

Guidelines for the management of seized assets

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Guidelines for the management of seized assets

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Abbreviations

AAPSK	Agency for the Administration of Sequestered and Confiscated Properties
ADISBISMUR	Association for the Disabled People of Bisbarra de Muros
AGRASC	Agency for the Recovery and Management of Seized and Confiscated Assets, France
AMO	Asset Management Office
AMSCA	Agency for Administration of Sequestered or Confiscated Assets, Kosovo
ANABI	National Agency for Management of Seized Assets, Romania
ANBSC	Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata, Italy
ARMA	Asset Recovery & Management Agency, Ukraine
ARO	Asset Recovery Office
BAMIN	Balkan Asset Management Interagency Network
CAB	Criminal Assets Bureau, Ireland
CARIN	Camden Asset Recovery Inter-Agency Network
COGAMI	Galician Confederation of People with Disabilities
COSC	Central Office for Seizure and Confiscation, Belgium
DGPNSD	Delegación del Gobierno para el Plan Nacional sobre Drogas, Spain
DMS	Data Management System
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FP	Functioneel Parket, the Netherlands
GAB	Gabinete de Administração de Bens, Portugal
GAVEA	Galicia Vela Adaptada Project
MILDT	Mission interministérielle de lutte contre la drogue et la toxicomanie, France
MLA	Mutual Legal Assistance
NFT	Non-Fungible Token
NGO	Non-Government Organisation
OAS	Organization of American States
ORGA	Oficina de Recuperación y Gestión de Activos, Spain
REACT	European anti-counterfeiting network
SALVO	Strategic Assets: Lifecycle Value Optimization Project
UNCAC	United Nations Convention against Corruption
UNODC	United Nations Office on Drugs and Crime

Glossary of key terms

Asset management: according to ISO 55000, asset management is the “coordinated activity of an organisation to realise value from assets”, throughout the four stages of the asset lifecycle (planning, acquisition, operation and maintenance, disposal). Can take different forms, ranging from reactive to predictive asset maintenance. The asset management discussed within this publication is performed within the (criminal) justice system any time an asset is subject to a seizure/freezing order.

Asset Management Office: government institution mandated to handle all aspects of seized asset management, both within criminal proceedings and civil proceedings.

Pre-seizure planning: the process of evaluating assets and anticipating confiscation scenarios before the actual freezing or seizure takes place.

Interim use: use of assets still under seizure, i.e. before a final confiscation order (therefore pending judicial proceedings).

Asset disposal: at the end of any judicial procedure aimed at removing the proceeds from crime, the issue of what to do with these assets arises. These issues are dealt with in the disposal phase, which is the phase in which a final confiscation order is enforced and confiscated assets are disposed of.

Social reuse: a disposal option that involves giving confiscated proceeds/assets back to the communities affected by (organised) crime and promoting their use in line with communal needs.

Direct social reuse: disposal option where confiscated assets are directly reassigned for the public benefit through a change in their intended use (e.g. conversion of the house formerly belonging to a criminal boss into a playgroup).

Indirect social reuse: a disposal option that involves the transfer of the confiscated proceeds (or those obtained from the sale of confiscated assets) to specialised funds that use them either in crime prevention projects or in incentivisation schemes for law enforcement agencies.

Executive summary

The objective of this publication is to provide guidelines related to the different aspects of asset management in criminal proceedings.

Firstly, it is important to consider the asset management aspects throughout the entire process in the criminal justice chain, from the moment the criminal investigation is being prepared until a final judicial decision has been taken regarding the asset.

Proper pre-seizure planning contributes to streamlining the process of management of assets during the criminal investigation. Once seized, assets should be registered, screened, evaluated and re-evaluated if necessary. Asset management responsibilities should be allocated as soon as possible given the fact that multiple key players can be involved in the management process at different times for different types of assets. Potential risks related to asset management should be addressed, and attention has to be paid to the fact that the legislative framework should be flexible enough to allow the competent authority to choose for each type of asset the most efficient management option. Ideally, interim use, pre-trial sale, but also the destruction of certain seized items should be part of these options. Since seizing an asset does not imply any change in its ownership and a possible confiscation decision might take years to obtain, the rights of bona fide third parties should be preserved.

In addition, an overview of the existing institutional arrangements shows an evolution towards an increasing number of countries that are establishing specialised asset management offices. These agencies, while often have the same basic set of powers, can at the same time differ to a great extent depending on the historical legal tradition of each country. An efficient inter-agency cooperation between the AMO and the other agencies involved in criminal proceedings will increase the performance of the asset management framework. Allocating adequate funds and specialised and well-trained staff to the AMO is critical for its asset management performance. Moreover, secured databases have been recognised at the international level as a key tool in asset management since many years.

Several real-life cases are included in this publication, illustrating good practices and lessons learned in relation to pre-seizure planning, complex assets, movable assets and crypto-currencies. Another series of practical cases is used to highlight the principles, challenges and good practices in relation to social reuse, which is a disposal option that involves giving confiscated proceeds/assets back to society and their use in line with common needs.

Environmental risks posed by seized assets are also discussed. They can vary, depending on the specific type of asset (e.g. cars, other movable goods, potentially dangerous goods, real estate), and call for timely management choices or options capable to mitigate the identified risks.

Finally, the publication provides a set of guidelines or key recommendations that can support and inspire countries in developing their own asset management approach from scratch, or in improving what they are already doing.

These guidelines are as follows:

1. establish the **necessary institutional arrangements** to ensure that seized assets do not lose value, and to especially consider the establishment of a dedicated Asset Management Office (AMO) depending on the volume of seized assets and the specialised skills requested;
2. promote **transparency and accountability in the activities of the AMO or other entities** in charge of asset management, also by means of external audit mechanisms;
3. ensure that the AMO or the other entities in charge of asset management are provided with sufficient human and material **resources** to handle all aspects of asset management;
4. consider the establishment of **dedicated databases** to register and track seized assets throughout the procedure (with special attention to their exact location, conditions, and economic value), to support daily management also with automatic alerts, to evaluate the costs and benefits associated with asset management and to promote a transparent and accountable asset management system;
5. ensure that the AMO or other entities in charge of asset management regularly take part, together with other relevant actors (prosecutors, law enforcement agencies), in **pre-seizure planning**, to make decisions about the assets at an early stage;
6. set up a system for **evaluation** of any type of assets (except for items with little/no value), and ensure that the value of each seized asset is assessed at the time of seizure and then re-assessed periodically (except for items with little or no value);
7. ensure that the AMO or the other competent entities have legal powers and expertise (in house or via external experts), to manage **any type of asset**, including complex and exceptional ones (such as companies, real estate, high value assets such as airplanes and luxury cars, valuable paintings, and manuscripts);
8. warrant the AMO or other competent entities are attentive to **new/emerging asset typologies** (e.g., nowadays, virtual currencies and digital art pieces) and can develop solutions to effectively seize, store, manage and dispose of them;
9. the AMO or the other competent entities should be able to set up **partnerships** with relevant experts/professionals and private companies (e.g., transport companies/auctioneers/expert managers of specific categories of seized assets/waste management services), when a given in-house expertise is not available;
10. ensure that the AMO or the other competent entities can **exchange information** with a variety of national and foreign actors (e.g., AMOs established in other countries);

11. ensure that the AMO or the other competent entities can count on a **variety of management options**, including the pre-judgment sale of perishable/ too burdensome to maintain/rapidly depreciating assets; the destruction of property that is unsafe/hazardous or that is not suitable for sale (e.g., no commercial value); the interim use of assets; leaving the assets in the possession of the owner;
12. to ensure that all **interested third parties** are notified the seizure/confiscation orders and give them the opportunity to appeal/make their claims known, and to protect the rights of *bona fide* third parties;
13. procedures for the **prompt return of seized/provisionally confiscated assets** should be in place, anytime a seizure/provisional confiscation order is lifted;
14. the AMO or the other competent entities **take responsibility for any damages** to be paid;
15. the competent entities should be able to count, after the final confiscation order, on a **variety of disposal options**, including sale, destruction, and reuse;
16. explore the introduction of measures allowing the **use of confiscated assets for institutional or social purposes**;
17. promote **direct social reuse mechanisms** that “incorporate” the lessons learned by other countries, such as: the prevention of assets’ deterioration (by reusing assets still under seizure); the use of this option for hard-to-sell assets; the empowerment of beneficiaries by boosting their economic and technical capacity to draft and implement reuse projects; transparent rules for determining beneficiaries;
18. ensure **transparency and accountability when disposing of assets**, especially for institutional and social purposes;
19. develop an **environmentally friendly management and disposal of seized assets**, by understanding existing and potential environment risks associated with these assets, working hand in hand with certified operators, promoting timely management interventions and (social) reuse anytime this is possible, and exploiting the benefits offered by technology.

These guidelines have been incorporated in a practical checklist, to help countries assess how their asset management system compares with them and to identify possible areas for improvement.

Introduction

This publication aims at presenting practitioners involved in confiscation proceedings with general advice about the management of seized and provisionally confiscated assets.¹

Asset management in confiscation proceedings has been for a long time a neglected topic, both at the international and national level. Only over the past 15 years - also due to the challenges posed by the increasing number of seized assets, by the emergence of new typologies of assets that can be subject to seizure (e.g., virtual currencies, NFTs) and by the highly specialised skills needed to manage them - countries and international organisations have realised that asset management plays a key role in confiscation proceedings, and strongly impacts on their effectiveness and efficiency. Seized assets can easily shift from being a wonderful opportunity for economic and social development to a lost and even a burden, since the way they are managed makes all the difference. Having realised this, at the supranational level a set of standards have been developed to increase the efficiency of asset management.

This publication is organised as follows. The key EU and international standards on asset management are first reviewed (**section 3**). A step-by-step overview of the management of seized assets is given (**section 4**); this should be intended as the ideal path a given asset should go through once the decision to seize is taken by competent authorities. This ideal path is informed by practice and by the standards in the previous section.

Such standards are then used to discuss institutional building (and related resources), with a special focus on the possible contribution to asset management by an Asset Management Office (AMO), as well as on the role of other institutional actors (such as police and magistrates) and their relationships. It also illustrates strategic resources in the asset management process, with special attention to dedicated databases (**section 5**).

The ideal path to asset management described in the previous section is then exemplified by presenting and discussing real-life case studies provided by the Central Office for Seizure and Confiscation (Belgium). Since different types of assets raise different challenges, case studies analysis separately focuses on each of them separately and discusses real obstacles/challenges faced in the management of the assets, as well as useful lessons learnt (**section 6**).

1. By provisionally confiscated assets we mean assets subject to a confiscation order that can still be appealed (e.g. first-degree confiscation order).

Two emerging issues are then discussed, dealing with the societal and environmental impact of seized assets: the first one is social reuse, i.e., the use of seized and confiscated assets in the interest of society (**section 7**); the second one is the incorporation of environmentally friendly principles into the asset management process (**section 8**).

Conclusions are finally drawn (section 9) and include guidelines as well as a checklist to enable countries to assess how their asset management system compares with “gold standards” and to identify possible areas for improvement.

Supranational standards on asset management

Over the past decades international and EU institutions developed a variety of standards on asset management.

The *Council of Europe* was one of the first international organisations to act in this area: art. 6 of the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism² requests each Party “to adopt such legislative or other measures as may be necessary to ensure proper management of frozen or seized property”.

The *European Union* recognised how easily seized assets can lose value and deteriorate pending judicial proceedings back in 2010; the Justice and Home Affairs Council Conclusions on confiscation and asset recovery adopted that year, in fact, recommend the adoption of measures aimed to ensure the preservation of assets during the confiscation process. That same year the Commission Communication on an EU Internal Security Strategy took up the topic again, requesting Member States to make by 2014 “the necessary institutional arrangements, for example by creating asset management offices, to ensure that frozen assets do not lose their value before they are eventually confiscated”.

More recently, the issue was addressed by Directive 2014/42/EU³. Article 7 requires Member States to take “the necessary measures to enable the freezing of property with a view to possible subsequent confiscation. Those measures [...] shall include urgent action to be taken, when necessary, in order to preserve property”. Article 10 invites Member States to take the measures necessary to ensure the adequate management of property frozen with a view to possible subsequent confiscation, including the establishment of centralised offices/a set of specialised offices/equivalent mechanisms, as well as the possibility to sell or transfer property where necessary. The Directive also invites Member States to “consider taking measures allowing confiscated property to be used for public interest or social purposes”. It also specifies that such measures may comprise earmarking property for law enforcement and crime prevention projects, as well as for other projects of public interest and social utility. Social reuse has also been addressed by the 2011 European Parliament Report on organised crime in the European Union,⁴ where the Parliament highlights that “the re-use of confiscated assets for social purposes fosters a positive attitude to strategies aimed at tackling organised crime, since confiscating an asset is no longer regarded solely as a means of depriving a criminal organisation of resources but is doubly constructive in that it both helps to prevent organised

2. Available at coe.int/en/web/convention

3. Available at op.europa.eu

4. European Parliament, Report on organised crime in the European Union (2010/2309(INI)), Brussels, 6 October 2011, available at europarl.europa.eu.

crime and has the effect of boosting economic and social development” and urges the Commission “to accept and support the urgent need for European legislation on the re-use of crime proceeds for social purposes [...], so that the capital of criminal organisations or their associates can be reinjected into legal, clean, transparent and virtuous economic circuits”.

In 2013 the European Commission promoted a cross-country dialogue and exchange of experiences on the topic by setting up a dedicated Sub-group on Asset Management within the ARO (Asset Recovery Offices) Platform. In its report, the Sub-group recommended, amongst other things: the setting up/further development of designated authorities (AMOs), and tasking them with sufficient resources; the involvement of these authorities in pre-seizure planning; the setting up of dedicated databases; inviting AMOs to set up partnerships with relevant professionals (e.g. notaries/transport companies/auctioneers); envisaging legal provisions/mechanisms allowing for the management of any asset typology; envisaging legal provisions to maximise value/reduce deterioration of seized assets, also via sale before the final confiscation order or destruction; exploring the introduction of options associated with lower management costs and high visibility (e.g. online auctions, social reuse); setting up a robust system for the evaluation of the value of any type of assets (with the exception of items of very limited value), and updating it at different stages of the procedure; setting up a system for the evaluation of the overall costs and benefits associated with asset management.

The topic has been discussed within other international bodies, including the Camden Asset Recovery Inter-Agency Network⁵ (CARIN), the G8, the Financial Action Task Force⁶ (FATF) and the United Nations.

With reference to CARIN, a dedicated working group developed best practice guidelines on the management of restrained assets. In its 2008 final report the group recommended establishing an Asset Management Office (AMO), intended as a “government institution independent from investigative bodies and mandated to handle all aspects of seized asset management”, both within criminal and civil proceedings. The document included further recommendations related to AMOs, i.e. to establish them independently from investigations units; to ensure that AMOs are appropriately funded (either state funded, or self-funded, or both); to ensure that openness, honesty and transparency in the AMO by means of internal governance structures, subject to an external audit mechanism; to ensure that the AMO is involved at an early stage in investigations (pre-seizure planning); to ensure that the AMO has sufficient expertise to manage any type of asset (internally or via external experts); to ensure that the AMO can exchange information with a variety of national and foreign actors (other AMOs); to ensure that the AMO can, in principle, manage all assets, irrespective of the value (taking however the cost of management always into account in relation to the value of the asset); to ensure that the AMO has the legal possibility to sell assets before any confiscation or forfeiture order is made (a minimum acceptable sale price shall be set, together with optimal timelines to ensure that the best price is obtained). In the same year the CARIN General Assembly on “Promoting the Creation of National Asset Recovery Offices and the Effective

5. carin.network

6. fatf-gafi.org

Management of Seized and Confiscated Assets” took up again these principles and stressed the importance of international cooperation and of setting up a centralised database to track assets.⁷

The latest CARIN recommendations (2020-2021) focus on the challenges associated with the management of high value and exceptional assets and of new asset typologies. Amongst other things, it is recommended:

- ▶ to seek/enable public/private partnerships between law enforcement and judicial practitioners and private companies in order to identify and freeze bank accounts or to dispose of high value or virtual assets;
- ▶ as CARIN members and observers, to seek and provide assistance to each other for the effective management of high value or exceptional assets;
- ▶ to be attentive to other kind of virtual assets (apart from virtual currencies) like digital art pieces, and to the range of their possible hiding places;
- ▶ to use informal cooperation to pave the way to formal cooperation to enhance the trust and the knowledge which will lead to success; this means that prosecutors and law enforcement agencies, in the pre-seizure phase, should decide on every asset seized, on the basis of a cost-benefit analysis.

In 2005 the G8 countries issued a guide on best practices for the administration of seized assets,⁸ which include pre-seizure planning; efficient and cost effective mechanisms for the administration of seized assets (in particular via the establishment of an Asset Confiscation/Forfeiture Fund); designation of the body responsible for administration; strong controls with respect to the administration of seized assets; transparency and auditing; use of information technology systems; preservation of the assets in the same condition it was at the time of seizure; pre-judgment sale of assets that are perishable or rapidly declining in value, or too burdensome to maintain; protection of *bona fide* third parties; appraisal of the market value of seized assets, with the support of qualified third parties if needed.

Moving to the FATF, in October 2012⁹ it recommended that countries implement a program for efficiently managing frozen property and disposing of it. It also suggested an ideal asset management framework, with the following characteristics:

- ▶ a framework for managing frozen, seized and confiscated property, including designated responsible authority(ies);
- ▶ sufficient resources to handle all aspects of asset management;

7. The CARIN General Assembly stated that jurisdictions “should consider establishing a National Asset Management Office (AMO). In respect of AMOs, each jurisdiction should consider: establishing the office independently from investigations units ensuring that AMOs are appropriately funded; co-coordinating the pre-seizure planning with all stakeholders; putting in place an independent audit of the AMO; establishing a centralised database to track all assets seized or restrained for confiscation; having provisions for international co-operation with other AMOs, in respect to both operational matter and also sharing expertise of asset management issues”, and that jurisdictions “should have the legal possibility to sell assets before any confiscation or forfeiture order is made, if the costs of management are high or the value of the asset could depreciate quickly”.

8. G8 Lyon/Roma Group Criminal Legal Affairs Subgroup, *G8 Best Practices for the Administration of Seized Assets*, 27 April 2005.

9. FATF, *Best Practices Paper. Best practices on confiscation (recommendations 4 and 38) and a framework for ongoing work on asset recovery*, FATF/OECD, Paris, October 2012, pp. 9-10, available at fatf-gafi.org.

- ▶ planning prior to freezing/seizure;
- ▶ measures in place to: properly care for and preserve property; deal with the person's (and third party) rights; dispose of confiscated property; keep records; and take responsibility for any damages to be paid, following legal action for property loss/damage;
- ▶ those responsible for managing property have the capacity to provide immediate support and advice to law enforcement at all times in relation to freezing and seizure, and sufficient expertise to manage any type of property;
- ▶ statutory authority to permit a court to order sale, including in cases where the property is perishable or rapidly depreciating;
- ▶ a mechanism allowing for the sale of property with the consent of the owner;
- ▶ a mechanism allowing destruction of property that is not suitable for public sale;
- ▶ in the case of confiscated property, there are mechanisms to transfer title, as necessary, without undue complication and delay;
- ▶ mechanisms in place to ensure transparency and assess the effectiveness of the system, including the tracking of frozen/seized property; assessment of property value at the time of freezing/seizure, and thereafter; keep records of its disposal; and, in the case of a sale, keep records of the value realised.

FATF also recommends (recommendation 38) the setting up “of an asset forfeiture fund into which all or a portion of confiscated property will be deposited for law enforcement, health, education, or other appropriate purposes”.

The United Nations started addressing the topic in 2003, when the United Nations Convention against Corruption¹⁰ (UNCAC) Convention was adopted. Art. 31(3) requires each State party to “adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property” covered by the Convention. The implementation of this provision raised significant challenges at the country level, due to “the absence of a body tasked with the management and disposal of frozen or seized and confiscated assets and the lack of an effective legal framework governing the administration of frozen or seized and confiscated assets”.¹¹ Because of these criticalities, 14 non-binding guidelines were developed, and grouped in 3 areas:

A: The administration of assets and, where possible, their disposal prior to final confiscation. The first set of guidelines deals with asset management prior to final confiscation:

- ▶ Guideline 1: States should commit dedicated resources and adequate capacity for pre-seizure planning and should aim at making pre-seizure planning part of the routine, everyday work of law enforcement agencies;
- ▶ Guideline 2: States should consider permitting pre-confiscation sale with or without the owner's consent in defined scenarios;

10. Available at unodc.org

11. UNCAC *Revised draft non-binding guidelines on the management of frozen, seized and confiscated assets*, Vienna, 2018, p. 3 available at undc.org.

- ▶ Guideline 3: States should consider providing for a range of choices for interim measures, such as (a) retaining the asset in the possession of the owner or possessor; (b) interim use of assets; and (c) destruction of unsafe, hazardous property, or property that has no commercial value;
- ▶ Guideline 4: States should endeavour to notify third parties of the interim measures and give them the opportunity to challenge them before a judicial authority.

B: Enforcement of confiscation orders and the use of confiscated assets. The second set of guidelines deals with the management of confiscated orders, therefore with asset disposal:

- ▶ Guideline 5: States should consider providing a range of choices for confiscation, so that practitioners can consider the most cost-efficient and productive method for the disposal of assets when ordering confiscation;
- ▶ Guideline 6: States should articulate in their legislation their fundamental policy preferences for the allocation of confiscated assets;
- ▶ Guideline 7: When States allocate confiscated proceeds to specific objectives, clear rules for determining the beneficiaries should be established;
- ▶ Guideline 8: States should give specific consideration to transparency and accountability when managing and disposing of assets, in particular when specific funds or programmes are used;
- ▶ Guideline 9: States should give due consideration to procedures for the prompt return of frozen or seized assets if the confiscation order is not granted;
- ▶ Guideline 10: All persons having an interest in the assets should have an opportunity to make their claim known.

C: Institutional structure for asset management. The third set of guidelines deals with institutional arrangements in place for managing assets:

- ▶ Guideline 11: States considering the establishment of a dedicated asset management office should take into account the volume of assets being frozen or seized and confiscated and the skill set already available in their public institutions. Should States decide to establish a dedicated asset management office, the autonomy and accountability of such an office, and the possibility for the office to participate in pre-seizure planning should be given due consideration;
- ▶ Guideline 12: States should equip the institutions tasked with asset management with adequate skills and capacities, as well as empower them to enter into any necessary agreements, as required for their effective functioning;
- ▶ Guideline 13: States should consider investing in the resources necessary for central asset registration, databases, and data management;
- ▶ Guideline 14: With regard to the funding of asset management offices, States should also consider whether these offices should be allowed to fund their operations wholly or partially from confiscated proceeds, thus over time making them economically viable by covering all or part of their own costs.

The United Nations Office on Drugs and Crime (UNODC) has also undertaken significant work in this area since 2013, when the Conference of the States Parties to

the United Nations Convention against Corruption, at its fifth session, in Panama City, adopted resolution 5/3 that “encourages States parties and the United Nations Office on Drugs and Crime (UNODC) to share experience on the management, use and disposal of frozen, seized and confiscated assets, and to identify best practices as necessary, building upon existing resources that address the administration of seized assets, and to consider developing non-binding guidelines on this issue”. In line with this resolution further work was undertaken, including an expert group meeting held in Reggio Calabria (Italy) in April 2014,¹² followed by an expert group meeting held in Vienna in 2015 that reached a consensus on the key elements for effective management of seized and confiscated assets, i.e. “core legal provisions, including on the use or disposal of assets prior to final confiscation, the handling of abandoned assets, the flexible use of restraining or seizure powers, as well as of conviction or non-conviction based (NCB) forfeiture powers. Moreover, legal systems require provisions allowing for the early identification and the protection of *bona fide* third parties”.¹³ The Vienna expert group meeting also discussed key issues with which countries are confronted in designing their own asset management structures for seized and confiscated assets, including pre-seizure planning, the management of complex assets, asset recovery funds, training of asset managers, databases, effective final disposal of assets, social reuse and compensation of victims. This work was consolidated in a 2017 publication.¹⁴

The above standards, which have been specifically developed for the management of assets under seizure and confiscation, shall be read in conjunction with the broader international standards on asset management. These have been developed earlier, since 2002, and are relevant for the public as well as for the private sector. These standards include ISO 55000¹⁵ (overview of the subject of asset management, standard terms and definitions), ISO 55001¹⁶ (requirements for an integrated, effective management system for asset management) and ISO 55002¹⁷ (guidance for the implementation of such a system). These principles have been integrated into the SALVO Process¹⁸, which is a 6-step method for determining what is worth doing with assets, why and when.

12. UNODC, *Reported outcome of the expert group meeting on the management, use and disposal of frozen, seized and confiscated assets*, held in Reggio Calabria, Italy, from 2 to 4 April 2014, available at unodc.org.

13. UNODC, *Report of the international expert group meeting on effective management and disposal of seized or frozen and confiscated assets* held in Vienna from 7 to 9 September 2015, conference room paper presented at the Conference of the States Parties to the United Nations Convention against Corruption, Sixth session, St. Petersburg, Russian Federation, 2-6 November 2015, p. 7 available at unodc.org.

14. UNODC, *Effective management and disposal of seized and confiscated assets*, UNODC, Vienna, 2017, available at unodc.org.

15. iso.org/standard/55088.html

16. iso.org/standard/55089

17. iso.org/standard/70402.html

18. Available at salvoproject.org

Management of seized assets: a step-by-step overview

Since depriving criminal offenders of the illicit proceeds of their activities should be an important goal in any investigation of criminal acts committed for financial gain, managing these illegally obtained assets, once they have been seized, should be an ongoing effort, from the moment the investigation is being prepared until a final judicial decision has been taken regarding the asset.

Whether the chosen asset management approach will ultimately be successful or not will largely depend on the attention that has been paid to this aspect of the criminal case throughout its different phases.

Pre-seizure planning: thinking ahead of time

A sound asset management system should imply that the AMO be involved¹⁹ in the decision-making process related to the seizure of assets as early as possible.²⁰

This implies that, in optimal circumstances, asset management should be a critical part of the pre-seizure planning phase.

Pre-seizure planning can be defined as the process of evaluating assets and anticipating confiscation scenarios before the actual freezing or seizure takes place. As such, it constitutes a fundamental part of a broader investigation plan,²¹ that should be established as early as possible in any criminal case.²²

There are several reasons why pre-seizure planning is considered as a good practice.²³ Firstly, a well-balanced pre-seizure plan will limit the risk of future problems or obstacles regarding the management of seized assets, which might burden or delay the investigation or even the final confiscation of the asset.

19. Report of the EU Sub-group on Asset Management, which recommends the involvement of designated authorities (AMO) in pre-seizure planning.

20. 2008 final report of the CARIN working group on best practice guidelines on the management of restrained assets, recommending that the AMO should be involved at an early stage in investigations (pre-seizure planning).

21. Apart from pre-seizure planning, an investigation plan will also tackle other issues like the goal of the investigation, its duration, targets, witnesses, evidence gathering, resources needed, etc.

22. 2018 UNCAC non-binding guidelines on the management of frozen, seized, and confiscated assets, Guideline 1, that recommends that Member States should allocate adequate resources and capacity for pre-seizure planning, and also Guideline 11, about the possibility for the AMO to participate in pre-seizure planning.

23. Ideally, the importance of pre-seizure planning should be mentioned in legislation or at least be part of the training program of prosecutors, investigating magistrates and law enforcement agencies. On an international level it is generally considered among the best practices for the administration of seized assets (for an example, see the G8 2005 Guide on the subject of the best asset management practices).

Moreover, in complex cases with multiple and different types of assets in several locations, a pre-seizure plan will give law enforcement officers responsible for seizing the assets more time to focus on how to deal with other assets that are found e.g., during a house search and that were not known to be present at the time of planning.

Finally, pre-seizure planning will ensure that all parties involved in the investigation (AMO,²⁴ prosecutor, investigating magistrates, law enforcement²⁵) know from the start not only what decision to take but also who has the responsibility to decide in relation with each asset.

In complex cases, where an important number and various types of high-value assets are expected to be seized, pre-seizure planning should result in a comprehensive written document that can take the form of a business plan, that contains the goals²⁶ of the seizure operation, the methods for attaining these goals, and the time frame within which these goals should be achieved.

Such forward planning should also include a checklist²⁷ of assets expected to be available for seizure and that by law can be seized for purposes of confiscation.²⁸ Subsequently, for each asset, a decision will have to be taken whether, where, how and when to seize. At the same time, items suitable for interim use or pre-trial sale can be set apart or highlighted. Other issues like asset ownership, transportation, storage requirements²⁹ and availability of management resources available should also be already considered at this stage.

Seizure and asset management

Asset management in criminal proceedings can be considered as a way of dealing with seized assets by the competent authorities in such a way that the safety of the asset is ensured, the risk of damages to or depreciation of the asset is minimised, while at the same time making sure that the final management costs do not outweigh the value of the seized asset.³⁰

At the moment of seizure it might already be useful for law enforcement authorities in the field to seek the assistance of specialised agents,³¹ to identify and select valuable

24. If an AMO has been set up, the law should provide for the possibility for the AMO to be involved in or informed about the pre-seizure planning. An example of this can be found in art. 4.12 and 16 of the Kosovo* AMSCA law of 24 March 2016, that stipulates that the AMO should be involved at an early stage, in order to provide support in the pre-seizure planning phase.

25. See also the CARIN recommendations 2020-2021 on the subject of informal cooperation between prosecutors and law enforcement agencies in the pre-seizure phase.

26. These goals can be set forward using the SMART-method: Specific, Measurable, Achievable, Relevant and Time-bound.

27. This implies that the necessary steps in order to obtain information on available assets (bank accounts, real estate, cars, ...) have been taken, including international informal asset tracing.

28. This excludes items to be seized for purposes of evidence gathering or immediate destruction like drugs, forbidden weapons or counterfeit goods.

29. Safety deposit box, virtual storage in the cloud, warehouses, etc.

30. See also the general definition of asset management according to ISO 55000: asset management is the coordinated activity of an organisation to realise value from assets, throughout the four stages of the asset lifecycle (planning, acquisition, operation and maintenance, disposal).

31. These agents may be in-house AMO experts or external experts hired to screen specific types of assets, e.g. antiques or old timer cars.

assets³² for seizure, while discarding other items that fail to meet the standards for further management by the AMO.

Since all seized assets should be screened and evaluated as soon as possible, it is important to obtain and even seize all documents found in possession of the suspect that may help establish the value of certain items.³³

After seizure, an update of the pre-seizure business plan will have to be carried out, considering that some expected assets may have turned out to be unavailable for seizure in the end, while at the same time other newly discovered assets have been seized.

Asset registration, screening, evaluation, and re-evaluation

A meticulous screening of each asset at the moment of its seizure is critical in making the final choice for the management option after sequestration.³⁴

At the same time an inventory will have to be started on all seized assets, preferably by means of an automated tool or database, which allows the uploading of pictures or videos³⁵ of the registered assets.³⁶ A good recordkeeping system will include the possibility to be easily updated throughout the further management of the asset.

Whenever first-hand information found at the seizure premises is not available to determine or give an indication of the value of the asset, authorities should conduct open-source searches and/or submit the asset to an appraisal by a designated expert. As a rule, this initial evaluation will have to be updated whenever events occur that significantly influence the value of the seized asset.³⁷

Finally, the screening process should also include an assessment of the necessity to store the asset under special conditions to preserve its original value,³⁸ and to anticipate how the transportation can take place in safe conditions.

Allocation of asset management responsibilities

Once an asset has been seized, an important question to be answered is what entity will eventually bear the responsibility for its proper management, given the fact that several key players can be involved in the management process at different times for different types of seized assets.

Although in the end this allocation of responsibilities should be addressed by the national legislation, several practical considerations should be underlined.

32. This goes not only for newly discovered assets but also for items already mentioned in the pre-seizure plan.

33. Invoices, bank statements, insurance policies, information on the previous owner or selling company, etc., should be preserved to facilitate the process of value determination.

34. See the 2012 FATF recommendations regarding an ideal asset management framework, including an assessment of property value at the time of freezing/seizure, and thereafter.

35. It is important to document not only the value but also the condition of the item at the moment of seizure.

36. Ideally this would be a system that also assigns a unique code to each item with a scannable barcode or QR code.

37. This might be the case for highly volatile products like virtual currencies and other complex financial instruments. Re-evaluation will also be necessary in case of interim use of a seized asset.

38. This will be critical with regard to vulnerable assets like antiquities, paintings, old manuscripts, etc.

Firstly, sometimes it might be preferable or necessary to seize certain assets on site, which implies that they will be left in the custody of the owner (real estate, furniture, a collection of paintings seized in a museum, etc.). Even if in such an event the management responsibility could be given to the AMO by law, the owner will physically still be left in the possession of the asset. While the dedicated agency may periodically inspect the condition of the seized asset on site, there will be an inherent risk of devaluation, depreciation, destruction or concealing. To minimise this risk, it is a good practice for national legislation to provide for a specific and separate criminal offence of concealing or destroying a seized asset.

Moreover, even when the seized asset is managed under the responsibility of the AMO, this does not necessarily imply that the final responsibility may be put elsewhere. In countries where the AMO or other dedicated agency has no legal personality,³⁹ the owner ultimately will have to sue the state in case the asset has been subject to depreciation due to improper management by the AMO. In such a case, it is advisable to have a clear channel of communication between the AMO and the legal department of the state, so that the latter can be provided with all documentation and arguments related to the case before court.

Finally, for the storage of certain seized assets, such as virtual currencies or precious paintings, managed by the dedicated AMO, the use of specialised subcontractors will be inevitable. It is a good practice for the AMO⁴⁰ to enter into framework agreements⁴¹ with external partners from the start,⁴² and to anticipate all types of assets that may need proper storage. Since the assets will physically be under the care of the subcontractor, clear arrangements should be made in the contract regarding management responsibility, liability, and insurance by the external partner.

Risk management

Although risks can never be eliminated, a solid management system will include an ongoing risk management at different levels.

AMOs should firstly consider the identification, analysis, and evaluation of financial and other⁴³ risks related to the seized assets under their care, together with the identification of procedures to avoid or minimise their impact.

This asset-related risk management will generally be based not only on the type of asset but also on where and how it is stored.

39. In general, a lack of legal personality will often imply that the AMO will depend on the general state budget for its funding.

40. It has to be noted that in some countries the appointment of a third-party manager is a decision to be made by a court and not by the AMO.

41. See the 2018 UNCAC non-binding guidelines on the management of frozen, seized, and confiscated assets, Guideline 12.

42. Often such agreements will be allocated following a mandatory public tender, which can be complex and time consuming. Such agreements should therefore be available well ahead of time and not be launched only at the moment after a specific asset needing proper storage has been seized.

43. Health risks are sometimes present in the case of seized assets such as contaminated or polluted land. This topic is discussed in detail in section 8.

The following examples can illustrate the wide-ranging variety of asset-related risks to overcome:

- ▶ seized cash or bank accounts: risk of negative interest rates when all the money is kept in one single bank account;
- ▶ virtual currencies: risk of hacking during the transfer or during storage, risk of quick depreciation caused by high volatility;
- ▶ real estate: risk of degradation or destruction by the owner, third parties or natural disasters; risk of illegal occupation;
- ▶ vehicles: risk of improper storage or under-maintenance;
- ▶ livestock: risk of disease/contamination.

Apart from these asset-related risks, AMOs should also be aware of the risks related to the way they are organised as an operational structure.

The most critical risk in this context is not knowing what assets are under the care of the AMO at a given point in time.⁴⁴ This risk can be caused by internal factors (improper record keeping) but also by external stakeholders (deposits of cash by law enforcement on the AMO's bank account without proper referencing to the specific criminal case).

Other structural risk factors commonly identified are related to human resources,⁴⁵ security,⁴⁶ technological issues,⁴⁷ legal liabilities, financial uncertainties⁴⁸ and internal procedures related to the release of assets after the seizure has been lifted.⁴⁹

It is a good practice for AMOs to be subject to both internal as external⁵⁰ periodic auditing⁵¹, including fieldwork by testing asset categories at different locations and sample testing of inventories.

44. In risk management terms this is often considered as "not knowing what you have". The topic of dedicated databases is discussed further in subpar. 5.2.3.

45. Both the replacement of existing staff as the recruitment of new staff can constitute a risk factor because of the sometimes-lengthy administrative procedures in the public sector, especially when the AMO depends on external administrative services for its recruitment needs. Specialised high-profile staff (ICT, managers of complex financial products) may be difficult to recruit due to more attractive salary opportunities in the private sector. Staff should be screened for prior convictions before hiring but also periodically after recruitment.

46. Seized assets will generally belong to alleged criminals, which means that the offices of the AMO will need proper security arrangements or a policy of working as a closed office with no public entrance.

47. The increasing use of electronic means of communication and databases by the AMO poses risks of security breaches or hacking.

48. This goes especially for AMOs who are self-funded and need proper budgeting and budget monitoring.

49. Once the seizure is lifted assets should be released to the owner as soon as possible. If the national legislation does not provide for a specific timeframe, the AMO itself should provide for an internal deadline.

50. Generally, an external audit will be conducted by the state audit authority but if needed an external audit can also be outsourced to a commercial audit company.

51. See the 2008 final report of the CARIN working group on best practice guidelines on the management of restrained assets, recommending that AMOs should be subject to an external audit mechanism. See also the 2005 G8 states guide on best practices for the administration of seized assets, recommending auditing as a good practice.

Finally, on an international level, a system of AMO peer review, comparable to the ARO peer review under the EU ARO-platform,⁵² has been recommended by the ARO Sub-group on Asset Management and has the potential to increase the level of quality required for risk management.

Asset management options

As stated above, a well-performing asset management system will allow the competent authority to choose for each type of asset the most efficient management option available in its national legislation.

The ultimate goal of asset management is to ensure the availability of said asset upon release or confiscation. Until such decision, measures must be taken to avoid loss, damages, destruction, or depreciation of the item, while at the same time considering that the cost of such measures does not become disproportionate compared to the economic value of the asset.

General observations

As stated, the management options available will be determined by law, which means that each national legislation will have to deal with a number of fundamental choices with regard to asset management in criminal matters.

A first and fundamental choice to be made is the general approach that the competent authority should take for any type of asset to be managed. Some countries prefer a conservative management style, privileging the simple preservation of the value of the asset and minimising the risks of economic depreciation.⁵³ Other countries might have a different approach, in which taking limited investment risks in order to yield maximum return is permitted. Either choice has important consequences on the asset management process in terms of budgeting, risk management and interim measures.

Another legislative choice that will influence the asset management options concerns the categories of assets that can or must be managed by the agency. In this respect, mandatory management implies that by law certain categories of assets (sized cash, bank accounts, etc.) will always and by law have to be managed by the AMO, whereas optional management implies that certain types of assets (complex financial instruments, real estate, etc.) may or may not be managed by the AMO.⁵⁴ Often the choice for mandatory or optional management will be in close relation to the composition of the AMO, more specifically in relation to the in-house expertise for specific categories of assets.

52. At the 4th High Level pan-European Conference on AROs, held in Warsaw on 24-25 October 2011, it was agreed to organise a light peer review process aiming for reviewing the key features of the European AROs in order to establish good practice and to enable fruitful discussion between peers.

53. For instance, the Belgian COSC law of 4 February 2018 stipulates in art. 8§1 that COSC manages the assets entrusted to it with due care and according to the principles of prudent and passive management. This guiding principle is also called constant value management.

54. Optional management requires that the seizing authority (prosecutor or investigating magistrate) sends a request for management to the AMO, after which the AMO can decide to accept or refuse the management of the proposed asset. In case of refusal by the AMO the management responsibility remains with the seizing authority.

Interim use

Some countries have adopted legislation providing for the possibility of making certain types of seized assets available for temporary use by specific institutions before any final decision has been made regarding the asset.⁵⁵

To minimise the risks presented by interim use, its presence in any national legislation is often accompanied by specific conditions that must be met in order for the asset to be used before trial.

Some of these conditions may include:

- ▶ in case the recipient is a law enforcement agency, the law enforcement entity involved in the seizure of the asset is excluded from the interim use of this asset;⁵⁶
- ▶ the asset can only be used to combat specific criminal offences (like organised crime);
- ▶ both, at the beginning and at the end of the interim use, a report containing a detailed description of the condition of the asset must be filed;
- ▶ the receiving entity lacks the specific type of asset to be used in sufficient quantities;
- ▶ the request for interim use is made by the receiving entity but the decision is made by the authority that decided the seizure and/or the AMO.

Typical assets put to interim use to law enforcement agencies include cars, computer equipment, caravans (used for stakeouts), but also furniture or high value items like brand watches or jewellery (used for undercover operations).

It is good practice that the AMO and receiving entities coordinate with each other to match the seized assets that are useful for interim use with the specific needs of the future interim user.

It shall be added that a very limited number of countries also envisage the interim use of real estate for social purposes. In relation to real estate the great majority of social reuse mechanisms apply only after the final confiscation order; the result is that properties, in the meanwhile, deteriorate and depreciate pending judicial proceedings. To avoid this, Italy started envisaging – initially in judicial practice and then by law – the social reuse of seized real estate via temporary loan for use agreements. This seems an option also in France now, following the 2021 amendment of art. 706-160 of the Code of Criminal Procedure.⁵⁷

55. See the 2018 UNCAC non-binding guidelines on the management of frozen, seized, and confiscated assets, Guideline 3, recommending that States should consider providing for a range of choices for interim measures, such as the interim use of assets.

56. See also G8 *Best Practices for the Administration of Seized Assets*, 2005, principle 10.

57. On this, and more in general on social reuse, see section 7.

Pre-trial sale

An increasing number of countries allow for the interim sale of seized assets under certain conditions mainly for reasons of cost-effectiveness.⁵⁸ Such sale might even be profitable for the accused (in case of an acquittal) or the state (in case of confiscation). The seizure on the original asset will continue to have its effect on the sales proceeds, which are generally easier to manage by the AMO.

Criteria that are often used for early sale are:

- ▶ the asset is at risk of rapidly depreciating;
- ▶ the asset is perishable;
- ▶ the asset is easily replaceable;
- ▶ the cost of management (storage, maintenance) can become disproportionate to the final value of the asset;
- ▶ the asset has a replacement value that is relatively easy to determine.

Some of these criteria leave room for interpretation based on the specifics of each asset seized. In countries where no prior consent of the rightful owner is needed, the owner will often have the right to appeal the interim sale decision before the court. The arguments set forward during the appeal procedure will probably focus on the fact that the legal criteria for pre-trial sale have not been met.

For instance, an “average” painting by a renowned painter might be considered as easily replaceable, unless availability of paintings by this artist on the current art market is very scarce. At the same time, a painting by the same artist considered his “magnum opus” will probably not meet the condition of replaceability before the court.⁵⁹ On the other hand, assets like most virtual currencies are perfectly replaceable items.

In case the decision to sell before trial must to be taken by the authority who ordered the seizure, it is considered good practice to coordinate with the AMO before deciding on the pre-trial sale, in order to check whether the legal criteria for the sale have been met. As a centre of expertise, the AMO should keep track of important court decisions nationwide that hold an interpretation of some of the criteria, allowing the AMO to inform prosecutors or investigating magistrates about relevant previous interpretative decisions in their jurisdiction.

58. It is also generally accepted as a good practice by most international organisations. See for this EU Directive 2014/42/EU article 10 and also the report of the EU Subgroup on Asset Management. CARIN also mentions pre-trial sale as a good practice in its 2008 report as in its most recent recommendations (2020-2021). FATF also includes pre-trial sale in its ideal asset management structure recommendation. Finally, see also the 2018 UNCAC non-binding guidelines on the management of frozen, seized and confiscated assets, Guideline 2.

59. The same goes for a car that as such can be easily replaced, but that becomes irreplaceable because it was owned by a well-known person, or it was used at a historical event (e.g. a royal wedding).

Destruction

Most countries provide for legislation that allows for the destruction of seized assets that cause a threat for public health or safety, which are illegal or contrary to public moral, or that are counterfeit items.⁶⁰

It is good practice to avoid putting assets subject to destruction under the care of the AMO, since the aim of the seizure in this case is destruction and not the maintaining of value of the asset awaiting a final decision. Nevertheless, it is possible that certain assets that initially have been seized for management and as such have been put under the initial care of the AMO, turn out to be dangerous or worthless and end up being destroyed.⁶¹

Rights of *bona fide* third parties

Both at national and international level the rights of *bona fide* third parties with an interest in a seized asset are increasingly taken into consideration.⁶²

Most countries address this issue in their national legislation by the obligation to inform such affected parties of the seizure and by giving them the right to approach the court to appeal the seizure decision.

This appeal procedure will often not directly implicate the AMO as such, since the claim will be filed against the authority that issued the seizure decision (prosecutor, investigating magistrate, etc.).

Since the AMO is not a party in the trial, it is critical that the agency is informed as soon as possible of the existence of such claim, of the further court proceedings, and of the final court decision.

Depending on the type of asset and on how it is managed, such notification allows the AMO to flag the seizure of the asset as being challenged. Moreover, it might be necessary for the AMO to change the management of the asset or to take certain precautionary measures awaiting the final court decision on the *bona fide* third-party claim(s).⁶³

The end of asset management

Asset management can end either during the pre-trial phase or once the final judicial decision about the seized asset has been executed.

60. See the 2012 FATF recommendations regarding an ideal asset management framework, recommending a mechanism allowing destruction of property that is not suitable for public sale; see also the 2018 UNCAC non-binding guidelines on the management of frozen, seized and confiscated assets, Guideline 3.

61. For instance, a collection of fine wines that turn out to be counterfeit or that might have been injected with liquid drugs.

62. See art. 31 (9) of UNCAC and also the G8 Best Practices for the Administration of Seized Assets, as well as the 2018 UNCAC non-binding guidelines on the management of frozen, seized and confiscated assets, Guidelines 4 and 10.

63. This can be the case for seized foreign currencies that are being periodically reinvested by the AMO for a fixed term, assets that are subject to interim use at the moment of the claim, or items that are up for a pre-trial sale in the near future.

Firstly, at any time during the investigation a decision can be taken by the competent authority (prosecutor, investigating magistrate, court) to lift the seizure and subsequently release the asset to be returned to the owner or beneficiary.⁶⁴ Depending on the type of asset, this moment can be a test for the way the asset has been managed. Poor management resulting in depreciating will inevitably lead to discussions about compensation and even possibly civil liability procedures in court.

Secondly, asset management will eventually cease once a final court order regarding the asset has been executed. This court order may be a confiscation order, by which a transfer of property of the asset will take place from the convict to the beneficiary as pointed out by the court (State, victim, etc.). In case the court finds the defendant not guilty, the asset will return to its original owner.

It can be mentioned that in certain countries, once the asset has been ordered to be released to its owner, a system of legal compensation has been put in place that eventually might prevent the release of the asset to its beneficiary. In Belgium, art. 32 of the revised AMO-law of February 4th, 2018, states that COSC⁶⁵ may pay fines, taxes, social security debts or procedural costs⁶⁶ owned by the beneficiary before releasing funds that were transferred to the AMO bank account.

64. Mechanisms should be put in place to allow for a prompt return of released assets. See in this regard the 2018 UNCAC non-binding guidelines on the management of frozen, seized and confiscated assets, Guideline 9.

65. Central Office for Seizure and Confiscation, which is the Belgian AMO.

66. This applies to debts to be paid in Belgium but also in other EU Member States.

Institutional arrangements and resources

Institutional arrangements

Specialised versus nonspecialised approach: an overview in the EU and beyond

There is no universal institutional arrangement when it comes to asset management. Traditionally, although asset management is not a typical law enforcement function, countries have relied on “existing law enforcement and public service capacity to manage seized and confiscated property in the initial stages of implementing asset recovery laws”.⁶⁷

However, over time the situation changed (the volume of seized assets has significantly increased over time, together with the level of expertise needed to handle them) which has resulted in a significant strain on these bodies that lack the necessary skills, facilities, and resources to ensure adequate management and, still face liability for the way they manage those assets. The private sector alone did not seem to offer comprehensive solutions to asset management, also due to the high fees charged by private judicial managers. This led many countries – also following guidelines/recommendations issued at the international level – to centralise these functions within dedicated offices, the so-called Asset Management Offices (AMOs).

Different countries have taken different paths/approaches in establishing AMOs and as noted by the UNODC, these offices fall in one of these three categories: 1) AMOs within law enforcement agencies and charged with additional asset recovery enforcement functions; 2) AMOs within public service entities already charged with property management related functions; 3) self-standing AMOs.⁶⁸

As discussed in section 3, the establishment of Asset Management Offices within the EU was recommended for the first time in 2010, in the Commission’s Communication on an EU Internal Security Strategy requested Member States to make by 2014 “the necessary institutional arrangements, for example by creating asset management offices, to ensure that frozen assets do not lose their value before they are eventually confiscated”. A few years later, art. 10 of Directive 2014/42/EU invited Member States to take “the measures necessary to ensure the adequate management of property frozen with a view to possible subsequent confiscation, including the establishment of centralised offices/a set of specialised offices/equivalent mechanisms, as well as the possibility to sell or transfer property where necessary”.

67. UNODC, *Effective management and disposal of seized and confiscated assets*, UNODC, Vienna, 2017, p. 46., available at unodc.org.

68. UNODC, *Effective management and disposal of seized and confiscated assets*, UNODC, Vienna, 2017, p. 47 available at unodc.org.

As of 2020, around half of the Member States had set up an AMO. As reported by the European Commission, “13 Member States (Belgium, Bulgaria, Czech Republic, Ireland, Greece, Spain, France, Croatia, Italy, Luxembourg, Netherlands, Portugal, Romania) have set up, or are in the process of setting up, Asset Management Offices (AMOs) to ensure the management of frozen property in order to preserve its economic value”⁶⁹

COSC (Central Office for Seizure and Confiscation) has been established in Belgium; the Centre for Seized Assets, Asset Management Department, Ministry of the Interior in the Czech Republic; AGRASC (Agency for the Recovery and Management of Seized and Confiscated Assets) in France; ANBSC (*Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata*) in Italy; Functioneel Parket in the Netherlands; GAB (Gabinete de Administração de Bens) in Portugal; ANABI (National Agency for Management of Seized Assets) in Romania and ORGA (Oficina de Recuperación y Gestión de Activos) in Spain.

Also, some EU neighbourhood jurisdictions have set up AMOs, such as Albania (AAPSK - Agency for the Administration of Sequestered and Confiscated Properties), Ukraine (ARMA - Asset Recovery & Management Agency), Kosovo* (AMSCA - Agency for Administration of Sequestered or Confiscated Assets) and North Macedonia (Agency for the Management of Seized and Confiscated Property).

Focus on AMOs

Each designated asset management office will depend on its national legislation regarding its location, institutional structure, and composition, tasks, and powers. When creating an AMO, countries will also need to consider how the AMO can fit best into the existing historical or institutional framework. Supranational regulations and standards, good practices and court rulings can also play an important role in this process and are often gradually incorporated in the national legislative framework by means of legislative amendments.

As a result, a variety of different models of AMO have been established in recent decades, which makes it difficult to put forward one gold standard and comprehensive set of common characteristics that each AMO should present.

As a general rule, the key powers of an AMO often include:

- ▶ the management of all types⁷⁰ of seized assets;⁷¹
- ▶ the central management⁷² of relevant electronic data (statistics) related to seized⁷³ assets;

69. European Commission, *Report from the Commission to the European Parliament and the Council Asset recovery and confiscation: Ensuring that crime does not pay*, COM(2020) 217 final, Brussels, 2 June 2020, p. 12 available at op.europa.eu.

70. Direct management by the AMO or indirect management by an external third-party expert.

71. This supposes that an effective notification system of each relevant seizure is set in place to inform the AMO.

72. Both data collection and data analysis should be part of data management.

73. Data management may also include statistics on confiscated assets.

- ▶ the execution of pre-trial and final judicial decisions;⁷⁴
- ▶ acting as a centre of expertise.⁷⁵

More specific powers⁷⁶ of the AMO may include:

- ▶ the evaluation of the value of seized assets;
- ▶ interim use;
- ▶ pre-trial and/or post-confiscation sale;
- ▶ disposal/destruction of assets;
- ▶ the exchange of information with other stakeholders or key players;
- ▶ establishing and maintaining relationships with equivalent foreign institutions and international organisations.⁷⁷

The composition and structure of the AMO will be influenced by its powers and location. It is a good practise to have in-house representatives of the different key players in the AMO. Firstly, this allows for the AMO to build a broad field of expertise on the different aspects of asset management.

Moreover, this in-house presence can facilitate the coordination and cooperation with other stakeholders (liaison officers). Finally, representatives of other relevant institutions will continue to have access to their specific databases, which is an important advantage for the information gathering activities conducted by the AMO.

The following categories of personnel may be part of the AMO staff:

- ▶ prosecutors;
- ▶ law enforcement agents (e.g., police);
- ▶ civil servants from other institutions (e.g., Ministry of Finance);
- ▶ legal staff;
- ▶ depending on the powers of the AMO: in-house experts for asset appraisal or expert managers of specific categories of seized assets (complex financial instruments, virtual assets, real estate, etc.);
- ▶ ICT managers and data analysts;
- ▶ accountants;

74. This power of the AMO will also have to be accompanied by a notification process of such decisions, including a statement that the decision is final.

75. As a centre of expertise, the AMO may provide advice to competent authorities (prosecutors, investigating magistrates, law enforcement agencies, and sometimes also courts, parliament, and the Minister of Justice), offer operational assistance and provide for trainings. As an example, the Belgian AMO drafted several templates related to all types of decisions to be made regarding seized assets and made those templates online available for prosecutors. On this see also the 2012 FATF recommendations regarding an ideal asset management framework, recommending that those responsible for managing property have the capacity to provide immediate support and advice to law enforcement at all times in relation to freezing and seizure, and sufficient expertise to manage any type of property.

76. Some of these more specific powers can be considered as being part of the basic set of key powers as mentioned above.

77. Examples of existing international organisations on asset management are the Subgroup on asset management, established within the EU Asset Recovery Offices Platform, and also the Balkan Asset Management Interagency Network (BAMIN).

- ▶ administrative case workers;
- ▶ secretarial staff.

Another important matter is the degree of independence of the AMO. Factors like the location of the AMO (stand-alone or embedded in a larger structure like law enforcement, Ministry of Finance, and others),⁷⁸ whether it has been granted legal personality or not, and whether it is self-funding with a proper budget or not, can influence whether or to what extent an AMO can function independently or not.

Finally, it has to be mentioned that it is a good practice, for reasons of transparency⁷⁹ and accountability, that the AMO periodically publishes an activity report.

Other stakeholders in asset management

The asset management landscape consists of a variety of other agents or institutions that the AMO will have to cooperate and coordinate with to execute its functions and make for a solid global asset management approach.

Prosecutors, investigating magistrates, law enforcement agents, courts, FIUs, local or foreign AROs, the Ministry of Finance, experts from the private sector, foreign agencies and others, will all work together with the AMO at one time or another.⁸⁰

To achieve a good performance in asset management (and ultimately confiscation), an inter-agency cooperation in the field of asset management should be set up in order to:

- ▶ clearly define the role of each participant in the asset management process and acquire a sound knowledge by each institution of the role of all other intervening parties;
- ▶ create awareness that all parties are working together to achieve a shared goal;
- ▶ commit to sharing information and databases in a loyal and transparent way;
- ▶ develop electronic channels of communication;
- ▶ be involved as early as possible in the asset management process (pre-seizure planning);
- ▶ debrief when necessary, sharing good practices and lessons learned.

It is considered a good practice to formalise these principles in protocols or agreements.⁸¹

78. Embedded AMOs will generally be put under the authority of another body.

79. See the 2008 final report of the CARIN working group on best practice guidelines on the management of restrained assets, recommending that the structure of the AMO should reflect openness, honesty and transparency. The 2018 UNCAC non-binding guidelines on the management of frozen, seized and confiscated assets also highlight transparency in Guideline 8.

80. The way these key players will act and behave towards one another throughout the procedure will determine the degree of success in depriving criminals from the illicit proceeds of their crimes, considering that a chain is only as strong as its weakest link.

81. See the 2018 UNCAC non-binding guidelines on the management of frozen, seized and confiscated assets, Guideline 12: States should empower the institutions tasked with asset management to enter into any necessary agreements, as required for their effective functioning.

In matters of international cooperation, the AMO may have to deal with the management of an asset seized at the request of a foreign authority or agency (international freezing order, MLA). From the start such assets should be flagged or highlighted in the database as being seized at the request of a foreign agency. Also, clear channels of communication and coordination have to be set up between all local and foreign agencies involved. Whenever the local interim-use legislation is applicable to these assets, the foreign authority should be kept informed of any measure taken regarding the asset.⁸² Finally, at the end of the asset management, the AMO should be involved in the coordination process regarding the final asset sharing agreement.

Resources

Funding options

Asset management comes inevitably with an important array of costs and expenses.⁸³

International organisations generally highlight the importance of a solid funding of the AMO as a critical factor for its success.

The 2018 UNCAC non-binding guidelines on the management of frozen, seized and confiscated assets, address this in Guideline 14, stating that with regard to the funding of asset management offices, States should consider whether these offices should be allowed to fund their operations wholly or partially from confiscated proceeds, thus over time making them economically viable by covering all or part of their own costs.

Some countries have therefore chosen to set up an AMO that can be self-funding. As an example, the French AMO (AGRASC), created by Act of 9 July 2010, can be mentioned. It has been set up to be self-funding, benefiting from various forms of revenue, mainly consisting of interests on its bank account and a part of the proceeds of certain confiscated assets. However, in cases when its budget falls short of its funding needs, AGRASC can apply for subsidies to its supervisory authorities.⁸⁴

Self-funding AMOs present the advantage for the state that the general budget is not burdened by recurrent funding needs from the AMO. For the AMO itself, financial independence also means that it can allocate its resources as it seems fits, without interference by external entities. Finally, having a self-funded budget can be an incentive to focus on maximizing profits from the assets under the care of the AMO.

Other countries have decided to fund their AMO from the overall state budget.

82. In Belgium, a measure of constant value management (e.g. pre-trial sale) has to be taken for vehicles, boats and airplanes within 3 months after the seizure. Since this principle is also applicable to assets seized in Belgium at the request of a foreign agency, a specific procedure has been set up: once the measure of constant value management has been taken, the foreign authority will be informed. The execution of the measure will be suspended for three months, in order to allow the foreign authority to comment on or object to the interim measure.

83. Storage costs, expert fees, staff expenditure, AMO housing costs, database maintaining expenses, transport costs, litigation risk provisions, insurance fees, etc.

84. At this moment AGRASC is fully self-funded.

Funding from the state budget protects the AMO against any risk of financial trouble or shortfall. However, being financially dependent can often cause lengthy procedures for expense approval, burdensome procedures for staff recruitment due to the involvement of other entities and a lack of commitment to an active asset management that focuses on profit maximisation.

Human resources and training⁸⁵

The technical character of most asset management activities demands for high competence levels when hiring staff, as specific skill sets are needed for each type of function assigned to the AMO.

Dedicated agencies without a proper budget might face difficulties to attract qualified staff in the field of accounting, ICT, or financial management, to the extent that the private employers will often offer wages and fringe benefits that state agents are not entitled to. Not being able to quickly hire or replace agents that hold critical positions poses a risk that can undermine the overall performance of the asset management agency.

In this regard it is a good practice to anticipate well in advance the recruitment or replacement of essential staff.

Provisions should also be made to elaborate an ongoing training programme for staff, including the sharing of best practices, and following the operational needs of the organisation. Countries should dedicate the necessary resources to train their AMO-staff properly in all skills relevant for asset managing.

Moreover, it should also be considered a good practice that the AMO is given the possibility to train its most important stakeholders (magistrates, police), on asset managing.

Material resources: Databases

So far in many countries little attention has been paid to how the structured and regular collection of data on seized and confiscated assets in a database can boost confiscation policies. As noted, “in the early stages of developing asset management capacity, countries have developed fairly rudimentary data-capturing and data-storage mechanisms. As the system matures, it becomes harder to maintain accurate record of all property subject to seizure and confiscation orders. The need to improve or develop ever-more sophisticated capacity to maintain, access and keep the data reliable and secure increases”⁸⁶

Internationally, databases have been recognised as a key resource in asset management since 2005, when the Criminal Legal Affairs working group of the G8 suggested that: “States should consider the use of information technology (IT) systems for the administration of seized property. Appropriate financial and property administration

85. See the 2018 UNCAC non-binding guidelines on the management of frozen, seized and confiscated assets, Guideline 12: States should equip the institutions tasked with asset management with adequate skills and capacities, as required for their effective functioning.

86. UNODC, *Effective management and disposal of seized and confiscated assets*, UNODC, Vienna, 2017, p. 59 available at unodc.org

IT systems can, for example, be extremely useful for tracking and managing inventory or for meeting expenses associated with seized property as well as for maintaining a transparent and accountable system⁸⁷. The topic was taken up again by the Camden Asset Recovery Inter-Agency Network (CARIN),⁸⁷ by the Organisation of American States (OAS),⁸⁸ as well as by the Sub-group on Asset Management set up in 2013 within the ARO (Asset Recovery Offices) Platform of the European Commission, which recommended the setting up of dedicated databases.

According to a review of existing databases carried out within the EU-funded Study PAYBACK, most of EU countries have a database in place, though not always dedicated and/or not always comprehensive in terms of information gathered. A database exists in Belgium, Cyprus (with information on relevant court order, type and value of the assets), Czech Republic (with a dedicated database still in its infancy), Greece (not dedicated database), France, Germany (at Land level), Ireland, Italy, Lithuania, Netherlands (the Seized Goods Portal), Portugal (info on type of assets, location, evaluation, probative value, etc.), Romania (an integrated IT system was set up by *Agenția Națională de Administrare a Bunurilor Indisponibilizate*, in cooperation with the Basel Institute on Governance, Switzerland),⁸⁹ Spain, Slovenia (kept by local courts), United Kingdom (JARD).⁹⁰ A database does not exist in Denmark, Latvia and Sweden.

This said, there is a great variety of ICT arrangements across the EU, with countries at different stages of development (some with a structured database, others with databases in their infancy) and using different ICT solutions (e.g., web based vs. Access). Existing databases are closely connected to national regulations, institutional building arrangements, and available resources. There is a scant level of completeness and quality of key data: for example, a key information such as the exact location of seized assets at a given time is not a mandatory field (e.g., in Italy and the Netherlands). In most cases, automatic alerts are not envisaged, and the production of statistics, graphs and maps is limited/unfriendly. Also, current databases make limited use of available asset valuation data to inform asset management activities.

To support countries in this area, the EU-funded PAYBACK Study⁹¹ in 2018 developed the prototype of a Data Management System (DMS) focusing on the following areas of interest:

87. The recommendations of the 2008 CARIN General Assembly on *Promoting the Creation of National Asset Recovery Offices and the Effective Management of Seized and Confiscated Assets* stressed, in respect to AMOs, the importance of establishing a centralised database to track all assets seized or restrained for confiscation.

88. Organización de los Estados Americanos, *Analysis of Systems for the Collection of Data on Seized and Forfeited Assets of Illicit Origin in the Member States of the OAS*, 2014.

89. For more information on the Romanian system, see anabi.just.ro/en.

90. For more information on JARD, see Chistyakova Y., Wall D.S., Bonino S., *The Back-Door Governance of Crime: Confiscating Criminal Assets in the UK*, in *European Journal on Criminal Policy and Research*, 2019.

91. The EU-funded Study *PAYBACK: Towards an EU Data Management System for Seized Assets* was co-financed by the European Commission under the ISFP 2014 programme available at project-payback.eu. It was coordinated by the eCrime research group of the Faculty of Law of the University of Trento and carried out in cooperation with CSD (BG), INHESJ (FR), CRJ (RO), Fondazione Nazionale dei Commercialisti (IT), and with the support of the following associate partners: AGRASC (FR); CAB (IE); Commission on Illegal Assets Forfeiture (BG); COSC (BE); Asset Management Section, Ministry of Interior (CZ); Openbaar Ministerie, Functioneel Parket (NL); Rome Tribunal (IT). It ended in July 2018. For further information see B. Vettori, *Moving confiscation policies forward: databases to support asset management in the EU*, *Iustinianus Primus Law Review*, vol. 12, issue 1, 2021.

1. **exact location of seized assets throughout the procedure:** lack of precise and updated information about the whereabouts of seized assets can result in inability to track them and liabilities of the managing agency. Any given database should make it possible to know the precise location of seized and provisionally confiscated assets, distinguishing between a) in-door location (e.g., of movable assets stored in deposits) and b) map location;
2. **economic value of seized assets over time:** a common problem across the EU is the quick depreciation of seized property. Keeping track of changes in their value is essential to understand when and what sort of actions should be taken to preserve their value;
3. **seized assets' conditions over time:** keeping track of assets' conditions is important not only to inform timely management interventions, but also to allocate responsibility for damage, considering that a given property may be taken under custody by different actors throughout the judicial proceedings;
4. **automatic alerts:** a key feature of an ideal database are alerts, to automatically inform actors involved in asset management activities about e.g., changes in each asset's value and/or conditions requiring immediate action, approaching deadlines, upcoming tasks.

The PAYBACK DMS can boost data collection on seized assets in these four areas, in virtually any country. It can assist both countries having a database in place looking for new functionalities and countries not yet having one; it is in fact composed of four solutions, ranging from one providing basic features to a comprehensive solution. Its key features are flexibility and easy and full integration in pre-existing systems. Also, the PAYBACK DMS has been designed to be accessible to the highest number of countries: its APIs are based on open-source third-party libraries. In order to further enhance accessibility of the prototype, in agreement with the European Commission the PAYBACK consortium decided to make the prototype available to all countries free of charge.

Case-studies, obstacles and best practices in asset management

This section is devoted to the presentation of some real-life case studies of asset management handled by the Central Office for Seizure and Confiscation (Belgium). This case-studies analysis focuses on different asset types and discusses challenges and lessons learnt.

These cases are based on three general types of asset management:

- ▶ constant value management: the main objective when managing seized asset should be to prevent a deterioration of the value of the asset and, at the same time, avoid excessive management or conservation costs. This can be achieved through several options:
 1. to alienate the asset (pre-trial sale);
 2. to return the asset to its rightful owner against the payment of a sum of money;
 3. to preserve the asset in good conditions;
 4. to put certain assets at the disposal of police services (interim use).
- ▶ mandatory management: this means that certain types of assets always have to be managed by the AMO by law, for instance seized cash or virtual currencies;
- ▶ optional management: this implies that other categories of assets can and will only be managed by the AMO after approval by the AMO itself, such as real estate and complex financial instruments. In case the AMO refuses to accept the management, the management responsibility will stay with the investigating magistrate or prosecutor conducting the investigation.

The combination of the 3 types of management as outlined above offers a certain degree of flexibility in the management approach of seized assets. The following case-studies can serve as examples of these management principles.

Pre-seizure planning: the Manuscript Case

In this case an important number of precious manuscripts and other writings were seized by an investigative magistrate.

Among the seized items were letters written by Paul Cezanne, Manet, Van Gogh, Tsar Nicolas II, Tolstoy, Apollinaire, an autograph manuscript by Beethoven, a Delacroix's book of drawings and even a Papal bull dating from the 17th century.

Unfortunately, the AMO had not been briefed about the case beforehand and was therefore not involved in the pre-seizure planning conducted only by the investigating magistrate and law enforcement.

It was only after the seizure that the investigating magistrate reached out to the AMO in order to help in organizing the transfer, under safe conditions, of all seized items to an appropriate storage facility.

The transfer concerned approximately 500 archives of great value. It basically implied emptying an entire museum, including the stock of the museum shop and the showcases that were used to display the manuscripts.

A list of requirements had to be drawn up urgently with the assistance of the AMO for transport and storage, considering the delicate nature of the seized objects.

Finally, based on the specific needs for safe storage, a solution was found by the signing of an archival management agreement between the AMO, the Ministry of Justice and the Science Policy Office for the conservation of the seized manuscripts at the Belgian Royal Library.

The AMO also had to monitor the cost estimate for adequate transportation to the Royal Library and helped to select the best offer from an insurance company covering the transportation risks.

Lessons learned

Although in the end a satisfactory solution was achieved, the lesson learned is that a lot of precious time was lost because the AMO was not involved in the pre-seizure planning in this case. Most of the issues (transportation, insurance, reaching out to an external partner for safe storage) that had to be dealt with urgency after the seizure, could have been easily prepared and set up beforehand during pre-seizure.

Creating awareness within the judiciary to involve the AMO as early as possible in the investigation is an ongoing challenge that can be achieved through training programs pointing out the usefulness of an early involvement by the AMO.

Complex assets (cannabis plantation)

Belgian police forces discover from time-to-time hidden cannabis plantations.

Seizure in these cases typically affects a wide variety of different assets that constitute the plantation or that are found on the premise, such as plants, soil, fertilisers, plant pots, forklift trucks, minivans, ventilators, heating equipment, carbon filters, power generators.

Some of the challenging questions arising from such seizure orders include how at what moment to manage these items and what is the optimal management strategy: sale, destruction or other.

Examples of potential solutions to these challenges are provided by the available legal options in Belgium.

Article 10 of the COSC Law states that at the moment of the seizure the public prosecutor/examining magistrate is responsible for the “constant value management” of seized valuable assets, which is a management that prevents a deterioration of the value of the asset and that limits the costs related to the management or conservation of the asset.

Another legal provision relevant in these cases is Article 4 of the Belgian “illegal substance act” of 24 February 1921: “Illegal substances, as well as all the material used for or destined to the production of illegal substances, CAN be destroyed by the public prosecutor during the investigation. In any case, once there is a final confiscation decision issued by the court, all these items HAVE TO BE destroyed”.

Considering that there are several possible forms of “constant value management” under the Belgian law, their pros and cons have been assessed as follows:

1. conserving all the items of the cannabis plantation until the final confiscation decision by the court

The challenges associated with this option include the long duration of the criminal proceedings (sometimes years), the risk of depreciation of certain assets, the costs of storage (at a rented location), some items are perishable, as well as the mandatory destruction after confiscation regardless of the value of the assets (destruction also has a cost).

Considering the factors mentioned above this is not the preferred management option in these cases (the only exception being for items needed as proof).

2. restitution of the seized assets to the defendant against payment of an equivalent amount of money

Some of the identified challenges in this approach are that some items cannot be legally held or sold; the morality of handing back to the suspect an illegal cannabis plantation – or even parts of it – could be questioned by public opinion.

Therefore, this is not the preferred management option either in these cases (except perhaps for some vehicles).

3. alienation: selling the assets during the investigation with the assistance of the AMO

The main questions which need to be answered before reverting to this options include what assets can be sold, who to sell to and at what price, how to sell and how to avoid bad publicity.

The conclusion is that this option could be useful but only for certain assets and under certain conditions (common sense within the law).

What assets can be sold?

Assets which were excluded from the pre-trial sale comprise items which cannot be legally sold (the cannabis plants and the crop), items that are specifically intended or too closely related to drug production (specific types of carbon filters), used items with little market value.

The AMO added another restriction: only items that can also be used for perfectly legal purposes (fertiliser, ventilators, vehicles) should be sold.

Who can buy the assets?

The AMO set some restrictions in this regard: assets can be sold only to professionals in the field of horticulture or hardware (e.g., electricians); also, potential buyers will be screened by the police first to prevent a sale to buyers with drug related priors.

Lessons learned/best practices in the management of seized cannabis plantations:

- ▶ before taking the decision to sell it is essential to find an agreement between public prosecutor/investigating magistrate and the AMO to list the items that can/should be sold;
- ▶ destruction during the investigation shall apply to all items that cannot be sold (except those items necessary as proof);
- ▶ limiting the type of buyers and running a police check is also important, to prevent a sale promoting further drug related activities.

Movable assets: the “Puzzle Ferrari” case

This case of asset management derives from the prosecution and conviction of four persons for the theft of 31,9 kg of gold (evaluated to be worth 1 000 400 €) and for being part of a criminal organisation.

By decision adopted on 17 February 2015, the court of appeal in Liège sentenced the four defendants to imprisonment terms, plus several confiscations (three confiscations in value of 328 466.67 € against three perpetrators, and one confiscation worth 15 000 € against the fourth offender).

The case

Following the conviction, the General Prosecutor in Liège launched a “criminal execution investigation”⁹² to recover the conviction orders.

The following items were therefore seized and sold:⁹³

92. A criminal execution investigation is a specific post-conviction procedure that aims at the detection, identification and seizure of assets belonging to the convicted person in order to collect fines, trial costs and confiscation orders as outlined in the verdict. It can be conducted by the public prosecutor or by the AMO.

93. Seized assets are generally sold by means of a public (virtual) auction. A minimum price is set forward by the AMO. This set price is based on a combination of various factors, such as the professional experience of the selling agency in past cases, open-source web searches, specialised websites, documents related to the asset that were found during the investigation, together with previous expert evaluations conducted at the demand of the investigating magistrate.

FERRARI SPIDER F4 304	60 000 €
BMW Type 1	10 000 €
Boat BAJA	4 011 €
JET SKI KAWASAKI SPEED BUILDER	1 200 €
MOTO YAMAHA SCOOTER XP500	2 400 €
QUAD YAMAHA A	600 €

The Belgian Police also seized a FERRARI 348TS but did so at the wrong time: the car had just been dismantled into small pieces to be repainted.

Criticalities

The criticalities faced in the management of this car and the decisions taken were as follows.

Sale was clearly the key management option, given the nature of the item, to prevent the asset depreciation affecting cars, as well as to limit the costs related to its management (e.g., high maintenance costs associated with a luxury car). Furthermore, the asset was not hard to sell it could attract the interest of buyers in a public auction; not being the latest Ferrari model, the price was affordable to a greater number of people.

The main question was what would be the most profitable way to sell the car, and whether to do this in pieces or to repaint it before the sale.

Selling the car in pieces would not be very profitable. It would not require any management action rather than taking the pieces to the selling agency of the Ministry of Finance. This is what the police decided to do, so all the small pieces were taken to the selling agency, which considered the pieces as a wreck and put them for sale for the total amount of 1 000 €.

The AMO prevented the process of selling the pieces and asked a specialised mechanic to rebuild the Ferrari. The costs (an amount of about 8 000 €) would be covered by the selling agency, and later recovered from the buyer.

On top of the rebuilding of the car, the mechanic also proposed the replacement of the brake cable (47 €), the battery (180 €), and the de-icing of the rear window (4 290 €). The Ministry of Finance accepted only the replacement of the brake cable and the battery.

The car was finally sold in February 2020 for 43 200 €. After deduction of the buyer's premium retained by the selling agency (20%), a total amount of 36 000 € was transferred to the AMO and paid to the Ministry of Finance to compensate the amount of the confiscation in value.

The costs of the repairs (8 766.98 €) were added to the costs to be paid by the convicted person.

Lessons learned

When seized assets clearly have a market value (the Ferrari was disassembled, but fully operational, so it did not need any major mechanical repair, but still needed some commitment and intervention to get to that value) it is important to consult with experts to assess costs and benefits associated with the different management options. As a result of proper analysis, it was possible to recover 36 000 € instead of 1 000 €.

Managing seized virtual assets (crypto assets)⁹⁴

The Belgian law states that all crypto assets seized must be under the management of the AMO.⁹⁵ The usual AMO partner, i.e., the Ministry of Finance, declined in 2018 to have any involvement in the management of such assets.⁹⁶ The current banking partner of the AMO could not provide a solution either.

This meant that the AMO had to find a reliable asset management strategy on its own, including.

1. a solution to store and manage the virtual assets in a secure way;⁹⁷
2. a solution to sell (pre-trial and post-confiscation) virtual assets for the best possible price.

Several issues had to be considered: the costs, the security risks – such as hacking –, the need for an insurance policy – in case an agent from private sector would be involved –, the need for an expeditious and user-friendly⁹⁸ procedure,⁹⁹ the organisation of the sale (auction).

The AMO decided to adopt a global asset management solution for cases with seized virtual assets, and launched an international public tender with two key elements:

1. storage/management of the crypto assets;
2. pre-trial and post-confiscation selling of the crypto assets.

Five requests across the EU were sent out to specialised crypto assets management service companies; four offers were received. After clarifications, by decision of 22 October 2018 the tender was finally awarded to one of the bidding companies and the arrangement was put in place from early 2019 onwards.

94. Virtual assets are a larger notion than virtual currencies, since it refers not only to currencies like Bitcoins, but also to other valuable assets such as NFT's (Non-fungible tokens).

95. It has to be noted that in some other countries the possession of virtual assets like cryptocurrencies has been outlawed or restricted (this is for instance the case in Algeria, Indonesia and Iran).

96. The state selling agency has been given a legal right of first refusal: only when it refuses to sell a seized asset, the AMO is allowed to contract another private partner for the sale of the seized item.

97. As a transitory solution, the AMO bought a Ledger wallet, which is a hardware cryptocurrency wallet, to store the virtual assets.

98. Law enforcement agencies have to be able to transfer seized assets very quickly to a safe storage account or digital vault.

99. Virtual assets like cryptocurrencies are highly volatile, which means the sale has to take place rapidly in order to avoid depreciation.

As a result, three online auctions were successfully organized throughout 2019 and 2020 in Belfast and Dublin.

A specific practical case on virtual asset management regards V. coin, a cryptocurrency offered by a company incorporated under Swiss law on several platforms, notably “V.co”.

By order of a Belgian investigating magistrate, searches were carried out in 2021 by federal law enforcement agents at 17 places all over the country.

Searches were also carried out in Switzerland, with the support of the Swiss public prosecutor, Europol and the American authorities, where the website servers were located.

The social media platform was taken offline, and 37% of the circulating ‘V.’ virtual currency was seized, together with various other cryptocurrencies.

In total five persons were arrested and charged with “participation in a criminal organisation”, “fraud” and “money laundering”. The activities of the organisation were allegedly based on a “pyramid” type scam (“Ponzi scheme”), consisting in remunerating clients’ investments mainly with money from new entrants.

The European police agency Europol estimated that some 223.000 people from 177 countries may have been the victim of this investment scam.

A total of 1.1 million euro in cash was seized, together with an amount equivalent to 1.5 million in cryptocurrency, as well as 17 luxury cars.

With the help of the solution put in place by the AMO the virtual assets seized in this case could be safely transferred and stored with minimal risks.¹⁰⁰

In another case 104.9909228 bitcoins were seized in 2015 by the Belgian police in a case of drug trafficking.

Two Belgian nationals were selling drugs on the dark net, sending the goods by mail worldwide.

Transactions were paid in cryptocurrency and transferred to cryptocurrency wallets found on a computer of the prime suspect during a search.

In 2016 the Court of Appeal of Antwerp sentenced the prime suspect to a prison sentence of four years and confiscated the seized cryptocurrency.

This confiscation led to the very first worldwide bitcoin auction held by a private auction house in 2019. Before the auction, the bitcoins were divided up into 69 different lots to maximise the final auction result. In total 6400 bids from around 100 countries were registered. Eventually this resulted in an average selling price for the bitcoins that was higher than the daily rate of this virtual currency on the day of the auction.

Lessons learned

Several lessons can be extracted from the asset management approach regarding virtual assets as explained above. First, the legislative framework of each country should be flexible enough to integrate newly emerging valuable assets quickly in the existing asset management process. Moreover, partnerships with the private

¹⁰⁰. The case remains ongoing at the time of writing.

sector should be explored when in-house expertise regarding new assets is missing within the AMO.¹⁰¹

Furthermore, in those cases where virtual assets are rated daily, efforts should be made when selling the seized assets (especially during the pre-trial phase) to maximize their value at the moment of the sale, in order to beat the public market rate and therefore avoid the risk of liability claims by the rightful owner.¹⁰² Specific risks related to virtual assets (high volatility, digital storing, hacking) need to be assessed and monitored throughout the management of the asset.

Finally, because of the digital nature of these assets, the chosen solution for the transfer, storage and sale of virtual assets should be user friendly for all agencies involved, including law enforcement agencies on the field.

101. See the 2020-2021 CARIN recommendation to seek/enable public/private partnerships between law enforcement and judicial practitioners and private companies in order to identify and freeze bank accounts or to dispose of high value or virtual assets.

102. This approach is approved by the 2008 CARIN report where it states that measures should be taken to ensure that the best price is obtained, such as setting optimal timelines. In the previously discussed bitcoin case the splitting up of the bitcoins into different lots serves the same purpose.

Social reuse: general principles and case-studies

General principles

Social reuse is a disposal option that involves giving confiscated proceeds/assets back to the communities affected by (organised) crime and promoting their use in line with communal needs. Its attractiveness is the visibility of confiscated assets among citizens.

While sale is still the main disposal option within the EU, most Member States envisage different forms of reuse of the assets/proceeds, via their transfer to public entities ('institutional reuse', via incentivisation schemes) or to society/non-government organisations (NGOs) ('social reuse'). Despite the non-binding nature of Article 10(3) of Directive 2014/42/EU, which requires EU Member States to consider reusing confiscated property for the public interest or social purposes, in fact, "specific legislation on the use of confiscated property for public interest or social purposes" exists in 19 Member States (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovenia, Spain).¹⁰³

The key social reuse experiences within the EU are in Belgium, France, Hungary, Italy, Luxembourg, Scotland, and Spain. These experiences fit one of the following **two models: direct and indirect social reuse:**

- ▶ direct reuse operates in Italy, Belgium (Flemish region), and Hungary. Assets are reassigned for the public benefit through a change in their intended use (e.g., conversion of the house formerly belonging to a criminal boss into a playgroup or a police station);
- ▶ indirect social reuse is where the proceeds of crime (or from the sale of confiscated assets) are distributed via specialised funds that use them in either a) crime prevention projects or b) incentivisation schemes for law enforcement agencies, so that these entities may have a further incentive to keep on fighting crime.

103. See European Commission, *Report from the Commission to the European Parliament and the Council Asset recovery and confiscation: Ensuring that crime does not pay*, COM(2020) 217 final, Brussels, 2 June 2020, pp. 12-13 available at op.europa.eu.

Under this mechanism confiscated assets are not straightforwardly passed on to society, rather the proceeds from their sale are. In addition, the proceeds may not always be reused for the immediate, but rather mediate (via incentivisation schemes) interest of society. This model is in place in France,¹⁰⁴ Spain,¹⁰⁵ Luxembourg and Scotland.

In **Belgium**, social reuse is envisaged in the Flemish Region only. Municipalities have the right to socially manage abandoned houses (including confiscated ones) on a temporarily basis, including the possibility of renting them out to needy people and to restore them.

In **France**, MILDT (*Mission Interministérielle de Lutte contre la Drogue et la Toxicomanie*) manages the fund established by decree n. 322/1995 to collect the proceeds of confiscated assets in connection with drug trafficking. AGRASC¹⁰⁶ manages the auction sale of the assets and the related proceeds are transferred to MILDT's. Ten per cent of these proceeds are allocated to the Ministry of Social Affairs and are used by MILDT to finance projects for the prevention of drug consumption, drug treatment or fight against drug trafficking.

In **Hungary** since 2000, confiscated (mainly counterfeited) personal assets can be offered for charity purposes. In practice, 98 per cent of all goods offered for charity purposes are counterfeited commodities (clothing, shoes, or toys). The Charity Council is the body in charge of initiating and co-ordinating these proceedings.

In **Italy**, social reuse has been envisaged since mid-90's (law 109/1996). The key institution involved in the decision-making process is ANBSC.¹⁰⁷ Real estate may be transferred to state institutions or, for institutional purposes or social reuse, to local entities (the municipality where they are located, or, alternatively to the province/region; local entities may manage the assets/assign it for free to social communities/associations). Furthermore, companies can be rented to worker cooperatives for free. Movable assets (also registered ones) can be used by ANBSC in institutional activities or assigned to other state bodies, local entities, or charities.

Luxembourg has the *Fonds de lutte contre certaines formes de criminalité*. It is made up by confiscated property from drug trafficking, money laundering and other serious crimes. It supports programs in fighting these crimes. Its beneficiaries include international organisations, national institutions, and NGOs.

104. France has recently introduced a direct reuse mechanism for real estate. Law n. 2021-401 of 8 April 2021 amended art. 706-160 of the Code of Criminal Procedure. As a result, AGRASC may now make real estate available (if necessary free of charge) to associations, foundations recognised as being of public utility, and bodies benefiting from the approval provided for in article L. 365-2 of the construction and housing code. The provision is in force since 10 April 2021. It is therefore premature to assess its implementation.

105. The Spanish model envisages both direct and indirect social reuse. In practice the second option is predominantly used, and for this reason Spain is herein classified in the related category.

106. AGRASC is a public administrative body under the Ministry of Justice and Ministry of Budget, established by Law 768 of 9 July 2010. It is vested with various tasks designed to improve seizure, management and confiscation; it also plays a key role in the disposal of confiscated assets, since it is tasked with the sale or destruction of all assets that AGRASC previously managed.

107. ANBSC was established by Law Decree 4 of 4 February 2010. It is tasked with, amongst other things, the management and disposal of assets confiscated from organised crime.

In **Scotland**, recovered criminal assets are invested in the CashBack for Communities programme, i.e., in community programmes, facilities and activities largely for young people at risk of turning to crime/anti-social behaviour.

In **Spain**, the disposal of proceeds from drug trafficking is regulated by law no. 17 of 29 May 2003. It established a fund nurtured by the assets confiscated in drug cases, as well as in drug contraband, and to be used to a) finance programmes for drug addiction prevention, assistance to drug addicts and their rehabilitation; 2) promote and improve measures to prevent, investigate, prosecute, and repress drug related crimes; 3) promote international cooperation on such matters.

The *Delegación del Gobierno para el Plan Nacional sobre Drogas* (DGPNSD) is in charge of this mechanism. Unless the assets must be abandoned or are definitively assigned to the law enforcement agencies authorised by the court to temporarily use them pending legal proceedings, two key options are foreseen: (i) sale, with the profits from the sale being transferred to the fund (indirect social reuse); or (ii) assignment for free to potential beneficiaries (direct social reuse), upon their request. In practice, most assets are sold.¹⁰⁸

Social reuse is an option that is also spreading -either as a legislative option or as test-cases (see case studies in par. 7.2)- in countries beyond the EU, such as Albania and Serbia.

Finally, how relevant is social reuse in connection with the management of seized (therefore not finally confiscated yet) assets? As already discussed in 4.2.4.2, the answer is that currently the great majority of social reuse mechanisms apply only after the final confiscation order, especially in relation to real estate (movable assets such as cars can still be used while under seizure, while the few countries managing seized companies appoint judicial administrators from the very beginning). The result is that properties, in the meanwhile, deteriorate and depreciate pending judicial proceedings. The management of seized real estate, as seen, is possible in a very limited number of countries (Italy and France).

Case-studies

The paragraphs below discuss real-life case studies of social reuse. The focus is here on:

- ▶ **cases of direct social reuse:** this is because of the two social reuse models (direct and indirect), the direct one is potentially the most powerful (what stems from crime - exactly that asset - is placed at the service of the community), still it is the model that raises more challenges (technical, organisational, economic and ethical ones), since it requires commitment and resources to choose amongst different community needs and to transform assets according to these needs. It is therefore an area where countries can benefit from real examples from countries with some experience on the matter. Indirect social

108. For more information on the activities of the Fondo de bienes decomisados por tráfico de drogas y otros delitos relacionados, see Mesa de Coordinación de Adjudicaciones, Delegación del Gobierno para el Plan Nacional sobre Drogas, Informe sobre la Actividad del Fondo de Bienes Decomisados por Tráfico Ilícito de Drogas y otros Delitos Relacionados available at pnsd.sanidad.gob.es.

reuse is on the other hand a more straightforward mechanism, characterised by flexibility and simplicity of use (confiscated assets are, still, sold and the money from the sale is used for social purposes);

- ▶ **cases of direct reuse of real estate, companies, and complex assets**, since these are the assets posing the biggest challenges and where most countries have very limited or no experience.

The cases below come from a few EU countries with a long-established tradition of direct social reuse (mainly Italy and Spain, where this disposal option has been known since 1990), but also from an acceding country that has only recently started testing direct social reuse, namely Albania. The cases are a mix of successes and failures:

- ▶ **Ostia Harbour, Italy:**¹⁰⁹ following extensive financial investigations in 2015 and 2016, the Ostia harbour (Porto Turistico di Roma, 200 000 square metres) was seized by the Rome Tribunal from an entrepreneur (Mauro Balini) charged with mafia-type offences. Seizure was worth 500 million euros and affected a variety of assets: 19 companies, real estate (over 500 assets), almost 30 lands, boats/vehicles, bank accounts. It was clearly a complex asset, bringing together commercial activities (e.g., restaurant), offices, apartments, beach clubs, berths, exhibition areas, parking lots. Right after seizure, the Tribunal appointed judicial administrators who faced many challenges: the harbour management was ruinous from the economic viewpoint since it responded to criminal interests rather than market dynamics (e.g. some harbour services were excessively costly, such as waste disposal); the harbour area was perceived as dangerous and was a hot spot for illicit activities; urban planning regulations had been violated and necessary authorisations were lacking; buildings were in bad conditions and urgent maintenance was needed. The judicial administrators fixed these issues first by managing the harbour based on economic efficiency criteria (e.g., eviction of defaulting tenants; legal actions for credit recovery; agreement with the municipal waste agency to reduce rubbish collection costs). To keep criminals away from the area a video surveillance and security system was installed, with the collaboration of police forces (Carabinieri, Coastal Guard, Finance Guard, Police); also, a police station was opened inside the harbour area. They then carried out marketing and communication activities aimed at reputation recovery, in order to let people know that the area was now safe and enjoyable. The harbour also hosted important sport events. After the first-degree confiscation in 2019, in August 2021 almost all assets have been finally confiscated and are now the property of the Italian State;
- ▶ **KinFolk Coffee Library, Albania:** Albania is trialling social reuse of real estate. In the context of the EU project CAUSE – “Use of Confiscated Property for Social Experiments” three properties under the administration of the Agency for the Administration of Sequestered and Confiscated Properties (AAPSK) were identified and by order of the Minister of Finance made available to the project to be used free of charge by non-profit organisations for a five-year period. One of these properties was a bar with an area of 174 square meters

109. See *Ostia: confiscati beni per 460 milioni di euro all'ex patron del porto turistico*, *Quotidiano Nazionale Roma*, 5 August 2021 available at [quotidiano.net](https://www.quotidiano.net).

in Durrës, that was assigned to the Albanian Educational Foundation with the project KinFolk Coffee Library. The property was transformed into a friendly environment for young people, especially those at risk of juvenile delinquency;

- ▶ **Social Garage for Handicrafts, Albania:** another property selected within the EU project CAUSE was a tiny garage (just 48.1 square meters) in Saranda, which was assigned to the Institute of Development, Migration, and Integration with the project Stone Handicrafts. The garage was turned into a workshop, where women and girls (victims or at risk from organized crime/domestic violence) produce handicrafts;
- ▶ **Pazo Baión, Spain:**¹¹⁰ a confiscation order was pronounced in 2006 and included the *pazo*¹¹¹ and other buildings as well as a couple of wine-producing companies. To prevent the former owners from buying the property back, the Award Board set strict requirements for companies interested to submit a bid, such as: at least four years in vineyard activities; an average annual turnover not lower than €5 million; agreement to respect all workers' rights; to continue the vineyard activities for at least 15 years; to employ over a 15 year period workers who suffered drug addiction; and to give back at least five per cent of the profits for the first 15 years to programmes on drug addiction prevention. One Galician company presented the best offer and the whole property was sold for €15 million in July 2008. Since then, the company has met all of its obligations;
- ▶ **Villa belonging to the Cosa Nostra boss Totò Riina, Italy:** the villa belonging to Totò Riina in the city centre of Palermo was confiscated in 2007. In 2015 it was converted into a police station, and was dedicated to two police officers killed by mafia;
- ▶ **Villa Schiavone, Italy:** the property, located in Casal Di Principe (Caserta), was confiscated from Walter Schiavone, brother of the boss Francesco Schiavone in 1999. The villa (813 square meters in three levels) was built on 3 400 square meters and had an outdoor pool. The building was inspired by the 'Scarface' movie starring actor Al Pacino. In the aftermath of the final confiscation order and before the transfer of the asset to the Municipality of Casal di Principe for its social reuse, the property was severely damaged by the combustion of tires. Restoring the villa and turning it into a Sports Rehabilitation Center for people with disabilities took time and resources: a loan was granted by the Campania Region (almost 4 million euros). The completion of renovation works was delayed multiple times by technical and organisational delays (variations to renovation plan, replacement of supervising officer and safety coordinator, testing activities). The Center started its activities in 2019;¹¹²
- ▶ **Hotel Smart, Italy:** the hotel was confiscated in Rimini in 2010 and transferred to the municipality in 2017. Since then, there have been different

110. For more information on this case, see: E. Lois, *El pazo del narco se convierte en hotel de lujo*, El País, 2 January 2011 available at elpais.es; and I. Calle, *Los millones de los 'narcos' se pudren en un almacén* El Mundo, 27 September 2014 available at elmundo.es.

111. A traditional cognate of stately palace from the region of Galicia in Northern Spain.

112. See agrorinasce.org.

reuse ideas/proposals, but nothing has been done also due to the significant economic resources needed; abandonment resulted in pigeon infestation;¹¹³

- ▶ **Sailboat Laion, Spain:** sailboat Laion was socially reused in the context of the Project Gavea (Galicia Vela Adaptada), that was launched in 2002 after the sailboat was confiscated in connection with drug trafficking activities and assigned to the Association for the Disabled People of Bisbarra de Muros (ADISBISMUR), member of the Galician Confederation of People with Disabilities (COGAMI). The 13-meter length, which had been modified by the criminals for use in drug trafficking activities, has been adapted to meet the needs of people with disabilities. So far, more than 4 000 people have benefited from this Project.¹¹⁴

Challenges and best practices¹¹⁵

Social reuse, as any disposal option, is not immune from shortcomings, which are as follows:

1. **problems related to the legal framework:** some EU Member States experience a lack of interest in assets available for social reuse by potential beneficiaries: so, in Belgium most of the social housing providers are not interested in the social management scheme, as it allows for temporary management and sub-renting. In Italy some articles of the Anti-mafia Code discourage potential beneficiaries from applying for the assets (e.g., art. 46, which - should the assets be given back to their owner - requires beneficiaries to pay back a sum of money equivalent to their value);
2. **asset-related problems:** confiscated assets are frequently in bad conditions (also due to vandalism), as discussed also in some of the case-studies, or subject to third-party claims (e.g., properties confiscated pro quota; mortgages) or to parallel proceedings; obstacles due to technical and logistical features of the assets (e.g., difficult access to an estate, unsafe buildings, environmental risks, high renovation costs) are also frequent;
3. **problems related to implementing institutions and procedures:** this includes shortage of human resources in centralised bodies dealing with asset utilisation, such as ANBSC and AGRASC. There can also be problems where procedures are overly complex, costly, and not always transparent. Related to this are problems associated with the lengthy duration of the social reuse procedure: in Hungary a clear timetable is set. However, in practice this timetable is respected only when

113. See *I piccioni occupano l'albergo confiscato. Gabbie e bonifica per cacciare i volatili*, Il Resto del Carlino, 3 December 2021 available at ilrestodelcarlino.it.

114. For more information see *El Laion, de Cogami, que ahora asienta su base en Muxía, salió de nuevo al mar*, La Voz de Galicia, 9 September 2021 available at lavozdegalicia.es; and Concello de Ferrol, *Gavea, Galicia vela adaptada* 2015, available at ferrol.es.

115. For an extensive discussion of problems and best practices in social reuse see B. Vettori, *The disposal of confiscated assets in the EU Member States: what works, what does not work and what is promising*, in C. King, C. Walker and J. Gurulé (edited by), *The Palgrave handbook of criminal and terrorism financing law*, volume 1, Palgrave Macmillan, Basingstoke, 2018, pp. 705-733.

dealing with original products (two percent of all cases), while with counterfeited goods (the remaining 98 percent) it is hard to keep these deadlines;

4. **beneficiary-related problems:** such as a lack of economic and technical capacity to draft and implement reuse projects on the side of beneficiaries;
5. **problems in terms of public information and policy evaluation:** often notable is a lack of any systematic publicity about the social reuse scheme. Also, there is a lack of any systematic policy evaluation of the outcomes of the social management regime: apart from some evaluation of the direct results of the individual social reuse projects, the overall outputs and outcomes of the social reuse scheme are not systematically assessed.

Looking at existing best practices, these are as follows:

1. **preventing assets' deterioration (social reuse of seized assets).** This includes provisionally assigning seized assets to prevent deterioration and to promptly respond to social needs. In Italy, the Rome Tribunal provisionally assigns to social reuse seized/provisionally confiscated assets, based on a temporary loan for use agreement. This practice has been developed based on regulations making it possible to assign seized movable assets (e.g., cars) to the police and other public bodies. The Rome Tribunal extended this practice beyond moveable goods to also include real estate. This is in order to immediately use the assets that will eventually be given back (not vandalised or depreciated, etc.) to the defendant at the end of the proceeding;
2. **giving value to hard-to-sell assets (for direct reuse only):** direct social reuse can oftentimes be the only feasible option to dispose of hard to sell property due to asset's inherent problems or because of market conditions: let's think of the pro quota confiscation of a tiny unit (e.g., the garage confiscated in the Albanian case), as well as of properties in unattractive/dangerous areas;
3. **empowering beneficiaries and institutions:** social reuse (especially the direct one) requires skills, commitment, resources, as some of the case studies made clear. So, in Scotland, through the CashBack for Communities programme, individual partner organisations are provided with assistance on project accountability, output outcomes monitoring and reporting, evaluation, and capacity to deliver. Empowerment can also take the form of setting up a mechanism linking institutions and acknowledged charity organisations. For example, the strong point of the Hungarian system is the link, via the Charity Council, between government and renown charity organisations. This strengthens the credibility of the model and ensures cooperation from local partners (which provide for better needs assessment and more effective distribution of the goods) and brand owners (that are increasingly consenting to the distribution of counterfeited goods carrying their trademarks without their prior removal).

Empowerment can also include the provision of external funding to support social reuse. This is especially relevant for direct social reuse mechanisms, since the recipients of the assets (in most cases, local entities or non-profit organisations) often lack the necessary resources and may get to see the assets more as a burden than as an opportunity. In Hungary charity organisations must bear

all costs related to the utilisation of the goods. However, the Ministry of Human Resources provides financial support through grants amounting to one third of all costs. The other two thirds are covered through the organisations' own resources, fundraising, volunteer work, grants, or in-kind contributions from local government. In Italy, funding can be provided by public entities at the local or national level, also thanks to EU funding (e.g., PON Programme);

4. **preventing criminals from buying the assets back**, via e.g., disposal monitoring (in Italy the act that assigned the assets is revoked if it merges that these have been re-acquired by the criminal) or, for companies, via a strict list of pre-requisites that applicants must meet (see the Pazo Baión case discussed above);
5. **public information and policy evaluation**. This can include setting up mechanisms for the evaluation of the social reuse scheme: in Scotland all individual CashBack projects, and the overall programme, are subject to self and independent evaluation for the impact and diverse range of outcomes that are being delivered. All evaluation reports are available online.¹¹⁶

116. An independent external evaluation of the programme was published in September 2017 and, more recently, in October 2020. See *Research Scotland, Impact Evaluation of the Cashback for Communities Programme*, Phase Four, Final Report Glasgow, October 2020 available at cashbackforcommunities.org.

Environmentally friendly asset management

A sset management, of any type, has an environmental impact. So far, the topic has not been specifically addressed in relation to seized and confiscated assets. This section aims to discuss environmental risks that may arise from different typologies of seized assets and to highlight key principles for an environmentally friendly asset management.

Seized assets and environmental risks

Distinct types of assets are associated with different environmental risks.

Let's start with **cars/vehicles**. They represent the Achilles' heel of most confiscation systems in the EU and beyond,¹¹⁷ since, on the one hand, in most cases cars represent numerically the largest share of seized assets, and, on the other hand, in most countries their management is basic, since they are left gathering dust in warehouses or are parked outside. This does not only result in deterioration and depreciation, but also in environmental risks, since they can leak chemicals and scatter polluting materials such as plastic/broken glass/metals.

Other typologies of movable assets, such as consumables, household appliances, consumer electronics, apparel, may pose serious environmental challenges if not properly managed, also considering that their number may be very large. So, **consumables** may come in plastic packaging; **household appliances**, if not properly recycled, are highly polluting goods. One of the major components of **consumer electronics** is batteries, which can significantly contribute to air, soil and water pollution because of the toxic chemicals used to make them (cadmium, lead, zinc, manganese, nickel, silver, mercury, lithium, acids). Also **apparel** may contain toxic chemicals, such as those used to create stain repellence and anti-wrinkle clothing; as it was noted, "the fashion industry has paid less attention to investment in more eco-friendly chemicals, even as it spends heavily on creating new materials".¹¹⁸ Large quantities of apparel is frequently seized in connection with counterfeiting; it has been acknowledged that "the storage and environmentally-sound disposal of expanding quantities of confiscated IP-infringing goods represent major logistical challenges for national authorities. [...] There is increasing recognition of the need

117. See for example, C. Eade, *The luxury lot where the cars are left to rot: Bankrupt Greece's warehouses full of vehicles that can't be sold because of red tape*, Mail Online, 11 September 2012 available at dailymail.co.uk.

118. See R. Cernansky, *It's time for fashion to remove toxic chemicals from clothing*, Vogue Business, 31 May 2019 available at voguebusiness.com.

to dispose of these goods in a safe and environmentally sensitive way. This can be a costly and technically complex undertaking. Minimizing the environmental impact of disposal requires specialised facilities, expertise, and high levels of stakeholder collaboration".¹¹⁹

A recent analysis of the Russian context illustrates some of these problems: especially in relation to perishable and bulky goods, every year there are thousands of violations of the "procedure for storing and handling seized valuables, items and documents. Violations related to improper handling of large-sized and perishable goods seized in criminal cases, non-compliance with fire safety requirements of premises, lack of necessary technical storage conditions are established; [...] illegal destruction and sale of material evidence seized in criminal cases",¹²⁰ mainly due to the lack of clear protocols/procedures.

Seized **dangerous items such as drugs and firearms** can also raise environmental concerns if they are not properly managed and disposed of (normally destroyed) when no longer needed as evidence.

The same applies to **real estate**. Seized and confiscated real estate is frequently vandalised/damaged by the owner/s, and this can cause pollution. An example comes from the already mentioned case of Villa Schiavone, Casal Di Principe (Caserta) that was emptied and set on fire by combustion of large quantities of tires. Tire fires produce toxic chemicals from the breakdown of synthetic rubber compounds while burning. Something similar has recently happened in Siderno (in Calabria, Southern Italy), where Paradise beach club, confiscated from organised crime, was set on fire twice, in 2020 and then in September 2021, when the club was about to be assigned for social purposes to an association.¹²¹

Seized and confiscated real estate in many cases rises environmental concerns because it has been built in violation of construction regulations: in Italy a special term has been coined to label these buildings, *ecomostri* (ecological monsters).¹²²

Environment issues can also arise due to the lack of a proper management of buildings by competent authorities pending criminal proceedings. This is the case of Hotel Crystal in Acitrezza, that after the final confiscation order, in 2015 was transferred by ANBSC to the municipality of Acitrezza, which was planning to use it as a police station. In 2017, being the building not yet turned into a police station and

119. J. Soentgen, *Disposing of counterfeit goods: unseen challenges*, WIPO Magazine, November 2012 available at wipo.int.

120. K. V. Kamchatov, A. A. Timoshenko, E. Y. Kamchatova, O. V. Buzu, *Effective Management of Seized and Confiscated Assets as a Condition for Providing Victims with Access to Justice and Fairness of Procedures Used in Criminal Proceedings: International and Russian Experience*, Advances in Social Science, Education and Humanities Research, volume 531, p. 193.

121. See *Siderno, incendio nel lido confiscato alla 'ndrangheta: è la seconda volta in meno di un anno*, LaC News24, 14 September 2021 available at lacnews24.it.

122. In Italy most of these environmental violations concentrate in the South, in the regions most affected by mafia-type organisations. Demolition seems in these cases the only option to avoid further environmental harm; notwithstanding this, demolition orders in Italy are not always executed, due to third parties' claims and widespread corruption practices. According to the most recent data, only 1 out of 4 orders was executed in 2020 (4.474 out of 18.407). See *Legambiente, Mare monstrum 2021*, Rome, 2021 available at legambiente.it.

lacking any proper management, some leaking put the building at risk of collapse.¹²³ Management failure contributed to turning a nice sea view property in Castellamare del Golfo (the so called Papirolandia) into an *ecomostro*.

The property, which used to be a discotheque, was confiscated and transferred to the municipality in 2004, that assigned it to an association to turn it into a youth centre. The association ran activities for over 1500 youths from all over the world for some years. The structure was damaged by a cloudburst in 2011. It reopened in 2012 but in 2014 it closed again because of lack of economic resources, and in 2015 the assignment was revoked when it was found that the asset was no longer used as agreed and that some citizens abusively used it to dry tomatoes. In 2016 the property was re-assigned to two cooperatives to continue the intended activities in favour of young people, but as a matter of fact it still lies abandoned, vandalised, and deteriorated by floods, and huge economic resources would be required to restore it. Destruction currently seems the only likely option, also because of the hydrogeological risk affecting the area.¹²⁴ Older buildings (from before 1980) may contain asbestos (in insulation and tiles), lead (paint and piping), and other toxic building materials. Other environmental hazards come from leaking heating oil tanks, pipes, and appliances, as well as by chemicals stored in garages/sheds.

The same applies to seized **companies**: depending on the company activities, risks connected to the improper storage and disposal of chemicals, inks, dyes, and grease/oils may arise.

Lands can be polluted, and this may frequently be the case in relation to seized and confiscated assets in connection with criminals involved in illicit dumping activities. By means of an illustrative example: land confiscated from mafia type organisations in Sicily was filled with all sorts of polluting substances (including polyethylene, construction material from demolitions, tires, plastic), and only after its assignment to the municipality to promote its social reuse, action has been taken to clean it.¹²⁵

Key principles for an environmentally friendly management of seized assets

The paragraphs above show the variety of environmental risks associated with the management of seized assets and call for timely management choices/options capable of mitigating/avoiding these risks. These choices clearly depend on the typology of asset and on the specific circumstances, more in specifically:

- ▶ **cars/vehicles**: both economic efficiency and environmental protection require a quick sale of these assets while still under seizure (this is an option in the legislation of many countries already). Another environmentally friendly management option could be their assignment to institutional actors, which is

123. See *Acitrezza pericolo di crollo hotel confiscato alla mafia*, La Spia Press, 27 February 2017 available at laspiapress.com.

124. See E. Buttici, *Il degrado di Papirolandia, il bene confiscato alla mafia sedotto e abbandonato*, Alqamah, 18 November 2019 available at alqamah.it.

125. M. C. Ferrai, *Villafranca Tirrena (Me): bonificato terreno confiscato alla mafia*, Eco di Sicilia, 7 December 2016 available at ecodisicilia.com.

envisaged in Italy; according to art. 40, par. 5 bis of the Antimafia Code, seized movable assets (including registered ones) can be transferred by the Tribunal to State and local entities (e.g., police, fire-fighters) and used for institutional purposes. Alternatively, these assets could be left with the owner, and a sum of money equal to their value could be frozen instead, if possible;

- ▶ **other typologies of movable assets:** seized consumables should be rapidly donated to meal centres, or quickly sold if profitable (e.g., luxury food); household appliances could be either recycled, or if still usable made available to needy people via charities/dedicated associations, still when under seizure. The same applies to consumer electronics.

Apparel could be destroyed (e.g., when defective, dangerous, or hazardous) or recycled or, again, donated to people in need. Donating goods to social welfare bodies is a creative and environmentally friendly management option. For example, after consultation with the right holders, customs authorities in many countries (China, the Philippines, and the UK) supply charities with IP-infringing goods. In the UK these goods are transferred to the registered charity His Church, that de-brands and re-marks them with the charity's logo and then uses them for humanitarian purposes.¹²⁶ The same happens in Hungary.

Regarding the destruction of apparel and other movables assets, it is key that it is performed by certified destruction services. With reference to the environmental friendly destruction of counterfeited goods, an interesting experience comes from the Netherlands, where REACT (European anti-counterfeiting network), a non-profit right holders' organisation offers its members effective and sustainable destruction solutions, so as to "protect consumers and rights holders, ensuring that the infringing product does not find its way back into the channels of commerce; and by maximizing their recycling consistent with international environmental standards";¹²⁷

- ▶ with reference to seized **drugs**, their destruction by incineration by specialised companies can offer alternative ways to protect the environment by using the excess heat from incineration to create electricity, hot air and/or hot water for cleaning and other uses (the so-called Waste to Energy is a new way to produce energy from burning waste);
- ▶ **lands:** seized polluted lands require prompt 'cleaning up' intervention to take contamination to acceptable levels. This typically requires specialised services and the use of appropriate techniques/technologies;
- ▶ **companies:** management of seized companies should be inspired by environmentally friendly principles in all phases of the productive activities;
- ▶ **real estate:** when real estate has been built in violation of environmental regulations, in most cases demolition is the only environmentally friendly option (e.g., buildings in environmentally protected areas/sites). When real estate is affected by other, solvable, environmental issues, action should be promptly taken to overcome them and to clean up.

126. See E. J. Kirby, *His Church: Charity re-uses donated counterfeit clothes*, BBC News, 7 December 2011 available at bbc.com.

127. For more information see react.org.

In all cases proper maintenance shall start from the very beginning (seizure order), to ensure that the property does not cause environmental hazards. Specialisation is key also in this case: an example in this respect comes from Belgium, where an *ad hoc* office for the centralised management and sale of confiscated real estate has been set up, FINDOMMO. After the final confiscation order, the office in charge of asset disposal (Patrimonial Services) takes over the management of the confiscated real estate. Within the Patrimonial Services, FINDOMMO is charged with the mission to ensure a more efficient management of all real estate, which is the property of the Belgian State. This office prepares the property for sale, and when ready (no further occupation, cleaned, new locks, etc.) FINDOMMO gives a sale order to the competent real estate committee, specialised in the sale of real estate. This experience has limitations: FINDOMMO takes over the management of real estate only at a very late stage (after the final confiscation order), while it would have been advisable to use such a mechanism from the issue of the seizure order.

An asset management option that instead prompts immediate cleaning up and maintenance actions -thus reducing the likelihood of environmental issues- comes from Italy, where the social reuse of seized real estate is envisaged via the temporary loan for use agreements, as already discussed (see 4.2.4.2 above). So, for example, in 2015 a seized real estate provisionally assigned by the Rome Tribunal to the municipality of Olbia was transferred to charities (Caritas) to shelter victims of the floods in Sardinia.¹²⁸

Notwithstanding the peculiarities of each seized asset, some key principles for an environmentally friendly management of seized assets can be tentatively drawn:

- ▶ **in depth understanding of existing and potential environment risks associated with seized assets**, through 1) evaluation of existing environmental issues at the time of seizure, while screening and evaluating assets; 2) a thorough evaluation of potential environmental issues that could emerge after seizure, also in connection with actions taken or not taken by entities in charge of asset management; 3) incorporation of existing and potential environmental issues into the business plan, so as to lay down management strategies mitigating/eliminating environmental hazards;
- ▶ **working hand in hand with (internal or external) certified operators**, both to assess environmental hazard and to address them properly;
- ▶ **promoting timely management interventions**: environment hazards arise or worsen as time goes by;
- ▶ **promoting (social) reuse anytime this is possible**, since it does not only send a powerful message that crime does not pay, but also protects the environment avoiding an unnecessary waste of resources. Also, social reuse projects can address environmental needs: so, for example, a land of 19 800 square meters confiscated from Michele Zagaria, boss of the Casalesi faction of the Neapolitan Camorra, was turned into a recycling centre using funds from the

128. See *Mafia capitale, le case sequestrate a Olbia vanno agli alluvionati: accordo ok*, Sardinia Post, 13 March 2015 available at sardiniapost.it.

Ministry of Environment;¹²⁹ a land of 4 hectares confiscated from boss Francesco Schiavone was turned into a biogas plant in 2016,¹³⁰ while another one was part of a reforestation project;¹³¹

- ▶ **benefiting from technology:** technology can not only provide tools to reduce/mitigate pollution in seized assets/sites, but it can also provide tools (e.g., the databases mentioned under subpar. 5.2.3) that help track the asset life cycle and orient real-time environmentally friendly options. Digitalisation of documents/evidence in the asset management area can promote a better environment too.

129. See *Isola Econologica – Comune di Casapesenna* at agrorinasce.org.

130. See *Impianto di Biogas per il trattamento dei reflui zootecnici S. Maria La Fossa (CE)* at agrorinasce.org.

131. See *Rimboscimento area in prossimità del fiume Volturno* at agrorinasce.org.

Conclusions and checklist for sound asset management

Depriving criminals from the proceeds of their illicit activities, starting with the seizure of such assets, should be a crucial objective in criminal proceedings.

At the same time, these seized, and provisionally confiscated assets can put a huge strain and burden on those charged with their administration. They require constant tracking and prompt interventions, managerial skills, and specialised expertise, and this is not normally an integral part of the criminal justice systems. On the other hand, when a country is properly equipped, these assets can provide an incredible opportunity of economic, social, and cultural development.

There is no universal approach when it comes to asset management; different options and institutional building arrangements are possible, depending on the needs and institutional peculiarities of each nation.

Still, there are some guidelines that can support and inspire countries in developing their own asset management approach from scratch, or in improving what they are already doing. They stem from the gold standards - set by practice and EU/international standards- discussed in these guidelines.

These guidelines are as follows:

1. to make the **necessary institutional arrangements** to ensure that seized assets do not lose value, and to especially consider the establishment of a dedicated Asset Management Office (AMO) if the high volume of seized assets and/or the specialised skills requested suggest so;
2. to promote **transparency and accountability in the activities of the AMO/other entities** in charge of asset management, also by means of external audit mechanisms;
3. to ensure that the AMO or the other entities in charge of asset management are tasked with the sufficient human and material **resources** to handle all aspects of asset management;
4. with special reference to material resources, to consider the establishment of **dedicated databases** to register and track seized assets throughout the procedure (with special attention to their exact location, conditions, and economic value), to support daily management also with automatic alerts, to evaluate the costs and benefits associated with asset management and to promote a transparent and accountable asset management system;

5. to ensure that the AMO/other entities in charge of asset management regularly take part, together with other relevant actors (prosecutors, law enforcement agencies), in **pre-seizure planning**, to make decisions about the assets at an early stage;
6. to set up a system for the **evaluation** of the value of any type of assets (except for items with little/no value), and ensure that the value of each seized asset is assessed at the time of seizure and then re-assessed periodically;
7. to ensure that the AMO or the other competent entities have legal powers and expertise (in house or via external experts), to manage **any type of asset**, including complex/exceptional ones (such as companies, real estate, high value assets such as airplanes and luxury cars, valuable paintings, and manuscripts);
8. to ensure that the AMO or other competent entities are attentive to **new/emerging asset typologies** (e.g., nowadays, virtual currencies and digital art pieces) and can develop solutions to effectively seize, store, manage and dispose of them;
9. to ensure that the AMO or the other competent entities can set up **partnerships** with relevant experts/professionals and private companies (e.g., transport companies/auctioneers/expert managers of specific categories of seized assets/waste management services), when a given in-house expertise is not available;
10. to ensure that the AMO or the other competent entities can **exchange information** with a variety of national and foreign actors (e.g., AMOs established in other countries);
11. to ensure that the AMO or the other competent entities can count on a **variety of management options**, including the pre-judgment sale of perishable/too burdensome to maintain/rapidly depreciating assets; the destruction of property that is unsafe/hazardous or that is not suitable for sale (e.g., no commercial value); the interim use of assets; leaving the assets in the possession of the owner;
12. to ensure that all **interested third parties** are notified the seizure/confiscation orders and give them the opportunity to appeal/make their claims known, and to protect the rights of *bona fide* third parties;
13. to ensure that procedures for the **prompt return of seized/provisionally confiscated assets** are in place, anytime a seizure/provisional confiscation order is lifted;
14. to ensure that the AMO or the other competent entities **take responsibility for any damages** to be paid;
15. to ensure that the competent entities can count, after the final confiscation order, on a **variety of disposal options**, including sale, destruction, and reuse;
16. to explore the introduction of measures allowing the **use of confiscated assets for institutional or social purposes**;
17. to promote **direct social reuse mechanisms** that “incorporate” the lessons learned by other countries, such as: the prevention of assets’ deterioration (by reusing assets still under seizure); the use of this option for hard-to-sell assets; the empowerment of beneficiaries by boosting their economic and technical capacity to draft and implement reuse projects; transparent rules for determining beneficiaries;

18. to ensure **transparency and accountability when disposing of assets**, especially for institutional and social purposes;
19. to develop an **environmentally friendly management and disposal of seized assets**, by understanding existing and potential environment risks associated with these assets, working hand in hand with certified operators, promoting timely management interventions and (social) reuse anytime this is possible, and exploiting the benefits offered by technology.

These guidelines above have been incorporated in the checklist in Table 1, to help countries assess how their asset management system compares with these guidelines and to identify possible areas for improvement.

Table 1 – Checklist for a sound asset management system

Guidelines on asset management	Does your country envisage it?	
	YES	NO
1. institutional arrangements to ensure that seized assets do not lose value		
2. transparency and accountability in the activities of the AMO/other entities in charge of asset management		
3. AMO/other entities in charge of asset management tasked with sufficient resources		
4. dedicated databases for seized assets		
5. pre-seizure planning as a routine		
6. evaluation of the value of any type of assets (at the time of seizure and later)		
7. AMO/other competent entities can manage any type of asset		
8. AMO/other competent entities are attentive to new/emerging asset typologies		
9. AMO/other competent entities can set up partnerships with relevant experts/professionals and private companies		
10. AMO/ other competent entities can exchange information with national and foreign actors		
11. variety of management options		
12. protection of the rights of interested third parties		
13. prompt return of seized/provisionally confiscated assets		
14. AMO/other competent entities take responsibility for damages		
15. a variety of disposal options		
16. use of confiscated assets for institutional or social purposes		
17. direct social reuse mechanisms incorporating lessons learned by other countries		
18. transparency and accountability when disposing of assets		
19. environmentally friendly management and disposal of seized assets		

Annex I – Bibliography

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European Commission, *Communication from the Commission to the European Parliament and the Council. The EU Internal Security Strategy in Action: Five steps towards a more secure Europe*, COM (2010) 673 final, Brussels, 22 November 2010.

European Parliament and Council of the European Union, *Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union*, OJ L 127, 29 April 2014 available at eur-lex.europa.eu.

This publication offers comprehensive guidelines related to the management of seized assets. It includes an overview of the practical considerations, management options and applicable safeguards from pre-seizure to disposal and destruction. Challenges and good practices regarding the institutional arrangements are noted. Environmental risks posed by seized assets are also discussed, as well as the possible social use of those assets. The different management possibilities presented are illustrated with case-studies. This publication aims at supporting and inspiring jurisdictions in developing or improving their own asset management approach in view of best practices and considering all options.

The Economic Crime and Cooperation Division (ECCD) at the Directorate General of Human Rights and Rule of Law of the Council of Europe is responsible for designing and implementing technical assistance and co-operation programmes aimed at facilitating and supporting anti-corruption, good governance and anti-money laundering reforms in the Council of Europe member states, as well as in some non-member states.

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