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The National Agency for the Management of Seized Assets (ANABI) in partnership with Expert Forum in Romania hosted an online public discussion on the topic of “Effective asset recovery of the proceeds of crime through measures to consolidate and develop the National Agency for the Management of Seized Assets” on the 23rd of February 2021. The discussions were intended at feeding into the Romanian policy process with the overall goal of improving performance in asset recovery.

Asset recovery in Romania

Progress and remaining challenges

1. Background and challenges

The recovery of ill-gotten gains from criminal networks is an essential part of a deterrent policy against serious crime. While efficiency in this field remains a challenge throughout the European Union, efforts are being made both at national level and at European level to put in place more robust mechanisms and processes in this field.

In a report¹ to the European Parliament dating June 2020 the European Commission quotes two EUROPOL estimations²:

„only about 2% of criminal proceeds are frozen and 1% confiscated in the EU” and „between 0.7 – 1.28% of annual EU GDP is involved in suspect financial activity”. The report of the European Commission discusses the progress in the transposition of the Directive 2014/42/EU regarding minimum rules for the freezing, management and confiscation of criminal assets and explores ways to improve performance in the asset recovery field.

The Directive 2014/42/EU has introduced non-conviction based confiscation in particular cases, extended confiscation and third party confiscation, improved procedures for

¹ https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/european-agenda-security/20200602_com-2020-217-commission-report_en.pdf

² Europol, From suspicion to action – Converting financial intelligence into greater operational impact,

2017, available at: <https://www.europol.europa.eu/publications-documents/suspicion-to-action-converting-financial-intelligence-greater-operational-impact>

freezing and confiscation orders, mechanisms to trace and detect property after a final conviction is issued in order to make confiscation orders efficient, provisions regarding the management of frozen and confiscated property, as well as requirements regarding data collection regarding freezing and confiscation procedures in a comprehensive manner. In Romania the transposition of this directive dragged behind for years³, and only in November 2020 Law no. 228 was passed in the Parliament in this regard. Though the Romanian legislation already partly included provisions regarding some of the aspects covered by the Directive – e.g. extended confiscation – the implementation of this new tools remains scarce.

The European Commission also listed a set of issues that remain relevant for Asset Recovery Offices:

- *the need to provide the Asset Recovery Offices with swift access to a minimum set of data;*
- *the need to exchange information via SIENA to enable the swift and secure communication of crime-related information;*
- *the need to enhance the Asset Recovery Offices' powers (for example, urgent freezing powers and the ability to trace assets following a final criminal conviction);*
- *the need to set fixed and strict time limits within which an Asset Recovery Office must respond to a request by a counterpart.*

Since its creation, ANABI has set the basis of a comprehensive statistical

system for collecting information regarding freezing, seizure and confiscation. It is due to this newly developed tool that now we know better where Romania stands in the process of recovering criminal assets and we are able to draw conclusions about the effectiveness of various mechanisms. According to ANABI's report for 2019⁴, while in 2016 only 25 courts have communicated 299 decisions, just one year later, in 2017 96% of the courts have sent to the Agency information regarding decisions in which measures were taken with a view to recuperate damage or to confiscate assets, including through extended confiscation. In 2018 ANABI received 11.705 court decisions from 179 Romanian courts. The statistics show that extended confiscation usage remains modest – only 14 decisions in 2017 (out of 6.863), 20 in 2018 (out of 11.705) and 30 in 2019 (out of 13.294). Between 2016 and 2019 only 4008 final confiscation court decisions were adopted by courts, including extended confiscation, with the largest number reached in 2019 – 1459. Out of 1409 final court decisions in 2019 only 231 regarded money only and in an additional number of 51 confiscation regarded money and other assets. All seizures regarding money are at present kept track of by ANABI. In the rest of the final court decisions the confiscation order regards various types of assets which brings into question the issue of assets management.

Assets management during the criminal proceedings is seen as a sensitive spot at European level. In Romania, legal provisions for early sale of assets during the criminal trial exist, but their application in practice is modest and mostly dependent on the

³ The EU report lists Romania among the countries under infringement procedures in June 2020.

² <https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/policies/european-agenda->

[security/20200602_com-2020-217-commission-report_en.pdf](https://anabi.just.ro/docs/pagini/38/Raport%20anua)

⁴ <https://anabi.just.ro/docs/pagini/38/Raport%20anua/l%202019.pdf>

agreement of the suspect. Movable assets can be sold without the agreement of the suspect before the issuance of the final decision only if after one year since the seizure their value decreases with at least 40%. Livestock, flammable and oil products and assets for which the administration costs are far higher than their value are exceptions from this rule. Also, when the suspect is not identified and the above-mentioned circumstances are not applicable, vehicles can be the object of early sale if they were used in the perpetration of the crime or if more than one year passed since the seizure was made. Early sale of assets is considered a good practice at EU level. According to the Director of ANABI, in 2020 assets that have undergone early sale proceedings were sold at approximately 90% of their market value.

ANABI manages assets that value more than 15.000 euro upon the request of the prosecutor or of the judge. It is common notice that unless professionally managed, seized assets tend to deteriorate rapidly – in addition with the normal deterioration with the passage of time. Proper storage facilities where the seized assets can be kept are essential. Improper spaces or facilities for the usage of which high fees would be incurred by ANABI undermine the effectiveness of the recovery process. At legislative level there is a need to review the current legal provisions with regard to the early sale of seized assets to ensure that a balance is stricken between the need to protect property rights and the need to ensure that crime does not pay. Moreover, there is already jurisprudence⁵ regarding the personal liability of police officers that have enforced a seizure order regarding a vehicle for the loss of value of the asset

during the criminal procedure that ended with the acquittal of the suspect (the asset was under seizure for 3 years).

Another challenge regards the early tracing and identification of seized assets. For an effective confiscation it is instrumental that the assets against which the order is taken are identified, seized and managed early on in the investigation. While the Romanian High Court of Cassation and Justice in the Interpretative Decision no. 19/2017 recognises the possibility for applying seizure orders without indicating exactly the assets upon which the decision is taken, in terms of the efficiency of the measure a timely identification of the assets impacted by the measure would greatly contribute to ensuring a deterrent effect of the measure. Missing that, the administrative bodies involved in the enforcement of the final court decisions would have to start tracing assets after a final conviction decision is reached against the suspect. By that time the likelihood of assets disappearing is very high. International cooperation tools in this field are effective if used timely.

In terms of management of the seized assets there is a clear need to incorporate in the process provisions that are not specific to the criminal law field. For seizure orders to be opposable to others they need to be properly and timely registered in the appropriate registries – the land registry of the electronic archive for movable property. In the Interpretative Decision no. 1/2020 the Romanian High Court of Cassation and Justice has stated that the seizure applied in relations to assets of legal persons that undergo insolvency procedures will not block the insolvency procedure, will not take out of the proceeding the asset in

⁵ <https://www.ziardecluj.ro/trei-angajati-bcco-cluj-buni-de-plata-pentru-reparatiile-unui-mercedes-aflat-sub-sechestru-timp-de-trei-ani-sentinta>

question and will not block the liquidation process performed by a judiciary appointed liquidator.

2. Summary of key findings from speakers

2.1. Mr. Stelian Ion, Romanian Minister of Justice

Asset recovery is a priority the Government and enjoys strong support from the Minister. The legislative amendments adopted in November 2020 – under the pressure of the infringement procedure - improved the mechanism of extended confiscation. We now have a better tool for extended confiscation and it should be used in practice at its full potential.

There is a need for a common effort in this area: all institutions involved – the ministry of justice, prosecutor's offices, courts, the ministry of finance, the tax administration - must sit at the same table and work together. Without this, asset recovery cannot be efficient.

The activity of recovering the proceeds of crime must be prioritized in the investigation, the judicial bodies should have full understanding of all the legal instruments at their disposal and of all available procedures for judicial cooperation. These are matters of finesse, but they must be known and effectively applied. Reluctance must be overcome.

It is very important to say that there have been other setbacks in recent years. The initial intention was that resources resulted from asset recovery are used in order to protect victims, to streamline activities in the area of prevention and education. Without this process of using the money to support the areas affected, we cannot expect crime to decrease. I am totally in favour of a change in the legislation,

in the sense of social reuse of money resulted from asset recovery - victim protection, education, prevention.

At the end of the intervention, I would like to list to some key calendar moments in connection to our commitments. I propose that by June 2021 we come up with **a new integrated strategy to recover the proceeds of crime**. We must also remember that August 2021 is the deadline for **transposing the legislative directive on financial information** and it is very important that people working in the area of recovery of damages have access to this information directly without making requests over requests and wait a very long time. It is an issue that we have addressed since the first days of the mandate and also, in October 2021, we intend to come up with a legislative package for strengthening the activity of the ANABI.

2.2. Ms. Floriana Sipala, Chief of unit, European Commission, DG Migration and Home Affairs

We all know how powerful and how dangerous organized crime is, how sophisticated, how evolving. Moreover, we all know that it is necessary to take away the profit because these powerful organizations of organized crime are profit-driven. We have to take away the oxygen from them and also possibly use the funds recovered for the communities which need these funds for investments.

What are our plans?

First of all, in April, the European Commission (EC) will adopt **a Strategy/a Communication addressed to Member State**, to the Council and to the European Parliament with a comprehensive **Strategy**

against organized crime. This Strategy will address issues such as: how to improve and enhance law enforcement's cooperation, how to target the high value targets, the big organizations that are present in more than one member state, how to address the financial investigation, the asset recovery and the confiscation. These will be three of the main trends of the Communication but it will also include concrete proposals both in terms of legislative actions, more operational initiatives or more interaction at international level. This is the strategic text that we are working under the steer of commissioner Ylva Johansson, who would like to present this in spring accompanied by a **Strategy on Trafficking of Human beings.**

At the same time, we know that we have to work on a new legislative proposal **to revise the Confiscation Directive.** This is in the EC work-plan and we intend to do our utmost to stick to the Commission Work plan and to be able to come with this proposal by the end of this year. This doesn't concern only the Confiscation Directive because we intend to address all the stages of confiscation and asset recovery process - the tracing, the management etc. All the steps can be improved to achieve a better rate of confiscation in the EU.

This is why, at the same time (by the end of the year), we would like to come with **a legislative initiative on how we can reinforce the AROs** which exist in all member states. When I say to reinforce, I mean: which kind of powers the office has to dispose of to be able to work even better, which kind of powers and competences they should have to cooperate better at international level. This is for the member states, but this initiative will send a strong message about the importance to have in place solid

offices and the opportunity to make use of European funds to contribute to a fully staffed, equipped and functional AROs. So, this is also in the pipeline. This is for the end of the year.

Soon, in weeks, we will be able to publish the **Inception Impact Assessment** which will be open to all stakeholders, we will publish it on the European Commission site where we will see the key ideas, initial ideas, behind this reform and we will also launch a public consultation with a document addressed to all stakeholders inviting to provide input, comments, ideas, suggestion, criticism, so we can have a better picture of what the member states, civil society, institutions expect from us.

Third point is a point that is very close to our heart which is **interconnection of Bank account registers.** Most of you know that recently, in 2019, the EU has adopted a new Directive on the use of financial information and that directive gives the legal basis for giving AROs direct access to centralized Bank account registers. This is something that exist in some MS, but not in all. The deadline for transposing this Directive is 1st of August 2021 and we look forward for the information from Romania about the transposition of this instrument. In parallel, we are working on a proposal to ensure the interconnection of the registers, so the authorities that will have access to these registers will also be able to access information which is not only in the national registers but also in the registry of another MS. Of course, with strong, solid and legal procedural safeguards. I am happy to say that these proposals should come before the summer in the package of AML, that the EC is also working.

Final remark: we also conducted a study which is being finalized and is

going to be published soon on how to improve AROs.

2.3. Mr. Frederic Pierson – EUROPOL

The importance of doing the financial investigation done early on cannot be emphasised enough. **Pre-seizure planning** is an important part of the investigation. Tracing the assets and the illicit financial flows gives the judiciary a clearer picture of the criminal investigation.

It is important to put together financial investigation and criminal investigation. In Romania ANABI can significantly help investigators to strengthen their cases. There are various stages where financial investigator can help and support:

- **Seizure pre-planning** is essential. There are assets which are complex to freeze and seize. For example – aircrafts. There are assets which are not worth to be seized. Sometimes also real estate can be put in this category.
- AROs usually answer fast and have experience in working across borders
- **Management of frozen assets** is challenging and important. It is key to decide on a management mechanism that limits the value loss for the seized assets. Specialized units would be best placed to deal with that. The capacity to sell the assets before a final conviction is reached is a modern tool that proved effective. Jurisdictions that do not have that tool are not modern. It is actually preferable also for the suspects because they prefer to get the equivalent value than an asset which has been damaged or lost value.
- Resources are key. The challenge of proper human resources is

pressing for all AROs. As the EU internal security is a priority so ARO should get the necessary resources.

- CARIN is a very good vehicle for international cooperation

2.4. Mr. Thomas Abernathy - US State Department, Marshall Office

The practice in the US is not to seize everything, however we try to seize valuable assets regardless of what those assets may be. The goal is to deprive the criminals of the ill-gotten gains and if there's victims in a case, we try to compensate them. For this process to be efficient there is a clear need to identify assets, to make sure the assets are viable, to seize only valuable assets and to sell them as quickly as possible to recuperate the money.

The importance of **pre-seizure planning** is key in each and every case. Without proper planning, the agency sets itself up for failure. Once the agency takes a property legally, the Government is the owner of that property and it will be held responsible for it. With proper pre-seizure planning, risk and losses can be avoided. Prior planning is paramount for successful forfeiture and confiscation/seizure.

Also, the asset recovery agency has to have **buy-in from the agencies** that are investigating the case. There needs to be buy in from the investigators to utilize the asset management agency in order to avoid taking assets which are not valuable. Sometimes we lose sight being in Government, that **you have to run this process like a business**. There is a lot of money involved in criminal activity. Crime is profitable and that is why people do it. Our job is to take those assets away and hopefully deter the next person

from committing this crime. We have to have the ability to look at the assets as a whole. The only way we can have this done properly is if the agencies all speak and talk to one another and come up with a plan. Without proper cooperation and early entry into the case to study these assets, this is not going to work.

Another lesson learnt in practice in the US is that agency must have the ability to have a fund that allows them to **hire contractors** that can go out and assist them on complex cases, to ensure those assets stay valuable and don't dissipate in value. It takes an investment from the Government in this direction. With proper pre-seizure planning the Government has the ability to almost pick what to seize.

Nonetheless, In the US we do take certain assets for specific law enforcement reasons, even though they might not be valuable. For example, let's say there's a drug house in a lower socio-economic area. That property is not worth any money but the Government feels that if that property was to be seized, redone and given back to the community as a community centre, for example, it's worth the investment. These properties will be transformed into something better for the community. It is a long process here in the US, but ultimately if it's for the best, we do it.

Lastly, the agency has to be staffed properly in order for them to do the job well. In the US, we have financial investigators sitting with our prosecutors across the country.

2.5. Mr. Cornel Călinescu - General Director, ANABI

I would also start by underlining the fact that when it comes to asset recovery, there is a need for an **integrated approach**. ANABI is an essential support for criminal investigation institutions and it is active throughout the entire criminal trial.

Although 2020 has been a difficult year, it has brought also brought opportunities for innovation for ANABI. For example, **early sale of assets**, with a rate of conversion of assets into money of over 90%. This is proof that when assets are identified in due time ANABI can proceed to capitalize them close to market value.

An element of novelty are the **international agreements**. The process does not end with a court decision in cases which also involve foreign jurisdictions. The decision issued in Romania must be recognized by a national court in the other jurisdiction. Once this happens, ANABI can negotiate agreements to share the proceeds of crime, applying the 50% rule, but we can raise that percentage if we have the necessary arguments. In order to get there, we must have final court decision, assets identified and confiscated, including in foreign jurisdictions.

I also must mention the fact that **ANABI is part of an international system**. This system is accessible to police officers, prosecutors and judges in over 70% of jurisdictions worldwide. ANABI can reach these jurisdictions in short timeframes of 8 hours to maximum 7 days. Information obtained with the help of ANABI from these jurisdictions in a criminal case could prove crucial.

At this moment, **ANABI has around 1 billion RON in its portfolio**,

composed of sums of money in the unique bank account, in the banking system and of the assets ANABI manages:

- 157.603.347 EURO – money seized in the banking system
- 34.436.145,92 EURO in the ANABI Unique Bank Account
- 2.067.923 EURO – value of assets managed by ANABI
- Over 500.000 guarantees registered on real estate

ANABI Challenges

First of all, ANABI needs to be involved from the early stages of the financial investigation, in order to be able to identify assets in foreign jurisdictions early on. Also, ANABI needs to have access to the bank account register which will become operational at EU level soon.

Secondly, ANABI needs to consolidate the instruments it already has at its disposal. For example, we are considering rethinking the special cases which allow for early sale of assets and propose a change in legislation. At this moment, ANABI has approximately 90 assets of around 3 million EUR in storage. The law provides that ANABI needs to keep the asset for one year and its value has to decrease with more than 40% in one year (about 1,2 million EUR loss) before ANABI can proceed to selling them. This is a considerable loss of value. We would like to introduce a legal provision to allow for early sale of real estate with the agreement of the suspect. There have been cases when suspects were in favour of early sale but the legal background was absent.

Interinstitutional cooperation also needs to be intensified with police, prosecutors and judges, but also with specialized institutions or external contractors who can help improve the asset recovery process.

Last but not least, we want to find a balanced and efficient formula by which the sums resulting from confiscation are directed primarily to the three priority areas: prevention, education and protection of victims.



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