

ROMANIA - national procedures for mutual legal assistance on laundering,
search, seizure and confiscation of proceeds of crime (ETS No. 141)
Updated 26/01/2017

Procedure for search (asset-tracing) and seizure	
<p>The Central Authority (name of the institution, address, telephone, fax and e-mail where available) responsible for mutual legal assistance (including freezing and seizure):</p>	<p>During the investigation and prosecution stage - Prosecution Office of the High Court of Cassation and Justice Directorate for Investigation of Organized Crime and Terrorism, Bucharest Central Office, Division for International Cooperation Address: 24, Calea Grivitei, sector 1 E-mail: diicot_cooperation@mpublic.ro Phone/Fax: 0040 21 319 39 05 Web: www.diicot.ro</p> <p>During the trial stage - Ministry of Justice Directorate for International Law and Judicial Cooperation Division for international judicial cooperation in criminal matters Address: Strada Apolodor 17, Sector 5 București, Cod 050741 Phone: +40.37.204.1077 / +40.37.204.1085 Fax: +40.37.204.1079/84 E-mail: centralauthority_copen@just.ro ; dreptinternational@just.ro Web : www.just.ro</p>
<p>If different from the Central Authority, the authority to which the request should be sent (name of the institution, address, telephone, fax and e-mail where available):</p>	<p>In case of urgency, requests for mutual legal assistance issued by states which are members of the EU may be channelled via EJM contact points or Eurojust. Requests for mutual legal assistance issued by non-members of the EU may be channelled via EJM contact points or Eurojust depending on agreements and cooperation of the respective other states with EJM or Eurojust, or via PC-OC contacts points.</p> <p>ARO-to-ARO assistance in the field of asset-tracing National Agency for the Management of Seized Assets Address: Str. Apolodor Nr.17, Sector 5, București Email: anabi@just.ro Tel: (+4) 037 204 1060 Fax: (+4) 037 204 1061 Web: anabi.just.ro</p> <p>FIU-to-FIU assistance in the field of asset-tracing National Office for the Prevention and Control of Money</p>

	<p><u>Laundering (NOPCML)</u> Address: Strada Ion Florescu No. 1 ,Sector 3 ,Bucharest Phone: (+)4021.315.52.07 / (+)4021.315.52.80 Fax: (+)4021.315.52.27 E-mail: onpcsb@onpcsb.ro</p>
Channels of communication for the request for mutual legal assistance (directly, or other):	Direct communication with the RO Central authorities. Direct communication with RO judicial authorities (identification of such authorities is to be made via RO EJN Atlas).
Means of communication (e.g. by post, fax, e-mail ¹):	E-mail, fax and/or poste
Language requirements:	Romanian, English or French
Double criminality requirement, if applicable:	If assistance required involves coercive measures, double criminality and consistency with the national law might be required
Other requirements: for example a link between the proceeds and the criminal offence, or that a request for the confiscation judgment or measure will be made later, or that leave is given by a judge for the seizure of assets/goods:	<p>It is recommended that request for mutual legal assistance for freezing/seizure of assets to include</p> <ul style="list-style-type: none"> • clear indication on the purposes for which the freezing order has being issued and (most important) on the subsequent treatment of the frozen assets. • contact details of the authorities that are to be further contacted for the request for confiscation or transfer of evidence • indication of any previous RO authority contacted before the issuance of the freezing/seizure order (in the framework of any LEAs cooperation, MLA request previous submitted to/executed by the RO authorities, exchange of information via FIUs or AROs or other channel/EU agency/network • indication of any other freezing/seizure orders submitted to other states and contact details of the authority in the requesting state in charge with coordination • in case of multiple freezing/seizure orders issued in the same case, the maximum amount (value) of assets to be frozen needs to be clearly indicated (explained) • indication of any property already frozen in the requesting state (an whether it is included or not in the maximum amount (value) of assets to be frozen)
Modalities/requirements for the execution of MLA requests for investigative assistance (search,	Requests for <i>search</i> will be made dependent on the following conditions: that the offence motivating request is an <i>extraditable offence</i> according to the Romanian law, and

¹ Please indicate if encryption or electronic signature is required.

<p>tracing, special investigative techniques), existence of a central register of real estate/ bank accounts, duration of preservation of bank data, etc.:</p>	<p>that execution of request is consistent with the Romanian law.</p> <p><i>Special investigative techniques</i> - Under the RO legislation (Article 139 of the Criminal Procedure Code), the followings are special methods of surveillance or investigation a) interception of communications or of any type of remote communication b) accessing a computer system; c) video, audio or photo surveillance; d) tracking or tracing with the use of technical devices; e) obtaining data regarding the financial transactions of individuals; f) withholding, delivery or search of mail deliveries; g) use of undercover investigators and informants; h) authorized participation in specific activities; i) controlled delivery; j) obtaining data generated or processed by providers of public electronic communication networks or by providers of electronic communication services intended for the public, other than the content of communications, stored by these under the special law on storing data generated or processed by providers of public electronic communication networks and by providers of electronic communication services intended for the public (subscriber information). Among these, the measures under a)-e) are categorized as technical surveillance and all of them are subject to the authorization (electronic surveillance warrant) of the Judge for Rights and Liberties of the competent court and can be disposed for a period no longer than 6 months (for the same person and the same criminal act), except for measure c) which can be disposed only for 120 days.</p> <p>Depending on the <i>special investigative technique required to be executed</i>, requests might be subject to different conditions. Details may be found on EJN Fiches Belges Romania https://www.ejn-crimjust.europa.eu/ejn/EJN_FichesBelges.aspx#</p>
<p>Limitation of use of evidence obtained:</p>	<p>Information or evidence provided by Romania under Chapter III of the Convention may not be used or transmitted by the authorities of the requesting state in investigations or proceedings other than those specified in the request without its prior consent</p>
<p>Modalities/requirements related to the execution of provisional measures (freezing, prejudgment seizing) including lifting of these measures (possibilities to seize (im)movable properties) and applicable time limits, if any:</p>	<p>Assets remain frozen / seized until the final settlement of the requests for confiscation or transfer of evidence that are to be submitted later on by the foreign authorities.</p> <p>Nevertheless, the Romanian prosecutor/judge may, after consulting the requesting judicial authority, in accordance with the Romanian law and practice applicable in this field and depending on the circumstances of the case, order that</p>

	<p>the property be frozen / seized for a shorter period of time.</p> <p>Depending on the case, if the RO prosecutor/judge intends to revoke the freezing measure, he or she shall inform the requesting judicial authority, allowing the latter the possibility to submit remarks. In addition, when the judicial authority of the requesting State informs the Romanian prosecutor/judge of the revocation of the freezing/seizure order, the latter shall have the obligation to revoke the measure in the shortest time practicable.</p>
Available asset management system including preservative measures, (for example prejudgment selling), concerning the seized goods:	<p>The <i>management of the seized assets</i> is under the authority of the National Agency for the Management of Seized Assets (set up by Law 318/2015).</p> <p>Disposal of seized/frozen movable assets before being confiscated can be done subject to the provisions of Articles 252 indent 1 - 252 indent 3 of the RO Criminal Procedure Code (special cases of sale of seized movable assets during the criminal investigation and trial). These provisions may cover also foreign freezing/seizure orders issued for purposes of subsequent confiscation of property.</p>
Procedure for confiscation/ Recognition of foreign decisions. Recovery of confiscated assets.	
The Central Authority (name of the institution, address, telephone, fax and e-mail where available) responsible for Confiscation/ recognition of foreign judgments/decisions/measures:	<p>Ministry of Justice Directorate for International Law and Judicial Cooperation Division for international judicial cooperation in criminal matters Address: Strada Apolodor 17, Sector 5 București, Cod 050741 Phone: +40.37.204.1077 / +40.37.204.1085 Fax: +40.37.204.1079/84 E-mail: centralauthority_copen@just.ro</p>
If different from the Central Authority, the authority to which the request should be sent (name of the institution, address, telephone, fax and e-mail where available):	
Channels of communication for the request for mutual legal assistance (directly, or other):	Direct communication with the RO Central authority
Means of communication (e.g. by	E-mail, fax, post

post, fax, e-mail ²):	
Language requirements:	Romanian, English or French
Document requirements and modalities/requirements for the procedure of confiscation:	<p>Document requirements - Article 27 of the Convention</p> <p>Method of cooperation - Article 13 (1) a) of the Convention</p> <p>National Law – Article 140 indent 1 of Law 302/2004</p> <p>The recognition and enforcement of the foreign confiscation orders issued by States (non-EU Members) take place according to the treaty signed by Romania and the foreign requesting State or, if such treaty does not exist, according to Law 302/2004, as well as according to the Romanian Criminal Procedure Code, under the requirement of reciprocity.</p> <p>Procedure of recognition and enforcement is dealt by the court judging in Council Chambers, upon subpoenaing the parties. The prosecutor's attendance is mandatory. The judgement may be subject to a second appeal in 10 days from pronouncement, filed by the prosecutor or the person concerned. The file shall be forwarded to the second appeal court in 3 days and the second appeal shall be judged in court session in 10 days in Council Chambers, upon subpoenaing the parties.</p> <p>When there are reasonable suspicions regarding the occurrence of a concrete danger concerning the concealment, destruction, alienation or removal of the assets subject to confiscation, the court may impose, ex officio or upon the request of the requesting State or of the prosecutor, the measure of preservation, ordering the seizure of the movable or immovable assets <i>in view of confiscation</i>. The court shall issue the order by motivated closure, in Council Chambers, without subpoenaing the parties. The prosecutor's attendance is mandatory.</p>
Other requirements, if applicable: For example: a link between the proceeds and the criminal offence. In case of money laundering, what are the requirements for the predicate offence(s):	Romania did not make any declaration to Article 6 (1) of the ETS 141 in respect to the predicate offence. Within the Romanian law, the offense of money laundering is an autonomous offense without being conditioned by the existence of a conviction for the offence of which the goods originate. Consequently, the request for freezing of property (or confiscation) made by another state in a money laundering case will not be subject to the existence of a specific predicate offence.
Procedure /possibilities to trace	Procedure depends on the objects subject to confiscation,

² Please indicate if encryption or electronic signature is required.

assets/proceeds when a (foreign) confiscation order is already given:	and on when the tracing is requested (previous to or at the same time with the request for confiscation).
Procedure for sharing of assets, if applicable:	<p>The Romanian authorities dispose of the money obtained from the execution of a confiscation orders as follows:</p> <ul style="list-style-type: none"> • if the amount of money obtained from the execution of a confiscation order is below EUR 10,000 euro or the RON equivalent of that amount, the amount shall accrue to the State budget; • in all other cases, 50% of the amount which has been obtained from the execution of a confiscation order shall be transferred to the issuing State. <p>For property other than money, confiscation shall be executed in one of the following methods:</p> <ul style="list-style-type: none"> • the confiscated property may be sold, in accordance with the legal provisions, and in this case, the proceeds of the sale shall be disposed of in accordance with the provisions of paragraph (1); or • the confiscated property may be transferred to the issuing State. If the confiscation order covers a part of the value of the order, the property may only be transferred to the issuing State, if the competent authority of such State gives its consent in this respect; • when it is not possible to apply the provisions of letters (a) or (b), the confiscated property may be disposed of in any other way, in accordance with the provisions of Romanian law. <p>The procedure of disposal referred above is applicable only if it is not contrary to the treaty in force between Romania and the requesting State or, if the treaty does not contain provisions to this aim, it is not agreed upon otherwise by the Romanian and foreign authorities.</p> <p>Sharing agreement is concluded by the Ministry of Justice (Article 140 indent 1 (9) of Law 302/2004).</p>
Where applicable, limitations to the possibility for the requesting state to serve judicial documents directly to the persons concerned:	Service of documents is subject to the procedure provided by the applicable treaty between Romania and the requesting state, and, in case of a multilateral one, of the declaration made by Romania in this respect.
Other particularly relevant information on special types of assistance	
Non Conviction Based Confiscation:	

<p>MLA regarding liability of legal persons (criminal, civil or administrative):</p>	<p>In accordance with Article 135 of the RO Criminal Code, legal entities, except for state and public authorities, shall have <i>criminal liability</i> for offenses committed in the performance of the object of activity of legal entities or in their interest or behalf. Public institutions are not held criminally liable for offenses committed in the performance of activities that cannot be the object of the private domain. Criminal liability of legal entities does not exclude the criminal liability of the natural person participating in the commission of the same act.</p>
<p>Other information (for example, extended confiscation, confiscation for the purpose of victims):</p>	<p><i>Extended confiscation</i></p> <p>According to the national confiscation system (Article 112 indent 1 of the RO Criminal Code) <i>extended confiscation</i> is ordered if the following conditions are cumulatively met: 1) the value of assets acquired by a convicted person within a time period of <i>five years before</i> and, if necessary, after the time of perpetrating the offense, until the issuance of the indictment, clearly exceeds the revenues obtained lawfully by the convict; 2) the court is convinced that the relevant assets originate from criminal activities such as a) drug and precursor trafficking; b) trafficking in and exploitation of vulnerable people; c) offenses on the state border of Republic of Romania; d) money laundering offenses; e) offenses related to the laws preventing and fighting pornography; f) offenses related to the legislation to combat terrorism; g) establishment of an organized crime group; h) offenses against property; i) failure to observe the law on firearms, ammunition, nuclear materials and explosives; j) counterfeiting of currency, stamps or other valuables; k) disclosure of economic secrets, unfair competition, violation of the stipulations on import or export operations, embezzlement, violations of the laws on imports and exports, as well of the laws on importing and exporting waste and residues; l) gambling offenses; m) corruption offenses, offenses assimilated thereto, as well as offenses against the financial interests of the EU; n) tax evasion offenses; o) offenses related to customs regulations; p) fraud committed through computer systems and electronic payment means; q) trafficking in human-origin organs, tissues or cells.</p> <p>The value of the assets transferred by a convicted person or by one-third party to a family member or to a legal entity over which that convicted person has control shall also be considered. In determining the difference between the legitimate income and the value of the assets acquired, the value of the assets upon their acquisition and the expenses incurred by the convicted person and their family members</p>

	<p>is to be considered.</p> <p>If the assets to be seized are not to be found, money and other assets shall be confiscated instead, up to the value thereof. The assets and money obtained from exploiting the assets subject to confiscation as well as the assets produced by such shall be also confiscated. Confiscation is not in any case exceeds the value of assets acquired during the period of 5 years that are above a convicted person's lawfully obtained income.</p> <p><i>Measures leading to confiscation</i></p> <p>The RO legislation foresees the recognition and enforcement of measures leading to confiscation, which are not criminal sanctions in so far as the measures are ordered by a foreign judicial authority in relation to a criminal offence and that it was established that the property constitutes proceeds or other property (Article 140 indent 1 (3) of Law 302/2004).</p>
<p>Links to national legislation, national guides on procedure:</p>	