrorism, with the exception of property confiscated for the realization and collection of tax liabilities;
- » Executes temporary measure Court Orders for securing property;
- » Executes the Final Court Decision, according to the legislation in force;
- » Evaluates the value of the seized and confiscated property;
- » Keeps records of the property it manages and of Court Decisions ruling on the seizure and confiscation of property;
- » Administers the data related to seized and confiscated property in a centralized computer system;
- » Determines the manner of preserving the value of the property under its management;
- » Participates in offering international legal assistance for all cases involving seized and confiscated property by managing property seized or confiscated on the basis of requests made by another State;
- » Enables the sale of seized and confiscated property, according to the Decision of the competent Court, paying the revenues collected from their sale into the Kosovo\* State Budget, or delivers property for use by the Government;
- » Provides advice to the Prosecution Office, the Court, and other institutions on the specific nature of the process of the management of seized and confiscated property, in order to provide assistance in planning of potential seizures and/or confiscations;
- » Establishes Memoranda of Cooperation with partner bodies and relevant institutions to agree on their relationships and responsibilities, as well as to increase its performance, in accordance with the provisions of the Law on the Management of Seized and Confiscated Property.

The Agency is also responsible for assessing the value and the management of all assets that are seized and confiscated in Kosovo\*. Under Article 284(6) of the CPC, the court shall issue an order to the Agency instructing it to sell, liquidate or retain confiscated immovable or movable property or assets. However, discrepancies in the data collected by the agency and the National Coordinator for Economic Crime suggest, relating to temporarily seized assets, indicates that the courts do not always refer to the agency for valuation and management of all assets.

### **Re-Use of Confiscated Assets**

There is currently no system for the social re-use of confiscated assets. The execution of Court judgments related to property confiscation and legal-property related claims is decided upon by the competent Court. If the verdict imposes a confiscation of items, these items will automatically become state property. A certified copy of the judgment shall be immediately sent to the Agency for the Management of Seized and Confiscated Property, which may sell the objects, or hand them over to the Government for use. The money collected from the sale of the property goes directly to the state budget.

## International Cooperation

The CPC (art. 219) provides for international requests, stating that all international requests shall be made in accordance with the law of Kosovo\* on International Legal Cooperation in Criminal Matters and via the Office of International Legal Cooperation in the Ministry of Justice. The new LCPC (2018) art. 21 usefully repeats this provision, stating the international cooperation for the purpose of restraint and confiscation will be made in accordance with the law of Kosovo\* on International Legal Cooperation in Criminal Matters. Although it has not been tested (there have been no requests of this nature), Kosovo\* does not have specific legislation allowing it to execute international requests based on a foreign NCB civil confiscation procedure. However, in 2020, Kosovo\* drafted a new Law on international legal cooperation on civil matters. This law prescribes the principal competences and procedures for the provision of international legal assistance in civil matters between Kosovo\* and foreign countries. In particular, it facilitates the provision of mutual legal assistance in civil matters in the absence of an applicable bi-or multilateral agreement, under the circumstance of reciprocity or comity.

Cooperation between other jurisdictions and Kosovo\* institutions is described by the Kosovo\* authorities as good. Kosovo\* has the added international cooperation challenge of not yet being part of the Europol and Interpol mechanisms. They have compensated for this by ensuring they are an integral part of the relevant regional asset recovery and asset management networks of CARIN and BAMIN. The National Coordinator for Economic Crime, who is Kosovo's asset recovery prosecutor specialist, has been the CARIN contact for Kosovo\* for several years and is well known within the global asset recovery community. Kosovo's law enforcement contact has recently changed and remains within the Kosovo\* Police.

On a formal cooperation basis, Kosovo\* has entered into bilateral agreements for mutual legal assistance in criminal matters with Albania, Hungary, Italy, Turkey, Germany, Croatia and North Macedonia. Considering its challenging political status, Kosovo\* works hard at forging good international cooperation, with its International Cooperation Department within the Ministry of Justice playing a pivotal role. For example, plans had been put in place, within the framework of the AIRE-RAI regional project, for a workshop related to international cooperation between Kosovo\* and Albania, in March 2020. This event was unfortunately postponed due to the outbreak of the Covid-19 pandemic.

## Measuring Effectiveness

Statistics on seized and confiscated assets are collected centrally in Kosovo\* in two ways. Firstly, the Agency for Seized and Confiscated Assets collects statistics on the assets placed under its management by the courts. These statistics include the number of seized and confiscated assets and their value. In addition, the National Coordinator for Economic Crime collects statistics on a regular basis from all the relevant institutions. Collecting and collating statistics on assets seized and confiscated, from which a quarterly report is produced, is a key mandated function of the National Economic Crime Coordinator. Currently, the relevant agencies holding the data (the courts, the police, the prosecution authorities, customs etc) are not linked electronically.

The collection of statistics by the National Coordinator is therefore carried out manually, using members of staff allocated to his office. Without question, traveling to all prosecution offices each week and speaking directly with colleagues is the most accurate method of ensuring that all seizures and confiscations are captured. Whether it is the most efficient method is questionable. Also, as the statistics collected by the National Coordinator are captured at a different moment in time from the AMSCA, naturally there will be some discrepancies, in particular for assets seized, as they may either be given back at an interim court proceeding or not brought to the attention of AMSCA as the courts do not always hand them over to the agency. Kosovo\* has an excellent opportunity to pool their processes and resources and produce even more accurate statistics than already available, by combining both the statistics from the National Coordinator and those of the AMSCA, processing them in one electronic register.

In June 2020, the Basic Court of Ferizaj began a pilot to replace all manual registers of court decisions with electronic registers, through the introduction of a system called CMIS. All documents received in court will be registered in the electronic registers through the CMIS system, thus increasing the efficiency in the court. After the completion of the pilot in the Basic Court of Ferizaj, the CMIS Project will be implemented in all other courts in Kosovo\*. If successful, this could be the start of digitalizing the recording of decisions which in turn may benefit the dissemination of information to other agencies.

Since the adoption of the EU Regulation on mutual recognition of freezing order and confiscation orders<sup>[24]</sup> European standards also now require the collection of statistics on incoming and outgoing international requests to enforce orders for seizure and confiscation of assets. The Ministry of Justice International Cooperation Department is the office sending and receiving requests for assistance, based on bilateral agreements and reciprocity, also relating to asset recovery, and engaging with foreign jurisdictions on issues such as the sharing of assets. It is not clear whether statistics specifically on asset recovery requests are currently collected, but this would not be difficult for this office to achieve, as it has a proven record of successful operations in the field of asset recovery in the past.

## 5.4 Montenegro

### Asset Recovery as a Policy Objective

There is no one National Asset Recovery Committee, national asset recovery strategy or national asset recovery action plan in Montenegro within which all aspects of the asset recovery process are discussed. Nevertheless, asset recovery is on the agenda within individual authorities, currently largely driven by the challenges posed by the extended confiscation provisions. Extended confiscation has been a strategic and political commitment since the adoption of the Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity (2015). All reports

[24] REGULATION (EU) 2018/1805 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 November 2018, on the mutual recognition of freezing orders and confiscation orders



sent to the Montenegrin Assembly on the work of the courts and prosecution services also address this particular issue. Training of police and prosecutors in conducting effective financial investigations is currently a political priority.

### **Asset Recovery Legal Provisions for Freezing, Seizure and Confiscation**

Both AIRE-RAI publications *Asset Recovery in the Western Balkans: A Comparative Analysis of Legislation and Practice* (2018) pp. 64-66, and *The Handbook on Effective Asset Recovery in Compliance with European and International Standards* (2019) pp.84-94, provide detailed commentary on the legal framework of Montenegro its conformity to the required regional and international standards. This section provides a summary of these provisions and any developments since the AIRE-RAI publications.

In Montenegro, the recovery of the proceeds of crime is governed by the Criminal Code (CC, 2018) and the Criminal Procedure Code (CPC, 2018). In addition, Montenegro has taken the positive step of combining its asset recovery provisions into one consolidated law, through the establishment of the Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity (2015) herein after referred to as the LCPC. The LCPC came into force in January 2016. It captures the process of recovering the proceeds or 'material benefit' from crime through an extended confiscation provision. It also includes provisions for financial investigation, access to banking information, temporary freezing and seizure, asset management, confiscation, protection of bona fide 3rd parties, confiscation of an equivalent value, compensation to victims, international cooperation and collation of statistics (record keeping). Including all these provisions in one instrument makes the LCPC a 'one-stop-shop' law for asset recovery and the most comprehensive in the region. The new law places the emphasis on confiscating proceeds rather than only instrumentalities or direct assets and improves on the extended confiscation provisions which already existed in the 2009 CPC.

In July 2019, the Montenegrin Assembly adopted amendments to the Law on the Confiscation of Proceeds of Crime, specifically to allow more time for financial investigations to be conducted in extended confiscation proceedings. The previous deadline of 1 year for the prosecutor to file a motion to confiscate material benefit, was extended to 2 years, to allow a longer period for asset tracing and identification. This is particularly important when assets have been transferred to a foreign jurisdiction, as international requests for information on the location and ownership of assets can be a lengthy process. It may be too soon to assess whether this has had any impact of the application of the law.

### **Non-Conviction Based Confiscation**

Non-conviction-based criminal confiscation may be ordered in the case of death, or when instituted proceedings cannot be continued due to the existence of circumstances which permanently preclude prosecution. In such cases, confiscation is only possible when the court finds it probable, on the merits of evidence, that instituted proceedings would have ended in a conviction had the person not died or had the circumstances permanently precluding prosecution not arisen.



## Extended Confiscation

Extended confiscation has been part of Montenegrin law since 2009, but articles contained within the CPC relating to this provision were repealed following the adoption of the new LCPC (2015). Cases involving extended confiscation are only dealt with by the SPO and although they are not new to the concept (as it has existed since 2009) prosecutors still face challenges in both applying the provision and using it systematically. The prosecutor must gather evidence showing a manifest disproportion between legal income and assets owned, arguing therefore that the assets are criminally derived. Amendments to the LCPC since the commencement of the project have extended the period in which the prosecutor has to gather this evidence before the main hearing from 1 year to 2 years. However, difficulties were evident also during the main hearing which takes place at the end of the 'investigation' period. The prosecutor initially presents evidence on assets allegedly owned by the accused or third party and the disparity between legal income and wealth. After this the onus of proving the legality of the asset shifts to the accused, who then has the opportunity to present evidence to show that the asset is a material benefit (art.40). Once all the evidence has been heard the court then issues its ruling. The EU Directive 2014/42 on Freezing and Confiscation, states that the court must be 'satisfied' that the property in question 'derives from criminal conduct' but does not say to which standard, leaving this open for jurisdictions to choose a lower standard than beyond reasonable doubt, for example a 'balance of probabilities' standard. The LCPC (2015) is silent on the standard of proof the court should reach and as the process is a criminal one, it seems appropriate that the court would aim for a criminal 'beyond reasonable doubt' standard. In Montenegro, as with other jurisdictions in the region, there is still a lack of guidance in the relevant law and case law on how to decide on the determination of the illegal origin of property. Following recommendations made within the AIRE-RAI regional project, a program of training was due to take place, within the curriculum of the judicial academy. Unfortunately, due the COVID19 pandemic, this has not yet happened. Training on extended confiscation legal provisions and their application will recommence as soon and restrictions are lifted. Further, to assist with the application of extended confiscation provisions, direct case-based mentoring would be beneficial, together with an analysis of ongoing and past cases to identify barriers to best practice in its use.

## Non-Conviction based Civil or Administrative Confiscation

The legislative framework of Montenegro does not provide for the confiscation of criminally derived assets, without a conviction, in civil or administrative proceedings.

## Financial Investigation

Legal possibilities for financial investigation are provided for both within CPC (2018) and the LCPC (2015). Article 11 of the LCPC (2015) lays down that a state prosecutor may issue an order initiating a financial investigation under a number of prescribed conditions. In addition, Under Article 14 of the LCPC (2015), the police shall conduct a financial investigation to identify the proceeds of crime either on

their own initiative or on the order of the state prosecutor in charge of the financial investigation. The CPC (2018) allows for access to financial information from banks and other financial institutions, with the investigating judge issuing an order to the bank to provide information on banking information and accounts, on the motion of the state prosecutor (CPC art. 257b). Additionally, the LCPC (2015) states that the investigating judge may order banks and other financial institutions to make data available that may be used as evidence for the purpose of conducting financial investigations. Although not specifically mentioned, the monitoring of bank accounts would be possible under the current law.

As a key aspect of Montenegro's LCPC, art 16 specifically states that financial information gathered during the criminal investigation may be used in the financial investigation, and *vice versa*. Although the process of parallel financial investigation is seen as good practice globally, including provisions in the LCPC underlines the relevance, importance and possibility of this vital opportunity.

Previous AIRE-RAI reports have concluded that, in general, capacity to carry out financial investigations by both law enforcement and prosecutors is low. There are not enough persons with the skills to carry out financial investigations dedicated specifically asset recovery. Since 2018, additional experts have been recruited within the Special Prosecution Office (dealing with extended confiscation) and progress has been made to improve financial investigations.

The EURoL 2 Project has organised trainings for prosecutors and police at the Police Academy, in cooperation with the Judicial Training Centre. The initial training programme was followed by a several-day study visit to Italy in July 2019.

### **The Asset Recovery Office (ARO)**

Since the commencement of the AIRE-RAI regional Project, Montenegro has established a National Asset Recovery Office (ARO), within the police Division for International Operational Police Cooperation, which is also the office facilitating information exchange with Interpol, Europol and Sirene. The ARO was established in 2019, under the law on Internal Affairs and has facilitated a number of requests using the ARO, CARIN, Interpol and Europol channels. ARO to ARO cooperation with EU Asset recovery offices is legally provided for under the LCPC (art. 79), stating that the organisational police unit competent for financial investigations shall act upon requests in accordance with the EU Council Decision 2007/845/JHA of 6 December 2007. However, it is not clear whether the Division for International Police Cooperation is the 'the organisational police unit competent for financial investigations'. The location of the Montenegro FIU has recently changed. It has moved from the Ministry of Finance to the Ministry of Internal Affairs, placing it under the same Ministry as the ARO, albeit within a different place in the organisational structure. The newly adopted Directive (EU) 2019/1153 of the European Parliament and of the Council laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, sets out in its article 3, para. 1, the authorities that may have direct access and search national centralised bank account registries, stating that 'Those competent authorities shall include at least the

Asset Recovery Offices'. Granting the Montenegro ARO direct access to the National Central Bank Registry held by the Central Bank of Montenegro, may therefore require an amendment to the LCPC (2015).

### **The Asset Management Office (AMO)**

The AIRE-RAI Handbook on Effective Asset Recovery in Compliance with European and International Standards provides a useful breakdown of the legal provisions within the LCPC (2015) for asset management in Montenegro, including the functions of the AMO (art.53) and the information to be recorded. In addition to the LCPC, the competences of the AMO are set out in the Decree on Lease of Seized/Confiscated Proceeds of Crime and the Decree on the Sale of Seized Proceeds of Crime. The Office for the Administration of State Property, under the Ministry of Finance, has performed the functions of the national asset management office for a number of years. As the jurisdiction improves its application of the law on extended confiscation, this office will be required to manage an increased number of assets leading to legislation, processes and capacity being tested for effectiveness.

### **Re-Use of Confiscated Assets**

There is no separate fund into which the money from confiscated assets is held for potential use in state and social community projects. Money realised from the sale of confiscated assets is paid into the state budget. In the case of an unsuccessful sale, the confiscated property may however be donated for humanitarian purposes or entrusted for use to a state body or a public administrative body.

### **International Cooperation**

The LCPC (2015) art. 78 contains provisions of international cooperation relating to freezing and seizure, confiscation and management of criminal proceeds, by way of international treaty or reciprocity. The basis for International cooperation in Montenegro, as with most jurisdictions, are the provisions on mutual legal assistance in criminal matters. It is not clear whether it would be able to respond to requests from a foreign jurisdiction to enforce freezing, seizure and confiscation orders based on NCB civil confiscation proceedings as this has never been tested, although this is doubtful.

Article 83 of the Law on Seizure and Confiscation introduces time limits for temporary measures on assets managed in Montenegro on behalf of a requesting jurisdiction. After 18 months the requesting jurisdiction will be informed that the asset will be returned after two years. This can be extended to a 3 year maximum period on application by the requesting state to the court.

The need to utilise the regional mechanisms established to facilitate international asset recovery *i.e.* CARIN, BAMIN and StAR, has been emphasised within the AIRE-RAI Tools and Best Practices for International Asset Recovery Handbook. Montenegro's law enforcement CARIN contact sits within the Financial and Economic Crime Department of the Police. The same person has remained the contact for a number of years which is an excellent approach to building external relationships

internationally. As the single gateway to the global asset recovery network (Asset Recovery Inter-Agency Networks – ARINs), the law enforcement CARIN contact needs to be well known and well connected domestically for both pre-treaty based operational and enquiries and strategic development. At the beginning of the AIRE-RAI project, Montenegro had not designated a prosecutorial CARIN contact. This operational gap has since been filled, with a CARIN contact now designated within the Special Prosecutors Office.

Article 79 of the Law on Seizure and Confiscation mandates the organisational police unit competent for financial investigations (within which the CARIN contact sits) to deal with any incoming asset tracing requests from EU jurisdictions, based on Council Decision 2007/845/JHA of 6 December 2007 (see section on establishing an ARO in Montenegro).

### **Measuring Effectiveness**

The LCPC (2015) art. 77 prescribes record keeping for freezing, seizure and confiscation. It states that records can be kept in paper form or electronically. The LCPC suggests a comprehensive list of statistics that will be collected, in line with the EU Directive of Freezing and Confiscation and the FATF standards. It does not state who is keeping the records however. The Montenegrin institutions competent and responsible for collecting asset recovery data domestically are the Supreme Court, Supreme State Prosecutor, Police, Agency for Property, and the Government Office for European Integration. Other jurisdictions in the region have unsurprisingly mandated their national asset management offices to collate national asset recovery statistics. Having designated its own national asset management office, Montenegro may consider it also the most suitable location for a national electronic register of statistics on seized and confiscated assets, in order for a comprehensive set of figures to be of value. Since 2016, yearly statistical records are being maintained by the Special Prosecutors Office. These records show the number and type of cases in which provisional seizure and confiscation have occurred, whether through plea bargain or order of the court, and the amounts. This does go some way to providing baseline statistics for assessment.

## **5.5 North Macedonia**

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### **Asset Recovery as a Policy Objective**

Asset recovery is a formal and integral part of all previous National Strategies for reforming the judiciary. The National Asset Management Agency, established within the Law on the Management of Confiscated Assets (2008), has elaborated two strategic plans, (2014-2016 and 2018-2020). The 2018 – 2020 Strategic Plan included an Action Plan to strengthen the capacity for conducting financial investigations and asset confiscation envisaged setting up a ‘National Commission for Monitoring Implementation of the Strategy and the Action Plan’. This should be acknowledged as a positive step towards introducing a systematic approach to asset recovery. However, it should be implemented in practice and further developed, which may require further support from external international specialists.



## **Asset Recovery Legal Provisions for Freezing, Seizure and Confiscation**

Both AIRE-RAI publications *Asset Recovery in the Western Balkans: A Comparative Analysis of Legislation and Practice* (2018) pp. 60-64, and *The Handbook on Effective Asset Recovery in Compliance with European and International Standards* (2019) pp.105-114, provide detailed commentary on the legal framework North Macedonia and its conformity to the required regional and international standards. This section provides a summary of these provisions and any developments since the AIRE-RAI publications.

In North Macedonia, legislation for the freezing, seizure and confiscation of instrumentalities and the proceeds from crime are provided for in the Criminal Code (2018) and the Criminal Procedure Code (2018). No separate law on confiscation has been adopted, and there are no plans in place to establish one. As such, substantive provisions for extended confiscation are contained in the CC and procedural provisions in the CPC. A comprehensive explanation of asset recovery provisions in North Macedonia is available within the AIRE-RAI Handbook on Effective Asset recovery in Compliance with European and International Standards (2019) and the AIRE-RAI Publication *Asset Recovery in the Western Balkans: A Comparative Analysis of Legislation and Practice*. There have been no new asset recovery instruments adopted or amendments to existing asset recovery provisions since 2018. However, a working group is currently established within the Ministry of Justice to consider a number of amendments to the CPC in order to provide a better perspective for confiscation. The Ministry of Justice has also established a Working Group focused on drafting a new CC, including issues relating to confiscation.

The confiscation of instrumentalities and direct objects of crime, and crime proceeds, value-based confiscation and third-party confiscation are all provided for within the CC and the CPC, as are the protection of bona-fide 3<sup>rd</sup> party rights, however case law elaborated within past AIRE-RAI reports has highlighted that the provisions and safe guards around third party confiscation and the protection of bona-fide 3<sup>rd</sup> party rights would benefit from amendment.

Reports published within the AIRE- RAI regional project suggest that there is a need to better define the instruments, institutions and procedures allowing for asset recovery in North Macedonia, particularly regarding extended confiscation, and this need still remains. The MoJ Working Group for drafting the new Criminal Code addresses these issues.

### **Non-Conviction Based Confiscation**

Non-Conviction based confiscation within criminal proceedings is incorporated within the North Macedonia legislative framework. Assets which must be forfeited according to the CC shall also be forfeited when the criminal proceedings have not been completed with a judgment finding the accused guilty, for example in the event of death or absence of the suspect. In this case, a special procedure for the confiscation of assets and the proceeds of crime and the forfeiture of instrumentalities is carried out when there are factual or legal obstacles to conducting criminal proceedings

against the perpetrator of a criminal offence. In these cases, the court shall, upon a motion of the public prosecutor, conduct special proceedings for the confiscation of assets and proceeds of crime and the forfeiture of instrumentalities, if the conditions of the Criminal Code are fulfilled.

### **Extended Confiscation**

Both the CC (art. 98a) and the CPC include provisions for extended confiscation which are fully described in the AIRE-RAI Handbook on Effective Asset recovery in Compliance with European and International Standards (2019). It is suggested that very few cases exist where extended confiscation has been applied or attempted. Reasons for this, as elaborated within the Handbook, still remain and include a lack of preparation by prosecutors, the proceedings being too lengthy and a general lack of understanding of prosecutors and judges on how to apply the law. Unlike the majority of other jurisdictions in the region, with the exception of Kosovo\*, the balance proof that the value of the defendant's property exceeds his legal income, and that it derives from a crime to which extended confiscation applies to, is made by the court on the basis of the 'balance of probabilities' standard. However, there are no provisions in place which explicitly govern the determination of the illegal origin of property. Art. 98-a (1) of the CC clearly sets out that, within a certain time period and following conviction of certain crimes, when the court is "well asserted that the property exceeds the legal incomes of the offender and originates from such crime" it may be confiscated. The CPC (2018) also offers extended confiscation provisions on determining the facts of the case in which criminal proceedings exist. However, problems around determining the illegal origin of property to the required standard remain.

### **Non-Conviction based Civil or Administrative Confiscation**

North Macedonia has not incorporated provisions for civil or administrative forfeiture or confiscation into its criminal asset recovery legal framework in order to target the proceeds of crime.

### **Financial investigation**

The CPC, article 530, provides the legal basis for the tracing and identification of assets and proceeds acquired through the commission of a criminal offence. The public prosecutor is obliged to gather evidence during the proceedings and to investigate circumstances of relevance for determining the assets and proceeds and to propose measures referred to in Article 202 of the CPC. In the course of determining the amounts of assets or proceeds acquired by a criminal offence, the public prosecutor can request a report from other State bodies, financial institutions or legal entities or citizens, who are obliged to submit the information without any delay. If there is reasonable suspicion that the assets are abroad, the court is obliged to issue an international request.

The Public Prosecution Office (PPO) is in overall charge of a financial investigation. In dealing with the matters under the PPO jurisdiction, the Public Prosecutor cooperates with a broad range of agencies and bodies, including the Financial Police, the Ministry



of Interior, the Public Revenues Office, the Custom Office, the State Commission for the Prevention of Corruption, the State Audit Office, the State Foreign Currency Audit Office, the State Market Inspectorate and other inspection bodies, state bodies and legal entities vested with the tasks of preventing and detecting criminal offences under the law. State administration bodies and other State bodies, institutions or legal entities which gather data and keep records, in accordance with the law, are obliged to submit this data upon a request by either the public prosecutor or, if it is required, by the Financial Police. The public prosecutor may also cooperate with and exchange information among prosecutors, foreign police and State bodies from other countries and organizations operating in the area of financial crime, on the basis of bilateral agreements and ratified international treaties regarding issues falling into the prosecutor's jurisdiction. However, only on the basis of a court order can the Public Prosecutor make searches into all databases, bank accounts, records and overviews of the Public Revenues Office, the Cadastre, the registries of securities, motor vehicles and other databases. This is not an efficient procedure and would benefit from legislative and procedural amendment.

Legislation also allows for bank accounts to be monitored under certain conditions stipulated in the CPC. During the pre-investigation or investigation stage, upon an application by the public prosecutor regarding unlawfully acquired assets, a decision on account monitoring can be made by a preliminary procedure judge, while such a decision, after filing an indictment, is made by the trial court. The preliminary procedure judge must decide within 12 hours from the moment of receiving the application. If the judge does not accept the public prosecutor's application, he or she will ask a panel of judges to decide on the application without any delay. A panel of judges shall then make a decision within 24 hours from the moment of receiving the public prosecutor's application. Upon the public prosecutor's application, a preliminary procedure judge can order a bank or other financial institution to monitor financial turnover in respect of that person, and to regularly report to the public prosecutor at timely intervals specified in the decision. On the basis of the public prosecutor's reasoned application, a court can also order a financial institution or other legal entity to stop the execution of certain financial transaction or to temporally seize certain assets.

In urgent cases, the public prosecutor can determine special measures regarding financial transactions or assets without a court order. In such cases the public prosecutor immediately informs the preliminary procedure judge, who, within 72 hours, must make an order. If the judge does not make the order, the public prosecutor shall return the data and may not open them before the judge's decision.

A separate Financial Police Unit was established, under the Law on the Financial Police ("Official Gazette", No. 12/14, published on 22.01.2014). The Law on the Financial Police regulates financial investigation and provides for a broad range of investigative tasks and mechanisms, including:

- » Detecting and conducting criminal investigations into criminal offences that are prosecutable *ex officio*, such as Laundering of Money and Other Proceeds from a Criminal Offence (Article 273), Unauthorized Trade (Article 277), Smuggling (Article 278), Tax Evasion (Article 279);

- » Gathering and analysing cash transaction data;
- » Taking pre-investigation and other measures when there are reasonable suspicions of committed criminal offences,
- » Monitoring the movement of money in order to detect criminal offences determined by law;
- » Conducting forensic computer analyses of temporarily seized computer systems and other electronic devices;
- » Filing criminal charges before the public prosecutor competent to deal with criminal offences falling within his/her jurisdiction which are prosecutable *ex officio*;
- » Submitting an initiative for instigating tax proceedings or other proceedings for the determination and collection of public obligations before the competent bodies;
- » Coordinating, initiating and filing charges for punishable acts.

The CPC, article 200, provides provisions for accessing banking information, on application by a prosecutor to the court. In addition, the Financial Police, within the framework of the Law on the Financial Police, has direct access to banking and other financial information without the need to obtain an order from the court.

Previous AIRE-RAI reports have concluded that capacity to carry out financial investigations by both law enforcement and prosecutors is low. Even considering the Law on the Financial Police, the AIRE-RAI study highlighted a number of deficiencies in effective instruments for tracing and identifying assets, incomplete property records, an absence of specialised units for asset tracing and a lack of inter-institutional coordination.

Since 2018, North Macedonia has established investigation centres within prosecution offices. Although it is too early to assess the impact of this change, this appears a positive move brought about, also by AIRE-RAI reporting, of a recognition of weak capacity in this area.

Financial investigation training of prosecutors and judges on a regular basis was organised by the Academy for Judges and Public Prosecutors of the Republic of North Macedonia. However, there is no specialized education and training for law enforcement officers regarding financial investigation to trace and identify assets which may later be subject to confiscation.

### **The Asset Recovery Office (ARO)**

The government of the Republic of North Macedonia has not yet formally designated a national asset recovery office (ARO) dealing with assets acquired through criminal activity. However, one senior prosecutor within the Public Prosecution Office in Skopje has been nominated as the national 'expert' in matters relating to asset recovery, performing this role alongside a number of other commitments. Further support to this prosecutor and to the plan to establish an ARO, *i.e.* building greater capacity and knowledge, in order to establish a fully functioning ARO in line with EU standards, is required as a priority. This may involve legislative amendments, in particular in relation to access to databases without the need for a court order. A working group

composed of practitioners and academic and scientific representatives have drafted a working version of 'The Law on the ARO' that will soon enter into the procedure for adoption. EU best practice has included both the level of direct access to data bases for the tracing of assets and the ease of access (without a court order) as effectiveness indicators for National AROs, within a list of 11 effectiveness indicators. EU standards also state that the ARO must have access to a national central register of bank accounts<sup>[25]</sup>.

### **The Asset Management Office (AMO)**

The Asset Management Office (Agency for Management of Seized Property (AMSP)) was established in January 2009, by entry into force of the Law on the Management of the Confiscated Assets, Proceeds and Forfeited Instrumentalities in Criminal and Misdemeanour Procedures ("Official Gazette of RM", No. 98 of 04.08.2008). It is an independent agency, directly accountable to the government. The Agency is managed by a Management Board consisting of five members. These members were formally representatives from each of the Ministries (Ministry of Justice, the Ministry of Finance, the State Attorney's Office), one from each. However, following an amendment in 2016 this was changed, allowing the board members to be directly recruited from all walks of society.

The functions of the AMSP are regulated by the Law. The Agency's mandate is to manage confiscated assets, criminal proceeds and forfeited instrumentalities and, with the consent of the court and the competent authorities, manage temporary frozen and seized assets, criminal proceeds and instrumentalities in order to preserve the value of these assets. It conducts all procedures involved in asset management, including storage, conducting condition and valuation assessments, maintenance of records of all assets under management and sale of assets. It is also responsible for maintaining statistical, financial and other reports on the assets under management. The office leads on training in relation to asset management, both for Agency employees and for other subjects and entities involved in the procedure of seizure and confiscation. It provides opinions regarding the application of the Law on the Management of Confiscated Assets and performs other tasks as determined by law.

The asset management law is currently under revision. A working group, already established in 2020, drafted a new asset management law including a comprehensive package of amendments which will be adopted by the Parliament.

### **Re-Use of Confiscated Assets**

There is currently no separate fund into which the money from confiscated assets is held for potential use in state and social community projects in North Macedonia.

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[25] Directive (EU) 2019/1153 of the European Parliament and of the Council laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, sets out in its article 3, para. 1, describes the authorities that may have direct access and search national centralised bank account registries, stating that 'Those competent authorities shall include at least the Asset Recovery Offices'

Good examples of the re-use of the direct object from crime have occurred, however. Assets that are perishable or of low value have been donated to charity organisations by the Agency.

## International Cooperation

The basis for formal international cooperation regarding asset recovery is the Law on International Cooperation in Criminal Matters (“Official Gazette of the Republic of North Macedonia”, No. 124/10). In addition, bilateral agreements with neighbouring States have been concluded. The Republic of North Macedonia is a party to a number of key international treaties for asset recovery including The European Convention on Mutual Assistance in Criminal Matters and its additional protocols (ETS 3016, 9917 and 18218); The European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS 1419); The European Criminal Law Convention on Corruption (ETS 17320) and its additional protocol (ETS 19121); The CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 19822).

North Macedonia is a member of CARIN since 2014. The Republic of North Macedonia has recently appointed its nominated asset recovery ‘specialist prosecutor’ within the PPO, also earmarked to be the ARO, to be its CARIN contact, alongside the nominated contact within the police. This is a positive step, and places North Macedonia firmly within the global network of asset recovery experts for both operational and strategic engagement. The Republic of North Macedonia has aligned itself with the EU institutional bodies Europol and Eurojust. It has an operational agreement with Europol since 2011 and since 2015 has a liaison police officer posted in Europol HQ in The Hague. The Republic of North Macedonia signed a cooperation agreement with Eurojust in 2008 which entered into force in 2010. It is also a member of BAMIN.

International cooperation in the field of asset recovery requires jurisdictions to have the legal and procedural ability to respond quickly to requests to freeze, seize and confiscate assets on behalf of another jurisdiction, or following receipt of information from another jurisdiction. Showing effectiveness in this area requires the maintenance of statistics at central level on international requests (see the section of Measuring Effectiveness). Although statistics are not comprehensive in this area, North Macedonia can provide examples of ongoing international cooperation cases in relation to asset recovery.

Domestic legislation in North Macedonia does provide for NCB confiscation or forfeiture in criminal proceedings, with respect to natural persons and legal entities that have committed criminal offences, including where a suspect is deceased, has absconded or is otherwise unavailable (Art. 540, LPC). Responding to orders from foreign jurisdictions is also possible, bringing North Macedonia in-line with international standards. It is not clear whether any requests have been received from foreign jurisdictions based on non-conviction based civil or administrative proceedings, however as no domestic law exists for this, it is doubtful whether North Macedonia would be able to respond.

During the period of the project, the Public Prosecution Office of the Republic of North Macedonia, on 12 June 2019, signed a Memorandum of Understanding and Mutual Cooperation Agreement with the National Directorate for Prosecution of Mafia and Terrorism of the Republic of Italy which provides for asset sharing between the jurisdictions.

To date, there are no examples of asset sharing with another jurisdiction, although a future agreement and share is anticipated with the United States of America, in relation to a pending case.

### **Measuring Effectiveness**

In the Republic of North Macedonia there are no centralised records maintained of assets frozen, seized and confiscated, and their value. The gathering and processing of statistical data is distributed among several institutions. Statistics on the work of courts and judges are kept for their needs by different institutions and bodies independent of each other, namely: The Judicial Council of the Republic of North Macedonia, the Ministry of Justice, the Supreme Court and the State Bureau of Statistics. The lack of a unified methodology for gathering, processing and analysing statistical data has resulted in inconsistent and incomparable statistics.

The AIRE-RAI Report on Regional Monitoring Methodology provides a detailed overview of North Macedonia's focus in this area, highlighting that the Ministry of Justice has defined the adoption of the Methodology for Court Statistics as the top priority in the National Programme for the Adoption of the Law of the European Union. Within the IPA 2010 Twinning project "Support for effective prevention and fight against corruption" component 4, a technical specification was prepared and a software for the web solution "System for gathering and processing statistics for preventing and combating corruption" ('Akstats') was procured. From 1 April 2019, 49 institutions have signed a Memorandum of Understanding allowing them to access the Akstats system as beneficiary institutions, including the Agency for the Management of Seized Property. However, it is not clear whether this system will sufficiently deliver the comprehensive national asset recovery statistics needed to conform to EU standards and the baseline developed in the AIRE-RAI Regional Monitoring Methodology report, which includes the number and value of seized and confiscated assets, the number of cases in which assets have been confiscated, and the number of international asset recovery requests.

## **5.6 Serbia**

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### **Asset Recovery as a Policy Objective**

Although there is no separate asset recovery strategy at national level, the Serbian asset recovery 'agenda' runs across a number of national strategies, including the National Anti-corruption Strategy and the National Anti-Organised Crime Strategy. Asset recovery is the responsibility of various government bodies, charged with combatting organised crime, money laundering and corruption. These inter-sectoral bodies comprise representatives of various ministries, state organisations and



services. Asset Recovery has been a policy objective in Serbia since 2002, when it was first raised within the Organised Crime Strategy. The adoption of a separate law on asset recovery was set as a goal at that time and its adoption was preceded by amendments to the Criminal Code. A ‘working group’ charged with drafting the Law on Confiscation of Proceeds of Crime (LCPC) started work in 2005 and the LCPC was adopted on 23 October 2008, entering into force on 1 March 2009. This law was seen as a revolutionary at the time.

### **Asset Recovery Legal Provisions for Freezing, Seizure and Confiscation**

Both AIRE-RAI publications *Asset Recovery in the Western Balkans: A Comparative Analysis of Legislation and Practice* (2018) pp. 66-69, and *The Handbook on Effective Asset Recovery in Compliance with European and International Standards* (2019) pp.115-127, provide detailed commentary on the legal framework for Serbia and its conformity to the required regional and international standards. This section provides a summary of these provisions and any developments since the AIRE-RAI publications.

The legal framework governing the confiscation of the proceeds of crime in Serbia is contained within the Criminal Code (CC, 2016) and the Criminal Procedure Code (CPC, 2014). In addition, as already mentioned, Serbia has taken the positive decision to establish a separate law for asset recovery in the form of the Law on the Confiscation of Proceeds of Crime (LCPC, 2016), which provides for, in addition to provisions in the CC and CPC, clear definitions of instrumentalities, property and proceeds, provisions for extended confiscation, value based confiscation, third party confiscation and the protection of bona fide third parties. The only recent change to legislation has been an amendment to the LCPC, article 2, in May 2019, in relation to the criminal offences the law applies to, in response to the amendments to the CC provisions on crimes relating to abuse of office. Aside from this, the legislative framework remains the same.

### **Non-Conviction Based Confiscation**

Serbia’s legal provisions provide for NCB confiscation in criminal proceedings only. In addition to the extended confiscation provisions provided for in the LCPC (see section on extended confiscation below), assets can be confiscated in the case that perpetrator dies, absconds or is mentally unfit to stand trial. Article 3(4) of the LCPC describes all persons who are considered the owners of assets, in addition to defendants. They include associate defendants, bequeathers, legal successors and third parties. The term “bequeather” denotes a person against whom criminal proceedings have not been instituted or have been discontinued due to their death, and that it had been ascertained, during criminal proceedings against other persons, that they had committed a criminal offence under Article 2 of the LCPC in complicity with them. In practice, this means that property may be confiscated from the heirs of the bequeathers i.e. defendants against whom criminal proceedings have been discontinued due to their death or who have not been tried. This happened only once in Serbia, when the members of the so-called Zemun Clan were on trial; the guilt of two leading organisers of the clan, who had been fatally shot by the police, was

established during the trial and in the judgment, and assets of considerable value, including a house, were ultimately confiscated from their widows. Further, defendants at large may be tried in absentia under specific conditions and their property may be confiscated. Under the CPC, however, in the event they are arrested, they may request a retrial, which must be held. Mandatory psychiatric treatment of mentally ill defendants may be ordered under specific conditions provided by law and in this case, their property may also be confiscated.

### **Extended Confiscation**

The Law on the Confiscation of Proceeds of Crime (LCPC, 2016) is the only law allowing the extended confiscation of all property presumed to have derived from criminal activity in Serbia. Following a criminal conviction, a determination of the disproportion between legal income of the defendant and assets owned is made and where the prosecution show that this is a manifest disproportion, the court may order the confiscation based on ‘reasonable suspicion’ that the property derived from criminal activity. For certain offences, the value of the proceeds of crime must exceed 1.5 million RSD (approximately 12,750 EUR). The onus of proof remains initially on the prosecution to show the disproportionate wealth, and then shifts to the defendant or third-party owner, who have an opportunity to explain the legality of the asset to the court.

Difficulties still exist with the extended confiscation provision both for prosecutors to prove that assets are criminal proceeds and for judges to accept evidence relating to the illegal ownership of assets. This applies both at the provisional phase of freezing and seizure and at the confiscation phase. Judges hear evidence from the prosecutor on the disparity or ‘manifest disproportion’ between legal income and assets owned. However, once the defendant or an alleged owner has the opportunity to provide an explanation as to the legal ownership (shifting of the onus of proof), judges have difficulty in accepting all evidence provided in the prosecutor’s ‘motion’ including circumstantial evidence and therefore have difficulty in rejecting the explanations from the asset’s ‘owners’. The assets are very often then given back. The CPC only regulates the confiscation of instrumentalities and benefits from the criminal offence subject to the charge. All issues relating to extended confiscation are contained in the LCPC. Any guidance for judges is left to case law and case law harmonization. Prosecutors and judges have not yet fully embraced the opportunities of extended confiscation and therefore the legal provision is not used as widely as it perhaps could be.

### **Non-Conviction based Civil or Administrative Confiscation**

Serbia continues to expand its legislative possibilities in the area of asset recovery and is currently developing a “Law on Determination of the Origin of Property and on a Special Tax”, which provides for a determination of increased assets against possible lawful income. Any unexplained assets will then be subject to taxation. This administrative measure, albeit a taxation provision, falling within the jurisdiction of the Administrative Court, should add to the Serbian legislative toolbox for targeting unexplained assets. It is anticipated that this law will come into force in 2021.

Legal asset recovery provisions in Serbia conform to the necessary regional and international standards, but only allow for confiscation in criminal proceedings. Exploring NCB civil and/or administrative remedies would allow for a more targeted approach to confiscating criminally derived assets, without the particular and often difficult considerations involved in the criminal process that are contingent on the existence of a criminal conviction. For example, during criminal and extended confiscation proceedings, third parties may, in line with European standards<sup>[26]</sup>, rightfully show that they had lawfully acquired property. They are entitled to appeal court decisions and, ultimately, they may sue the state in civil proceedings for compensation and prove that they had lawfully acquired their property. The Supreme Court of Serbia reviewed the issue of a third party's right to require a retrial after a final confiscation decision rendered in criminal proceedings, a legal remedy reserved only for the defendant. Given that owners of the property are parties to extended confiscation proceedings, and they may include not only the defendants but the third parties as well, the Supreme Court held that third parties were entitled to require a criminal retrial under the CPC. Further, the Court also held that only the property of the defendant could be confiscated under a plea bargain arrangement, while confiscation of the property of third parties required the conduct of separate adversarial proceedings. Although the Supreme Court's views and opinions are not binding, they are relevant to case law.

In order to overcome these restrictions, Serbia may consider legislating for the confiscation of assets independently of criminal proceedings, where it would suffice only to prove, to a civil standard of proof rather than criminal standard, that there is a connection between the assets in question and general criminal conduct. If successfully adopted and applied, the new administrative 'tax' law under consideration may go some way, in the interim, to filling this gap.

## Financial investigation

Legal provisions in Serbia contain adequate provisions for access to financial information and databases both by law enforcement and prosecutors. These are contained within the LCPC and the CPC and offer a broad range of mechanisms for financially profiling suspects and their assets. The legislation prescribes the authorities able to access financial information, the types of information and the conditions and restrictions. It also provides for a range of contemporary special financial investigatory techniques. Obtaining access to banking data is possible on the order of the public prosecutor, with the Central Bank of Serbia designating an officer charged with acting as law enforcement liaison. Additionally, the Financial Investigation Unit which operates as the national ARO has direct access to a number of databases, including bank accounts of legal and natural persons. Swift inter-agency cooperation between the agencies holding and requesting financial data is equally important to the legal possibility of accessing data. The FIU has a contact list of staff in business banks charged with cooperating with it directly. Financial investigators dedicated only to the tracing and identification of assets, and financial profiling, are engaged within the Financial Investigations Unit.

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[26] EU Directive 42/2014 art. 6 (2)

Previous AIRE-RAI reports have concluded that capacity to carry out financial investigations by both law enforcement and prosecutors is low. Since this report was published, the number of staff in the Financial Investigation Unit has increased, albeit still insufficiently. The number of prosecutors has also increased. The existence of financial forensic experts in the prosecution office departments is a positive factor also. Despite this, further strengthening of the prosecutor's office is needed, especially in terms of forensic financial investigation and the presentation of financial evidence in court.

During the project period a large number of domestic trainings for police investigators, prosecutors, and judges, have been organised within the Judicial Academy. Several 'round tables' held in 2018 are especially significant in terms of developing capacity to carry out effective asset recovery, including financial investigation. Twelve trainings on the fight against money laundering and organised crime were held in the September 2019-March 2020 period alone. They included lectures on proactive financial investigations of natural and legal persons. One two-day event in November 2019, organized within the framework of the AIRE- RAI regional project, was devoted exclusively to asset recovery. In addition, the Financial Investigation Unit took part in several round tables discussing effective cooperation with other bodies, the reports involved in this cooperation and their quality, and their capacity to serve as evidence in criminal proceedings. The trainings covered financial investigations against both natural and legal persons.

The two handbooks prepared within the AIRE-RAI Regional Project have been actively promoted and short lectures held at the annual consultation organised by the Supreme Court in Vrnjačka Banja in October 2019. The activities and studies undertaken by the AIRE-RAI Regional project have raised awareness among both prosecutors and police of the significance of financial investigations and asset recovery. The impact of this may only be reflected through the increase in statistics in future years, as organised crime proceedings take considerable time to come to a conclusion.

### **The Asset Recovery Office (ARO)**

The Financial Investigation Unit, established within the framework of the LCPC, currently functions as the national ARO. This unit operates under the Ministry of Internal Affairs, *i.e.* the police, as a separate organisational unit. In the majority of cases and on the order of the relevant public prosecutor, the unit conducts financial investigation to trace and identify assets and collect evidence on the lawful income, lifestyle and living expenses of defendants, co-defendants or bequeathers. The unit also collects evidence of assets inherited by legal successors, *i.e.* evidence of assets and compensation transferred to third parties. Individual investigative actions are conducted *ex officio* and on the order of the public prosecutor. State and other authorities, organisations and public services must forward the requisite data to the unit without delay. Public prosecutors may order banks and other financial organisations to forward data on the status of the owners' business and private accounts and safety deposit boxes to the Financial Investigation Unit and instruct the unit to undertake the automatic processing of such data. The National Bank of



Serbia has designated an officer charged with liaising with the unit. The unit also performs house searches and searches of other premises of owners or other persons, on the order of the relevant court and of owners or other persons if evidence is likely to be found. The unit is empowered to seize objects, records, documents and data that may serve as evidence. State and other authorities, organisations and public services must provide the unit with access to data, records, documents, and other items; they may not invoke confidentiality. Natural and legal persons in possession of documents relating to the source of income and assets on any grounds must surrender them without delay to the unit on its request if it is likely that they may facilitate the identification of proceeds of crime. The unit prepares profiles of the owners of assets under investigation at the request of the competent prosecutor. Such reports include data on the individuals' criminal activities and their criminal records, if any, an analysis of their assets and lawful income, together with an analysis of the 'manifest disproportion' between their lawful and actual income, proving any disproportionately expensive lifestyles. The unit performed several such analyses at the request of the Organised Crime Prosecutor over the past year.

Since 2016, the Financial Investigation Unit has been legally entitled to engage professionals working in other state authorities or institutions in order to obtain expert assistance. For example, in the past year, it has engaged experts working within the Tax Administration in several cases. Operating as Serbia's ARO, the unit also processes incoming and outgoing pre-MLA requests for international cooperation in detecting and identifying proceeds of crime with a view to their seizure or confiscation. The unit has a secure confidential channel for exchanging information with other AROs via Europol and its SIENA information exchange platform. It exchanged information using this method on ten occasions already in the past year.

Although established within the Ministry of Internal Affairs, the unit has a reputation for cooperating well with the Organised Crime and Special Anti-Corruption Prosecution Offices. The number of staff increased over the past year with a great deal of effort being placed on training. However, it has been understaffed since it was established and still lacks experts in financial forensics.

### **The Asset Management Office (AMO)**

The Serbian Asset Management Directorate was established in 2008 within the Ministry of Justice. It exists as an autonomous legal entity, headquartered in Belgrade and may establish organisational units in other towns. Its role and functions are included within Article 9 of the LCPC. Assets that fall within the scope of the Asset Management Directorate include the seized/confiscated proceeds of crime, assets seized on the order of the public prosecutor (LCPC Article 24) and instrumentalities of crime (CC Article 87), material gain obtained by a criminal offence (CC Articles 91 and 92), property pledged as security in criminal proceedings, items seized in criminal proceedings and assets the disposition of which is restricted by decisions of the United Nations and other international organisations the Republic of Serbia is a member of. In relation to these assets, the Directorate has the responsibility for valuation, storage, maintenance and sale. It also administers the funds required to manage assets.



## Re-Use of Confiscated Assets

Prior to 2016, money realised from confiscated assets was paid into the national budget. The 2016 amendments to the LCPC provide for the payment of money from confiscated assets into the national budget, but specify that 30% shall be used to fund social and health needs in accordance with Government decisions. The money is usually allocated for social projects related to the fight against trafficking in human beings, shelters and social work centres. There are also examples of the government providing assets for direct 'use', for example houses and vehicles for community centres, shelters, centres for the fight against domestic violence and some vehicles to police departments.

## International Cooperation

The legislation allowing authorities to request, and respond to other jurisdictions' requests, to trace, freeze, seize and confiscate assets is adequate and includes instrumentalities, proceeds derived from criminal activity and property of equivalent value to criminal proceeds. Available legislation containing international cooperation provisions includes the LCPC (art. 64 to 78), the Law on International Assistance in Criminal Matters, and the ratified conventions, notably the UN Convention against Organised Crime, the MLA Convention, and the CoE Warsaw Convention. It does not include legislation which enables the execution of international requests based on a foreign NCB civil or administrative confiscation procedure. Effective legislation aside, in practice, the process of obtaining information from foreign jurisdictions is notoriously challenging and requires both prosecutors and law enforcement authorities to draw on the available regional and international mechanisms available such as CARIN, StAR and BAMIN.

In terms of law enforcement cooperation for pre-treaty enquiries to trace assets, Serbia has had an operational agreement to exchange data with EUROPOL since 2014, with a permanent liaison officer placed at EUROPOL HQ. Serbia has been a member of CARIN since 2009. Its law enforcement CARIN contact sits within the Financial Investigation Unit. As the single gateway to the global asset recovery network (Asset Recovery Inter-Agency Networks – ARINs), both the law enforcement and prosecutorial CARIN contacts need to be well known and well connected domestically for both operational and strategic enquiries. Serbia would benefit from nominating a prosecutor who is actively dealing with domestic and international asset recovery as its prosecutorial CARIN contact.

Serbia has bi-laterally shared assets with other jurisdictions and is currently involved in developing a regional and multi-lateral asset sharing agreement involving FBiH, Republika Srpska and Montenegro, supported by the AIRE-RAI Regional Project.

## Measuring Effectiveness

Various types of statistics on freezing, seizure and confiscation and their values are collected by a number of agencies and authorities, and analysed by others including the courts, prosecutors, the police and the Asset Management Directorate.

Further, statistics have been provided for the period of the AIRE-RAI project and usefully recorded in the AIRE-RAI overview of a Regional Monitoring Methodology Study (2019). Serbia is described within the study as having a good system of data collection which enables excellent analysis of asset recovery data to be conducted.

Measuring the effectiveness of any asset recovery system relies not only on asset recovery statistics, but also on other factors including the level and type of criminality in jurisdictions and the threat this brings. However, having access to comprehensive statistics located at one central location is essential to the process. Serbia's move to achieve this, by collating all data needed within the Asset Management Directorate is a positive development.

Notably, the Asset Management Directorate carries out the national central collation of statistics on assets frozen, seized and confiscated, including their estimated value, within its 'Central Register'. The database software was upgraded in 2019 and this Central Register is now of major importance for the collation of national statistics. It is directly accessible by the police, prosecutors, courts and other competent institutions.

EU standards (EU Directive 2014/42 and EU Regulation 2018/1805) also require the collation of statistics relating to incoming and outgoing requests to freeze, seize and confiscate assets. Currently, the courts are recording the issue of orders from incoming and outgoing international requests to freeze, seize and confiscate assets manually on a standard form. These can be collated, albeit by a manual process. The statistics are therefore available, if required for internal monitoring and reporting or at the request of the EU and external evaluations. It is anticipated that these functions will be possible via an electronic method in the future.

## 6. The Impact of the COVID19 Pandemic on Asset Recovery in the Western Balkans

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Without question, the COVID-19 pandemic health crisis, and the ensuing economic crisis, has had a negative effect on the criminal justice system globally. Unprecedented times have required necessary and unprecedented measures; however, this has opened up an unwelcome opportunity for fraud, corruption and an increase in the cost of illicit commodities, such as drugs, potentially impacting on levels of criminality. Adding to this, a number of jurisdictions in the region have undergone elections in 2020 resulting in slower than usual government activity, a lack of continuity and unified decision making. This political instability raises additional concerns during the crisis.

In response to the changing criminal climate following the global health crisis, the international community has risen to the challenge of remaining informed of the situation, publishing regular updates on the impact on specific crimes such as drug and sexual offences, and the future criminal threat<sup>[27]</sup>, for example relating to the distribution of vaccines<sup>[28]</sup>.

### Implications on the Judicial process in the Western Balkans

Between the reporting period of March to May 2020, all states indicated that investigations and prosecutions, and the level of assets seized and frozen remained at similar levels to those before the outbreak of the pandemic. This was despite resources having limited access to their normal office environments. Police and prosecutorial agencies rotated the numbers of staff physically in the office, leaving others to continue to work from home. However, a number of factors restricting normal working practices over a longer period throughout the summer and into the 'second wave', have undoubtedly had an effect on the progression of cases. As a consequence, the levels of criminal proceeds identified, seized and confiscated are expected to drop. Jurisdictions in the Western Balkans have reported the following factors affecting what would be normal working practice:

- » Staff resources have reduced, as staff either fell sick with the virus or were forced to remain at home under quarantine after coming in to contact with an infected individual;
- » Staff required to work from home have had limited access to the technical equipment required to perform asset recovery related enquiries, for example

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[27] Europol Publication *How COVID 19 Related Crime Infected Europe During 2020*, 11 November 2020, <https://www.europol.europa.eu/activities-services/staying-safe-during-covid-19-what-you-need-to-know>

[28] Interpol Warns of Organised Crime Threat to COVID-19 vaccines <https://www.interpol.int/en/News-and-Events/News/2020/INTERPOL-warns-of-organized-crime-threat-to-COVID-19-vaccines>

office email intra-net, financial analysis software, access to databases for asset tracing, access to secure information exchange platforms for inter-agency and international asset tracing cooperation;

- » Limited access to the courts in order to apply for coercive measures for financial investigations;
- » Limited access to witnesses to obtain statements for evidential purposes, for example from banks and financial institutions;
- » Limited staff (police, bailiffs) to actively enforce freezing, seizure and confiscation orders;
- » Fewer cases prosecuted in the courts will have resulted in fewer asset seizures and confiscations. For example, in one jurisdiction, the Ministry of Justice recommendation on trials by video link was criticised by lawyers and the Judges' Association, which qualified them as illegal and insisted that the issue be addressed in accordance with the law and the Constitution. Legal professionals claimed that trials by video did not guarantee the right to a fair trial as the defendants, given that they were not in the courtroom, did not have the possibility to have confidential talks with their defence counsel. In some cases, the defence counsel refused to take part in trials by video link and they were adjourned;
- » Proposals for amendments to the asset recovery legislation, either within the Criminal Code, the Criminal Procedure Code, laws on the confiscation of criminal proceeds or the asset management laws have been suspended. In one case, a ground-breaking new law on civil forfeiture was proposed in 2019 but then put on hold due to the crisis.

## Risks Identified

1. Extraordinary changes were made to the budgets of public institutions, in order to deal with the change in national priorities caused by the pandemic. These changes were made urgently and therefore without the usual collaboration or oversight and often without transparency. The urgent and unusual movement of state funds provides an increased opportunity for abuse of power and misuse of public funds within state institutions.
2. Medicines and protective medical equipment were urgently needed and therefore the usual procurement procedures were not followed. It is reported in a number of jurisdictions that these urgent procurements were conducted via direct negotiation with companies, without publishing a public announcement and without a previously provided opinion from the public procurement bureaux. Many WB jurisdictions reported paying vastly increased sums for medicines and protective equipment (gloves, masks, protective suits, visors, etc.). Organized purchases in this way undoubtedly pose an increased risk of corruption due to the lack of fair competition in the selection of companies, increased cost of purchases and as reported, the apparent non-transparency of procedures.
3. There remains an ongoing risk of the misuse of donations and international aid which were provided for the protection of citizens' health and to support the economic situation of each jurisdiction.
4. There are indications that usury incites corruption and illegal business investments, for example in the construction industry, and increases the risk of illegal economic influence by criminal groups.

5. States that rely heavily on tourism for their revenue may suffer an increase in the illegal use of state funds, corruption, and recruitment of new organised crime members and associates due to the economic crisis.

### **The Impact of the COVID-19 Pandemic on Asset Recovery**

The COVID-19 pandemic has provided opportunities for an increase and diversity in acquisitive criminality, in particular fraud and corruption, but also cybercrime, theft, usury and counterfeiting, noting that the sale of counterfeit protective items, including masks, disinfectant gels and medicines, has increased significantly since the outbreak of the crisis. This is compounded by an increase in the value of illegal commodities due to the restrictions on international and domestic movements, resulting in an increase in usual criminal activity.

In parallel to this, during the pandemic many of the institutions whose focus is usually on the fight against organised crime and corruption worked at a reduced intensity. Courts were also working at a slower pace and were unable to proceed with certain criminal cases. As asset seizure and confiscation in all Western Balkan jurisdictions is dependent on the existence of a criminal investigation and prosecution, the level of assets seized and confiscated in 2020 and 2021 (at least) will undoubtedly be reduced. The statistical data recorded on the number of prosecutions and confiscations of the proceeds of crime will provide a clearer picture of this in jurisdictions that are successfully producing statistics.

On a positive note, police and judicial training academies have in general been able to continue with planned training activities, by conducting online trainings for judges, prosecutors and investigators.

### **Recommendations Related to the COVID-19 Pandemic**

1. Governments should be encouraged to regularly publish information on the sources of funds received for dealing with the crisis caused by the COVID-19 Pandemic, as well as on the manner of their spending.
2. Governments should be encouraged to publish information on the contracts received through financial support from the EU and other international and regional organizations.
3. Governments should be encouraged to regularly publish information on how funds received from all sources to deal with the pandemic are spent.
4. Public procurement to deal with the pandemic or as a result of the pandemic should be conducted with full transparency.
5. State institutional spending of funds collected in the budget regarding COVID-19 through donations from natural persons, legal entities and international organizations should be transparent and publicly available.
6. Donor lists and information on where and how donated funds are distributed should be regularly maintained and published.
7. Continued and increased supervision and control by competent State authorities (the Financial Police, the Public Revenues Department, the Public Prosecution Office) and the civil society sector is necessary, at least throughout 2021/2022.



8. Jurisdictions and external technical assistance should focus on supporting future international cooperation in financial and criminal investigations and asset seizure, including within the AIRE-RAI regional project, as the procurement of medical and protective equipment was evidently carried out via various jurisdictions. International procurement was complex, as equipment was scarce, and the procurement and payment conditions involved various middlemen in non-transparent contracts.
9. There is a need to analyse in greater detail the past, current and future risks and impact of the pandemic, and prepare a plan of activities to improve the efficiency of the fight against crime, including the confiscation of criminal proceeds. Technical assistance providers should review the possibility of engaging an expert to prepare an analysis of these risks and their impact in the COVID-19 pandemic climate.

## 7. Conclusions and Recommendations

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This chapter provides summary conclusions on the current asset recovery capacity in the Western Balkans region together with suggestions and recommendations for an improved and more effective asset recovery system. These recommendations should be included in domestic asset recovery strategies and action plans. The report may also serve as a guidance document for future capacity building in the region. The recommendations appear in italics at the end of each section.

It has been reported that the three handbooks prepared within the AIRE-RAI Regional Project have been actively promoted by the project management team, national coordinators and trainers. Lectures have been held domestically a number of national and regional events. The activities and studies undertaken by the AIRE-RAI regional project have raised awareness among judges, prosecutors and criminal justice experts of the significance of asset recovery. The impact of this may only be reflected through the increase in confiscation statistics in future years, as organised crime proceedings take considerable time to come to a conclusion.

The AIRE-RAI Regional Project has played a unique role in the development of asset recovery capacity in the Western Balkans Region. The elaboration of four regional specific publications on asset recovery has provided jurisdictions with a comprehensive domestic breakdown of asset recovery law and procedures, the ECHR and ECtHR applicable standards, the methodology for international asset recovery cooperation and the approach to apply when collecting asset recovery statistics.

*It is strongly recommended that jurisdictions make use of the clear descriptions of legislation, institutions and procedures outlined in the AIRE-RAI publications prior to, and in order to assist with, the adoption of new asset recovery provisions and institutional structures.*

### **Asset Recovery as a Policy Objective**

International standards<sup>[29]</sup> advocate that in order for jurisdictions to effectively target and reduce criminal activity through the use of asset recovery, asset recovery must be a specific focus for Ministers, policy makers, legislators and practitioners from all agencies. This situation can only fully happen if asset recovery is a *policy objective*. Ensuring asset recovery is a *policy objective* also requires firm political will. For that reason, this report initially assessed the asset recovery policy of Western Balkans jurisdictions.

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[29] FATF Recommendation 2, AML/CFT Policies and Coordination - Countries should have national AML/CFT policies, informed by the risks identified, which should be regularly reviewed, and should designate an authority or have a coordination or other mechanism that is responsible for such policies.

A core issue to be considered in determining whether jurisdictions in the Western Balkans have achieved FATF standards - Immediate Outcome (8) is:

*“8.1. To what extent is confiscation of criminal proceeds, instrumentalities and property of equivalent value pursued as a policy objective?”*

Within jurisdictions in the region, there are a number of strategies and action plans which include asset recovery (e.g, Albania’s Cross-cutting strategy against corruption and the cross-cutting strategy against organised crime, North Macedonia’s National Asset Management Agency’s 2018 – 2020 Strategic Plan and Associated action Plan and Serbia’s National Anti-corruption Strategy and the National Anti-Organised Crime Strategy). However, there are no specific functioning asset recovery committees in any of the six countries. Asset recovery is integral to criminal justice and it is necessary to alter agencies’ everyday processes to effect asset recovery. This involves tangible changes that can only be implemented by practitioners. An action plan without an implementing committee is a fundamental weakness to the implementation of effective asset recovery. Additionally, the existing organised crime, anti-money laundering and anti-corruption strategies are not asset recovery specific, containing only a small number of goals to confiscate criminal proceeds.

Strategies and action plans only move forward when someone has ‘ownership’ for them. Asset recovery affects a broad range of Ministries and agencies, including law enforcement within the Ministry of Interior, prosecutorial agencies, the Ministry of Justice for international cooperation and the Ministry of Finance for asset management. Within the EU, the national asset recovery office is often front and centre of all policy setting agendas. Kosovo\* has taken the progressive step of appointing, a National Coordinator for Economic Crime, which includes asset recovery. This is good practice and other jurisdictions in the region should consider appointing a national asset recovery coordinator, who would Chair a National Committee or Working Group for Asset Recovery.

*It is recommended that, in order to ensure asset recovery remains a policy objective, driving the change necessary to increase levels of confiscation, jurisdictions should develop a specific asset recovery strategy, action plan and working group. A prominent expert in asset recovery should be appointed to Chair the working group and drive policy and practice in asset recovery across all relevant agencies.*

### **Asset Recovery Legal Provisions for Freezing, Seizure and Confiscation**

The AIRE-RAI publications outlining the legal and policy situation in each jurisdiction, together with the project activities and trainings conducted since 2018, have enabled jurisdictions at political and practitioner level to assess where they sit on the scale of asset recovery effectiveness. Jurisdictions have continued to develop throughout the period of the project, undoubtedly with the enormous assistance the project has brought of this ‘situation mapping’. This is also the case for the continued development in legislation in the region, with asset recovery related amendments being made to the CC, CPC and LCPCs.

Although not stipulated as such in international legislation and standards, there is an increasing trend globally to combine all, or the majority, of national asset recovery provisions into one consolidated law. This is a reaction to the increasing international and regional provisions being adopted, making it more effective to draft new legislation to meet a new approach than making amendments to existing legislation. Not all jurisdictions in the region have adopted one consolidated contemporary asset recovery law. North Macedonia has not established a LCPC and there are currently no plans for this. Albania has, since 2009, had an Anti-Mafia Law and would not at this stage adopt a separate law capturing all aspect of asset recovery for a wider range of offences. The AIRE-RAI regional project, Handbook on Effective Asset Recovery in Compliance with European and International Standards (2019) clearly sets out the content of each jurisdictions' law on the proceeds of crime, enabling the region to compare and contrast and enhance its own legislation with amendments if necessary. As a good example, Montenegro's LCPC includes a broad range of required asset recovery provisions covering all phases of the asset recovery process, providing a 'one-stop-shop' law for asset recovery and the most comprehensive in the region. Although difficult to directly attribute the adoption of new laws to the information and training provided by AIRE-RAI regional project, it was reported during the drafting of this report that the publications had been referred to by prosecutors and legislators, prior to designing and amending legislation.

*It is strongly recommended that the AIRE-RAI Publications, in particular The Handbook on Effective Asset Recovery in Compliance with European and International Standards (2019), be made available to domestic asset recovery committees and legislative revision panels in the region as a good practice reference when developing asset recovery law.*

## **Extended Confiscation**

It has previously been recommended that the extended confiscation provisions in the WB jurisdictions should be reviewed as these provisions are not used as widely as they should be and are not successful when used. No new case law exists to assist this process and a lack of training and mentoring in this area hinders successful application by prosecutors and judges. Issues with extended confiscation mostly concern the scope of application (types of offences to which it is applied), time periods subject to (retroactive) scrutiny to establish the legal origin of property and the evidentiary standard on which the decision is made on the legality of assets. Prosecutors and judges are still not fully clear on which specific circumstances must be proven when establishing a link between the property subject to extended confiscation and the crimes it allegedly derived from. This uncertainty may result in a low level of use of this new provision and requires further training.

In all jurisdictions, with the exception of Kosovo\* and North Macedonia, the standard of proof is the criminal standard, higher than the civil standard applied in many jurisdictions outside the WB using this legal provision. Kosovo\* is the only jurisdiction in the region using the civil standard. It's 'confiscation of material benefit' legislation provides for a 'balance of probabilities' standard to be used. Kosovo\* also reported on a successful extended confiscation case in 2020. Lessons learned from

this case should be shared with the other WB jurisdictions. In some jurisdictions the Law is still relatively new and its application has not yet been tested to assess its effectiveness.

The AIRE-RAI Handbook (2019) usefully suggested that, in order to understand the challenges of applying extended confiscation laws, jurisdictions should ensure the regular monitoring of the relevant case-law (of domestic courts and the ECtHR), especially by the prosecution offices. Staff should be designated in the relevant judicial institutions to monitor decisions in the relevant areas and report on the good practices they identify as useful at staff meetings. As these challenges still exist but are now more widely recognised, a more regional approach to monitoring extended confiscation barriers and good practice is now recommended.

In addition, training on extended confiscation legal provisions and their application is still needed. To assist with the application of extended confiscation provisions, direct case-based mentoring would be beneficial.

Having initially identified legislative and implementation challenges to extended confiscation in the region, The AIRE-RAI regional project undertook a detailed unique analysis of the legislation, application and existing issues in each jurisdiction. The beneficiaries of this analysis have reported that this has assisted prosecutors and judges to identify some barriers to its successful application. However, this is a complicated law and a new contemporary approach to confiscation that requires further focus.

*It is recommended that the monitoring of ECtHR and national case law and decisions relating to extended confiscation should continue to be reported at domestic and regional platforms, including the AIRE-RAI Regional Alumni Network.*

*It is also recommended that training on the application of the law, in particular case-based mentoring, should continue to be provided to financial investigators and prosecutors building extended confiscation cases and prosecutors and judges assessing the links between the property subject to extended confiscation and the crimes it allegedly derived from.*

*In order to support the regional application of extended confiscation, the examples of successful cases that do exist, including those contained within the AIRE-RAI Report 'Effective Implementation of Asset Recovery Measures in the Western Balkans: an overview of a regional monitoring methodology, key benchmarks and case studies of good practice (2020)' should be shared both domestically and within the region, both at intra-governmental level and among public forums and civil society organisations. This will assist in changing any negative public perception of the fight against corruption and organised crime.*

### **Non-Conviction Based Civil or Administrative Confiscation**

The legislative framework of jurisdictions in the WB region still does not provide for the confiscation of criminally derived assets without a conviction in civil or administrative



*in-rem* (rather than *in-persona*) proceedings. However, since the commencement of the AIRE-RAI regional project, Kosovo\* has proposed a new civil-based law for the confiscation of assets established from proceeds of crime without a conviction that is currently under consultation. This is an interesting development in the region and one which should be followed closely by legislators, implementing agencies and projects. Exploring NCB civil and/or administrative remedies would allow for a more targeted approach to confiscating criminally derived assets, without the particular, often difficult considerations involved in the criminal process that are contingent on the existence of a criminal conviction, for example, the difficulties described with extended confiscation proceedings.

*It is recommended that, in the future, WB jurisdictions consider legislating for the confiscation of assets independently of criminal in-persona proceedings, where it would suffice only to prove, in in-rem proceedings, to a civil standard of proof rather than criminal standard, that there is a connection between the assets in question and general criminal conduct.*

*At practical level, further support from the UK, as a leading example of how to apply civil NCB confiscation and unexplained wealth provisions, is recommended.*

## **Financial Investigation**

Previous AIRE-RAI reports have concluded that capacity to carry out financial investigations by both law enforcement and prosecutors is low. In general, this remains the case. In analysing the information within the AIRE-RAI Handbook, it is apparent that the problem is not with the legislation, which adequately provides for investigative techniques and defines the conditions and objectives of financial investigations. The handbook stated that the specialisation of financial investigation duties is obviously a general trend that will continue in the forthcoming period (pp. 143). However, and progress made seems minimal. The fact remains that there are not enough persons with the skills to carry out financial investigation, not only for asset recovery but also for general criminal investigation. Those that do exist are isolated within specialist units and not 'mainstreamed' throughout law enforcement and judicial authorities. A lack of political will to effect change in this area is a barrier to progress.

*It is recommended that the mainstreaming of experienced and specialist financial investigators and prosecutors should be a policy objective within national asset recovery strategy and action plans.*

*It is recommended that further training is required in the region on financial investigation for the purpose of asset recovery, for example financial profiling of suspects and identifying the true beneficial owners of all types of assets.*

The issue of swift access to banking information is vital to effective asset tracing. Challenges in this area in all jurisdictions still remain. Legislation currently allows for banks to provide information to the prosecutor, on the order of the court. This does not solve the challenge of obtaining banking information promptly. This has been

discussed in many financial investigation forums across the world, notably within the EU and its ARO Platform, that has now developed best practice in establishing central bank registers and who should have access to them. (i.e. AROs). The future reforms of the regulations on banks will hopefully liberalise the concept of bank secrets, in line with EU Standards, thus providing the prosecutors conducting financial investigations with direct access also to the content of bank accounts, pursuant to court orders if necessary.

*It is recommended that jurisdictions should establish national central banking registers, in line with EU Standards, and legislate for swift and direct access to these registers, in particular by the national asset recovery offices (or entity AROs in the case of BiH), preferably without the need for a court order.*

As stated, Financial information is an integral part of any criminal investigation. Jurisdictions do seem to recognise and acknowledge this but there is still little evidence that units collecting financial information collaborate effectively with criminal investigative and prosecutorial agencies. As a key aspect of Montenegro's LCPC, art 16 specifically states that financial information gathered during the criminal investigation may be used in the financial investigation, and vice versa. This same provision is included in the Serbian LCPC, art 4 para. 2, stating that evidence gathered in criminal investigation may be used in the procedure of extended confiscation. Although the process of parallel financial investigation is seen as a good practice globally, including this as a provision in the LCPC, as Montenegro and Serbia have, underlines the relevance, importance and possibility of this vital opportunity.

*It is recommended that jurisdictions in the region legislate for financial information that is gathered during the criminal investigation to be used in financial investigations, and vice versa.*

### **The Asset Recovery Office**

In order to bring jurisdictions in-line with EU standards and globally recognised best practice, further support is required to each Western Balkans jurisdiction to establish and develop effective asset recovery offices (AROs). National central asset recovery offices must be legally and procedurally able to service all investigating and prosecutorial agencies, across all crime areas, with effective asset tracing and identification of assets that may become subject to sequestration and confiscation. Not all jurisdictions in the region have formally designated a national central asset recovery office (Albania's designation is currently in progress and not all the BiH entities have an ARO), in line with EU standards<sup>[30]</sup> and global best practice. There are those that still require support in bringing the offices to full operational capacity (for example North Macedonia (new law on the ARO in draft), Kosovo\* and certain of the BiH entities). Location is critical to the success of a national asset recovery office. It must be able to carry out the functions outlined in the 11 effectiveness indicators

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[30] COUNCIL DECISION 2007/845/JHA of 6 December 2007, concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.

elaborated by the EU ARO Platform. These indicators have been agreed by the expert financial investigators and prosecutors already working within EU AROs. To support learning and development, the Western Balkans would benefit from a regional approach to ARO capacity building, for example regional conferences and ARO to ARO peer reviews (as happens in the EU). In addition, individual AROs, if not already being supported by other projects, require procedures to be put in place and further training to be conducted in relation to their activities to make them fully effective.

WB jurisdictions have mostly established their asset management offices within a legal framework (with the exception of Montenegro that has its asset management capability within the Ministry of Finance State Property Office). Jurisdictions may need to consider a similar approach for the establishment of national AROs and further support will be needed with this. For example, support will be needed, in the form of either legislative amendments or policy changes, to conform to the new Directive on access to banking information<sup>[31]</sup>. EU best practice has included both the level of direct access to databases for the tracing of assets and the ease of access (without a court order) to these databases as effectiveness indicators for National AROs within its effectiveness indicators.

*It is recommended that a regional program of support to Asset Recovery Offices be developed to assist in peer learning. In addition, domestic AROs would benefit from further mentoring to ensure full effectiveness, in-line with EU legislation and effectiveness indicators. Albania should continue to move forward on formally designating a national central ARO, with legislation prescribing its mandate and powers. BiH should consider establishing or designating an ARO within each of its entities and at state level.*

## **Asset Management**

International and regional developments in asset recovery in the last two decades have elevated the importance of the role of national Asset Management Offices (AMOs), placing more focus on the need to effectively legislate for this aspect of asset recovery, and place it well within the national asset recovery architecture. International standards do exist<sup>[32]</sup>, although they are relatively few with more best practice available than standards<sup>[33]</sup>. The asset management function should be legislated for early on in the process. AMOs need to be involved at an early stage of the asset recovery process, and not only post court order, for reasons such as advice on removal and storage of assets and also on valuation. Prosecutors and LEA are currently presenting information to courts on the approximate value of the assets,

- .....
- [31] Directive (EU) 2019/1153 of the European Parliament and of the Council laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, sets out in its article 3, para. 1, describes the authorities that may have direct access and search national centralised bank account registries, stating that 'Those competent authorities shall include at least the Asset Recovery Offices'.
- [32] EU Directive 2014/42/EU on Freezing and Confiscation art. 11.
- [33] FATF Best Practice Paper 2012, rec.33, UNCAC non-binding guidelines an asset management and CARIN recommendations, 2008.

prior to the involvement of the AMO (for example in Albania). AMOs are the national office involved in this. They should be advising prosecutors and law enforcement along the way.

All jurisdictions in the region have established or designated an AMO that supports the asset recovery cycle to varying degrees. In the majority of cases, the offices are established and function within asset management legislation. They are either situated under the Ministry of Interior or Justice, or within the state property agency of the Ministry of Finance. It is important that the AMO is aware of the stages of the case in order to prepare to further manage the asset or sell it. This is best done when the AMO, the prosecutor and the courts are connected electronically. None of the Balkan AMOs are connected in this way, relying mainly on standard mail, email or telephone to receive notification of changes in freezing and seizure orders conditions, for example after appeal. A small number of jurisdictions have recently developed electronic systems linking these agencies, for the purposes of statistical recording (Albania, BiH) but none are yet fully functional and further work to digitalised asset management systems is needed. Similarly, in most cases the AMO is not informed of the likelihood that the police will seize assets, for example during a pre-planned search. The AMO should have the expert knowledge needed to effectively seize assets. It should therefore be leading the pre-seizure planning when police searches are likely to result in asset seizure. Pre-seizure planning prior to police searches is still lacking across the region.

*The Western Balkans have made huge progress in the area of asset management, not only during the project period but in the years before that. However, it is recommended that further capacity building is needed in the area of asset management in the form of laws and bylaws, pre-seizure planning and the establishment of registers for seized and confiscated assets which would be interoperable with judicial databases on asset recovery.*

### **Re-Use of Confiscated Assets**

Jurisdictions are increasingly considering the re-use of confiscated assets not subject to victim compensation for social or judicial purposes. Systems for the state and social re-use vary across the region. Not all jurisdictions have the ability to donate or gift assets that are perishable, for example, to charities or community projects. Similarly, not all have established a fund into which all or a portion of confiscated assets may be deposited for state or social use. However, there are some excellent examples of social re-use in the region, for example in Albania and Serbia, and this should be shared for the benefit of developing similar practice in other jurisdictions.

*It is recommended that further work to develop state and social re-use policy and practice is needed in all jurisdictions of the Western Balkans.*

### **International Cooperation**

It is internationally recognised that it is the variety of domestic laws, policies and procedures that makes the technical issues of asset recovery a challenge for international cooperation, even for the most advanced of jurisdictions. It is not



surprising therefore that during the period of the AIRE-RAI project, prosecutors reported this as the one of the biggest challenges, in particular during the investigation and asset tracing stage. For example, short timeframes within extended confiscation legislation for prosecutors to show to the court that assets were owned by their defendants in foreign jurisdictions made the task almost impossible. Having identified international cooperation as a challenge, the AIRE-RAI project focused on delivering a program of training in international cooperation in asset recovery and produced a reference Handbook on Tools and Best Practices for International Asset Recovery. Specific regional training on this topic delivered by the project was welcomed by prosecutors and is to be commended. However, this is a difficult area and jurisdictions would benefit from training more prosecutors.

*It is recommended that more prosecutors be trained in international asset recovery, both for investigation into the location of assets in foreign jurisdictions and drafting of mutual legal assistance requests to enforce freezing, seizure and confiscation orders. Sharing the experiences of experts from the UK in this area has proven successful during the project and therefore further training and support is recommended.*

Having a sound legal basis for international asset recovery cooperation only goes part way to ensuring an effective system. The need to utilise the regional mechanisms specifically established to facilitate international asset recovery i.e. CARIN, BAMIN and StAR, is now recognised international good practice and is emphasised within the AIRE-RAI Tools and Best Practices for International Asset Recovery Handbook. All of the Western Balkans jurisdictions have now nominated both a law enforcement and prosecutorial contact, however jurisdictions should ensure that these are within the correct agencies and are the most appropriate person for the role, both to service their colleagues in their own agencies and their international asset recovery partners. Progress has been made as a direct result of support provided by AIRE-RAI regional project, during the international cooperation training in 2019, with the designation of a prosecutorial CARIN contact for FBiH. This is the first time any entity or the State of BiH has been represented by a prosecutor since it became a member of the network in 2012 and is a major breakthrough.

*It is recommended that jurisdictions should ensure the correct agencies are represented within the asset recovery platforms that exist, in order to facilitate operational international asset recovery cooperation (CARIN, StAR and BAMIN).*

In addition to the already available asset recovery specific networks, and as a result of feedback received by project coordinators during trainings and study visits, AIRE-RAI beneficiary jurisdictions proposed the establishment of a 'Regional Alumni Network'. It was decided that this network will consist of participants from project activities and will be established in each beneficiary jurisdiction to ensure the sustainability of project results. The project team has since developed Alumni Network Guidelines and distributed them to the National Coordinators (NCs). Subsequently, the NCs have established national alumni networks within their respective jurisdictions funded by the project. At alumni meetings conducted by NCs, the alumni have already identified a number of practical problems which could be addressed on a regional level. As such, the establishment of a Regional Alumni



Network Platform has been proposed, which would facilitate the exchange of good practice and strengthen regional cooperation in asset recovery.

*It is recommended that a AIRE-RAI project Regional Alumni Network be established, both at national and regional level, to identify common problems in asset recovery which require a regional approach. This resource should be carefully cultivated and provided with the appropriate options for exchange of experience and dissemination of the knowledge. A list of asset recovery experts prominent in the region should be identified by the Alumni network, both for sharing among the Alumni network and inclusion in the group. These experts should assist in the exchange of good practice and in legislative revisions and changes.*

*In addition to vital training, and at the request of beneficiary jurisdictions the AIRE-RAI Regional Project has supported an initial consultation meeting on the development of a regional, multi-lateral asset sharing agreement between Serbia, FBiH, entity Republika Srpska and Montenegro. This will provide a legal arrangement for the sharing of criminally derived assets, following confiscation and should be used as a best practice model for other similar agreements concluded in the region.*

## **Measuring Effectiveness & Collating Statistics**

Measuring the effectiveness of any asset recovery system relies on a number of factors including asset recovery statistics, but also on the level and type of criminality in jurisdictions and the threat this brings. However, having access to comprehensive statistics located at one central location is essential to the process. The region has a clear drive to achieve this, motivated and supported by the research undertaken within the AIRE-RAI Regional Project. A lack of monitoring and collection of asset recovery statistics was identified and reported on in the AIRE-RAI publication *Asset Recovery in the Western Balkans: A Comparative Analysis of Legislation and Practice* (2018) pp.73<sup>[34]</sup>. In a direct response to this, the project has completed unique research to map the situation in each WB jurisdiction, and compare it to the most important standards derived from international sources, in particular from the European Union, culminating in the publication of *The AIRE-RAI Report on Effective Implementation of Asset Recovery Measures in the Western Balkans: an overview of a regional monitoring methodology, key benchmarks and case studies of good practice*. In addition to collating statistics on the number of sequestrations and confiscations and their value, EU standards now also require jurisdictions to monitor the number of international asset recovery related incoming and outgoing requests in order to monitor and measure effective international asset recovery. The time is right for jurisdictions to focus on asset recovery statistics and the WB has an excellent opportunity, with the support the AIRE-RAI regional project has already provided, to get this right. The *AIRE-RAI Report on regional monitoring methodology* clearly sets out the asset recovery statistics that need to be collated in the WB region to monitor asset recovery activity in a way that efficacy can be measured.

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[34] The study established a “need for the collection of specific datasets which would enable a better assessment of the effectiveness and efficiency of the asset recovery process, as well as fulfilling international obligations of data collection in the field of seizure and confiscation of assets”.

In assessing the current situation, the project can conclude that many jurisdictions have introduced asset management systems within their (national) asset management agencies which, along with recording statistics on assets seized, confiscated and their value, provide a case management system for each asset, from the beginning of its management by the state, through to disposal or use (e.g. Albania, Kosovo\* and Serbia). In addition, various other systems, some of them electronic, have been created during the period of the project, for the courts to collate and record decisions, including on confiscation (BiH and Serbia). However, these do not always record the detail required to conform with EU standards. The only way of ensuring that the relevant statistics are accurately collected is to employ one common system across all the agencies involved in sequestration and confiscation. This is the case, for example, in Serbia, which is described within the study as having a good system of data collection enabling excellent analysis of asset recovery data to be conducted. Where statistics are collated on assets seized and confiscated and their value, these rarely include any mention of engagement with other jurisdictions. International cooperation, in the process of assets recovery, is a vital part of any success. EU standards now require the collection of statistics on incoming and outgoing international requests for the enforcement of sequestration and confiscation orders<sup>[35]</sup> and this is the standard that the region should aim for.

*It is recommended that, in order to measure asset recovery effectiveness across the region, a standard model for the collection of statistics should be encouraged, based on the baseline described in the AIRE-RAI Report. Good examples of electronic registers do exist in the region (AASCA's RSCA in Albania, the Prosecutorial and Judicial Register within CMS in Bosnia and Herzegovina & The Central Register in Serbia) but jurisdictions still need support with this.*

## Training

The need for capacity building in the form of training is referred to throughout this report. Financial investigation training of prosecutors and judges is carried out in some jurisdictions on a regular basis (e.g. North Macedonia, Serbia) and also even appears on the political agenda of some jurisdictions (e.g. Montenegro). However, there is still a noticeable lack of specialized domestic education and training for law enforcement officers regarding financial investigations to trace and identify assets which may later be subject to confiscation. By way of example, Serbia reported a gap in forensic financial investigation for both police and prosecutors, and also training in the presentation of financial evidence for court purposes. This may be the case for all jurisdictions in the region, however reports from national coordinators suggest varying levels of knowledge and experience. The need for further regional training of prosecutors in international cooperation has already been highlighted as a conclusion, under the section of international cooperation. However, before embarking on generic training across all jurisdictions, as a start point a national survey of current skills should be undertaken so that training needs should be carefully analysed to ensure it fits the needs of each particular jurisdiction and audience.

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[35] REGULATION (EU) 2018/1805 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 November 2018, on the mutual recognition of freezing orders and confiscation orders

*It is recommended that further training to increase investigation skills to trace assets, present asset ownership and disproportionate wealth to the court, assist judges and prosecutors as well as police staff in financial investigation units in understanding circumstantial evidence during extended confiscation proceedings, and engage in international cooperation is needed. It is recommended that further capacity building projects analyse the training needs of individual jurisdictions before embarking on generic training that may be interesting but not particularly useful.*

## **The AIRE Centre**

The AIRE Centre is a non-governmental organisation that promotes awareness of European law rights and provides support for victims of human rights violations. A team of international lawyers provides information, support and advice on European Union and Council of Europe legal standards. It has particular experience in litigation before the European Court of Human Rights in Strasbourg and has participated in over 150 cases before those courts. Over the last 20 years the AIRE Centre has conducted and participated in a number of seminars in Central and Eastern Europe for the benefit of lawyers, judges, government officials and non-governmental organisations. The AIRE Centre has been focusing on the countries of the Western Balkans, where it has operated for over decade and a half conducting a series of long-term rule of law programmes in partnership with domestic institutions and courts. Our aim throughout these programmes has been to promote the national implementation of the European Convention on Human Rights, assist the process of European integration by strengthening the rule of law and the full recognition of human rights, and encourage regional cooperation amongst judges and legal professionals.

## **RAI**

The Regional Anti-Corruption Initiative (RAI) is an intergovernmental organization with nine member countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Northern Macedonia, Moldova, Montenegro, Romania and Serbia. Poland, Georgia and Slovenia are countries with Observer status. RAI's Mission is to lead regional cooperation to support anticorruption efforts by providing a common platform for discussions through sharing knowledge and best practices. The Organisation's Secretariat is based in Sarajevo with projects throughout the South East Europe primarily focusing on strengthening regional cooperation in conflict of interest & asset disclosure, corruption proofing of legislation, corruption risk assessment, whistleblowing, building integrity of law enforcement, and strengthening national capacities in asset recovery.

## 8. Annex

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### **Report on Effective Implementation of Asset Recovery Measures in the Western Balkans: an overview of a regional monitoring methodology, key benchmarks and case studies of good practice**

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The report includes an overview of a regional monitoring methodology, best practice and steps forward, and it presents the most important standards derived from international sources, in particular from the European Union. It provides a list of benchmarks and recommendations, which aim to provide the national authorities with useful and practical guidance for the establishment of a comprehensive, accurate and reliable system for collecting, processing and disseminating asset recovery data. The report also features success stories which are presented in the form of case studies which cover different aspects of asset recovery

- » Publisher: AIRE Centre and RAI
- » Authors: E. Mujanović, L. Mandia, M. L. Trajkovska, R. D. Dacic, G. Ismajli, A. Ivanovic
- » Year of Publishing: 2020
- » Additional Language Versions: Albanian, Bosnian/Croatian/Montenegrin/Serbian, Macedonian

### **Handbook on Effective Asset Recovery in Compliance with European and International Standards**

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This Handbook provides an overview of the international standards on the confiscation of the proceeds of crime and corruption. First, it addresses the questions of what confiscation is and why it is important. Second, it identifies the key international conventions and gives an indication of the scope of each one. Third, it explains the approach that those standards take on key aspects of confiscation.

- » Publisher: AIRE Centre and RAI
- » Authors: K. Kamber, W. Ferris, C. Harby, E. Haxhia, A. Selmani, E. Mujanovic, D. Datzer, G. Ismajli, A. Ivanovic, M. L. Trajkovska, R. D. Dacic
- » Year of Publishing: 2019
- » Additional Language Versions: Albanian, Bosnian/Croatian/Montenegrin/Serbian, Macedonian, Romanian

## **Tools and Best Practices for International Asset Recovery Cooperation Handbook**

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This handbook aims to assist asset recovery practitioners to conduct effective international asset recovery by providing best practice guidance for international cooperation. It contains relevant international and European asset recovery legislation, standards and mechanisms for international cooperation, and will be a practical hands-on tool for investigators, prosecutors, judges and other institutions involved in asset tracing and identification, freezing and seizure, confiscation (including non-conviction based confiscation) and international asset disposal.

- » Publisher: RAI and AIRE Centre
- » Authors: AML Consulting (Global) Ltd: J. Thomas, L. Day, F. Jackson
- » Year of Publishing: 2019
- » Additional Language Versions: Albanian, Bosnian/Croatian/Montenegrin/Serbian (available Cyrillic), Macedonian, Romanian

## **Asset Recovery in the Western Balkans – A Comparative Analysis of Legislation and Practice**

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The purpose of this study is to assess the current seizure and confiscation mechanisms available in the Western Balkans jurisdictions, in order to establish their efficient and effective use in the context of the asset recovery process.

- » Publisher: RAI and AIRE Centre
- » Author: Pedro Gomes Pereira
- » Year of publishing: 2018
- » Language Versions: English

## **Asset Recovery - A Comparative Analysis of Legislation and Practice: Bulgaria, Croatia, Moldova and Romania**

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The purpose of this study is to assess the current seizure and confiscation mechanisms available in Bulgaria, Croatia, Moldova and Romania, in order to establish their efficient and effective use in the context of the asset recovery process.

- » Publisher: RAI and OSCE
- » Author: Pedro Gomes Pereira
- » Year of publishing: 2018
- » Language Versions: English





The background of the page is a map of Europe. A large, semi-transparent blue rectangle is overlaid on the map, containing white text. The text is organized into two main sections: 'The AIRE Centre' and 'RAI'.

## **The AIRE Centre**

The AIRE Centre is a specialist non-governmental organisation that promotes the implementation of European Law and supports the victims of human rights violations. Its team of international lawyers provides expertise and practical advice on European Union and Council of Europe legal standards and has particular experience in litigation before the European Court of Human Rights in Strasbourg, where it has participated in over 150 cases.

For twenty years now, the AIRE Centre has built strong reputation for expertise in the Western Balkans, operating at all levels of the region's justice systems. It works in close cooperation with ministries of justice, judicial training centres, constitutional and supreme courts and prosecution to lead, support and assist long term rule of law development and reform projects. The AIRE Centre also cooperates with the NGO sector across the region to help foster legal reform and respect for fundamental rights. The foundation of all its work has always been to ensure that everyone can practically and effectively enjoy their legal rights. In practice this has meant promoting and facilitating the proper implementation of the international legal and human rights instruments, assisting the process of European integration by strengthening the rule of law and ensuring the full recognition of human rights, and encouraging cooperation amongst judges and legal professionals across the region.

## **RAI**

The Regional Anti-Corruption Initiative (RAI) is an intergovernmental organization with nine member countries: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, North Macedonia, Moldova, Montenegro, Romania and Serbia. Poland, Georgia and Slovenia are countries with Observer status. RAI's Mission is to lead regional cooperation to support anticorruption efforts by providing a common platform for discussions through sharing knowledge and best practices. The Organisation's Secretariat is based in Sarajevo with projects throughout the South East Europe primarily focusing on strengthening regional cooperation in conflict of interest & asset disclosure, corruption proofing of legislation, corruption risk assessment, whistleblowing, building integrity of law enforcement, and strengthening national capacities in asset recovery.