



Prevention of and Fight against Crime 2009
With financial support from the Prevention of and Fight Against Crime Programme
European Commission - Directorate - General Justice, Freedom and Security

White Paper on Best Practices in Asset Recovery

CEART

PROJECT



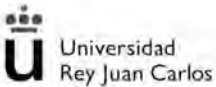
CEART PROJECT
(Centres of Excellence in Asset Recovery and Training)

White Paper on Best Practices in Asset Recovery



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Central Unit against Economic and Tax Crimes

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Catalogue of General State Administration Publications:

<http://publicacionesoficiales.boe.es>

Published by:



ISBN: 978-84-8150-303-6

NIPO: 126-12-070-4 (Electronic version: 126-12-071-X)

DL: M-31752-2012

Printed by:

National Police Force Printers, University Av., no. 27, 28911, Leganés, Madrid, SPAIN

WHITE PAPER

BEST PRACTICES
IN ASSET RECOVERY

CEART PROJECT

CONTENTS

FOREWORD	xi
ACKNOWLEDGEMENTS	xiii
I. INTRODUCTION	1
II. THE CONCEPT OF ASSET RECOVERY FROM AN INTERNATIONAL PERSPECTIVE	3
1. ASSET RECOVERY	3
2. INTERNATIONAL INITIATIVES ON ASSET RECOVERY	4
2.1 The United Nations	4
2.2 StAR Initiative	5
2.3 G-8	6
2.4 International Centre for Asset Recovery	9
2.5 Other international organisations	9
3. THE CARIN NETWORK (CAMDEN ASSET RECOVERY INTER-AGENCY NETWORK)	11
4. INFORMAL PLATFORM OF THE ASSET RECOVERY OFFICES OF THE EU (ARO PLATFORM)	12
4.1 Introduction. EU strategy in the fight against the proceeds of organised crime: (making sure crime doesn't pay)	13
4.2 Political-criminal proposals on the issue of the fight against the proceeds of crime in the European Union.	14
4.2.1 The need to recast the diversity of existing legislative instruments in the EU, on issues of seizure and confiscation of assets.	15
4.2.2 Guaranteeing that the obligation to provide information on bank accounts is fulfilled	16
4.2.3 The need to create wealth-related ancillary proceedings on forfeiture issues (towards the civil forfeiture)	17
4.2.4 Guaranteeing the mutual recognition of the seizure and forfeiture decisions in cases of civil confiscation	20
4.2.5 Is it necessary to classify a new crime of illicit enrichment (possession of "unjustified" assets)?	21
4.2.6 The need for available statistics.	25
III. THE IMPLEMENTATION OF THE CONFISCATION AND THE NEED OF CREATING ASSET RECOVERY BODIES	27
1. INTRODUCTION	27

2.	COUNCIL DECISION ON THE CO-OPERATION BETWEEN ASSET RECOVERY OFFICES OF THE MS IN THE FIELD OF TRACING AND IDENTIFICATION OF PROCEEDS OF CRIME AND OTHER ASSETS LINKED TO THE CRIME	30
IV.	THE FINANCIAL INVESTIGATION AS A BASIC INSTRUMENT FOR ASSET RECOVERY	33
1.	INVESTIGATION STAGES	34
1.1	The beginning of the investigation	34
1.2	Previous planning	34
2.	IDENTIFICATION AND TRACING OF ASSETS	36
2.1	Co-operation of private entities	36
2.2	Difficulties to identify the beneficial owner of the assets to be seized	36
2.3	Difficulties to establish an evidential link between the assets capable of being confiscated and the crimes	37
2.4	Difficulties related to time limitations	37
2.5	Difficulties related to the analysis of the information	38
3.	ASSETS SEIZURE	38
V.	ASSET MANAGEMENT OFFICES	41
1.	INTRODUCTION	41
2.	INTERNATIONAL RECOMMENDATIONS ON SEIZED ASSET MANAGEMENT	42
2.1	G8 Best Practices for the Administration of Seized Assets	42
2.2	FATF: Best Practices. Confiscation	44
2.3	Camden Asset Recovery Inter-Agency Network (CARIN)	46
2.4	American States Organisation – Drug Abuse Control Inter-American Committee, Project BIDAL. Good practices on asset management.	47
3.	BEST PRACTICES IN ASSET MANAGEMENT	48
4.	INTERNATIONAL CO-OPERATION	60
VI.	IDENTIFICATION OF BEST PRACTICES	61
1.	IRELAND: CRIMINAL ASSETS BUREAU (CAB). A SPECIAL REFERENCE TO BAU (BUREAU ANALYSIS UNIT).	61
1.1.	Introduction	61
1.2.	Bureau Analysis Unit (BAU)	62
1.2.1	Financial Crime Analyst.	64
1.2.2	Forensic Accountant in Law Enforcement	65
1.2.3	Holistic Approach	66

1.2.4 Information Sharing	67
1.2.5 Role of Forensic Accountants	68
1.2.6 How do Forensic Accountants assist Investigators?	69
1.2.7 What Information do Forensic Accountants analyse	71
1.2.8 Financial Analysis “Products”	73
2. POLAND: TRAINING EXPERIENCES.	81
3. BELGIUM: AN EXAMPLE OF ARO: COSC	85
4. BULGARIA: ARO EXAMPLE - LEGAL FRAMEWORK	87
5. UNITED KINGDOM (ENGLAND): FINANCIAL INVESTIGATION TRAINING AND NATIONAL ASSET SEIZURE AND CONFISCATION DATA BASES	91
5.1. Best Practice: Financial Investigation Training	91
5.2. Best Practice: National Asset Seizure and Confiscation Data Bases	95
6. GERMANY: A SPECIALISED SERVICE ON FINANCIAL ANALYSIS – AROs SUPPORT	95
7. THE NETHERLANDS: CJIB – AN EXAMPLE OF AMO AND CRIMINAL PROCEEDING OF CONFISCATION.	97
7.1 CJIB (Central Fine Collection Agency). An example of AMO.	97
7.2 Confiscation system in the Netherlands	98
8. ITALY: SOCIAL REUSE, CONFISCATION TYPOLOGIES AND SOFTWARE	101
9. HUNGARY: INVESTIGATION TECHNIQUES AND TRAINING	105
10. UNITED STATES OF AMERICA: TREASURY FORFEITURE FUND AND ASSET FORFEITURE PROGRAMME	110
10.1 The Treasury Forfeiture Fund.	110
10.2 The Justice Asset Forfeiture Programme	111
11. CANADA: USE OF CONFISCATED FUNDS: CIVIL REMEDIES ACT	114
12. SCOTLAND: CIVIL CONFISCATION – THE CIVIL RECOVERY UNIT (CRU)	116
13. SPAIN: SPANISH NOTARIES DATA BASE AND SOCIAL REUSE OF CONFISCATED FUNDS (NATIONAL PLAN ON DRUGS)	119
13.1 Public action to fight money laundering and financing of terrorism	119
13.2 National Plan On Drugs	124

VII. TRAINING	131
1. INTRODUCTION	131
2. A NEW DEGREE ON ASSET RECOVERY AND FINANCIAL INVESTIGATION	132
3. ECONOMIC TRAINING	137
THE ART MARKET AND ITS RELATIONSHIP WITH MONEY LAUNDERING	139
SOCIAL MARKETING	187
THE CONTRIBUTION OF STATISTICS TO POLICE ACTIVITIES	212
APPENDIX I: SYLLABUS OF THE FIRST INTERNATIONAL EXPERT PRACTITIONERS COURSE IN ASSET RECOVERY AND FINANCIAL INVESTIGATION	224
APPENDIX 2. TEMPLATES OF AROs	229
BELGIUM	231
BULGARIA	234
GERMANY	241
HUNGARY	246
IRELAND	250
ITALY	253
THE NETHERLANDS	256
POLAND	259
SCOTLAND	263
SPAIN	266
UNITED KINGDOM	271

FOREWORD

The recovery of assets with a criminal origin is one of the priorities of criminal policy within the European Union, as reflected in several legal instruments on this topic that have been adopted in recent years.

The CEART Project, which tries to be a small contribution to the efforts carried out by the European Union in this field, had some ambitious objectives that could not have been reached without the unconditional support of its partners: Rey Juan Carlos University, Europol and the Asset Recovery Offices from Belgium, Scotland (United Kingdom), Hungary and Poland.

With the publication of this White Paper on Best Practices in Asset Recovery, a compendium of the most effective current practices in the asset recovery field, in both the European Union and United States and Canada, one of the main goals of the CEART project has been achieved.

The exchange of best practices is already included as a key point in Decision 2007/845/JHA, of 6 December 2007 concerning co-operation between Asset Recovery Offices of the Member States in the field of tracing and identifying proceeds from, or other property related to crime, a regulation that represents one of the cornerstones in the field of asset recovery in the European Union.

Likewise, the CEART Project has given great importance to the training of the people working in this field. Without these two key points, training and the exchange of best practices, it is difficult to improve the effectiveness of the efforts of the Member States in the tracing and identification of assets coming from crime. Both topics were already highlighted in the Communication from the Commission to the European Parliament and the Council of 20 November 2008 – Proceeds of organised crime: ensuring that “crime does not pay”.

An innovative way of working has been used in the elaboration of this White Paper, such as the on-line drafting of the document, which was hosted on the project website and accessible to partners and others who have collaborated in its drafting.

We hope that this Paper, which is also published on the website of the CEART project, as well as on the websites of Europol and United Nations Office on Drugs and Crime, can be as useful as possible for those working hard every day to ensure crime does not pay.

José Luis OLIVERA SERRANO
CEART Project Leader

ACKNOWLEDGEMENTS

The production of this White Paper on Best Practices in Asset Recovery has taken a huge effort by the CEART team to achieve a useful text. Likewise, about one hundred and fifty people have donated their time in the course of the various activities carried out within this project. So, we would like to use the following lines to acknowledge their contributions; we also wish to thank the agencies employing them for having allowed them to do so.

This project lasting 27 months is aligned with current European initiatives focused towards proceeds of crime recovery and management, and received a grant from the EU programme “Prevention of and Fight against Crime 2007-2013 - Call for Proposals 2009”. In the course of these years, various activities have been carried out: two seminars, a financial investigation training course, twelve study visits and the text you now have before you.

First of all, we want to mention the different individuals who have supported it from the beginning: Mr. Sebastiano Tiné, Head of Section, Directorate General Home Affairs, European Commission; Mr. Antonio Camacho Vizcaíno, former Spanish Secretary of State for Security; Mr. Juan Antonio González García, former General Commissioner of the Judicial Police; Mr. Alfredo Cabezas Barrientos, former Head of the Money Laundering Squad; Mr. Jose Luis Fernández Gudiña, Head of the Money Laundering Squad.

All projects need a management team, and the CEART project is no different, so we must highlight the contribution of Mr. José Luis Olivera Serrano, Project Leader, Head of the Organised Crime Intelligence Centre (CICO); Mr. José Manuel Colodrás Lozano, Project Manager, Head of the Asset Tracing Office; Mr. Javier García Briongos, from the International Co-ordination Unit of the National Police Force; Dr. Pilar Laguna Sánchez, the project’s technical director, Dean of the School of Legal and Social Sciences at the Rey Juan Carlos University and Dr. Jesús Palomo Martínez, the

project's research director, Professor in the Department of Business Economy at the Rey Juan Carlos University (URJC).

Writing a document like this is a very difficult task, which must be coordinated by a very adequate team. So we would like to mention its members: Ms. Ruth Tabernero Alonso, White Paper Co-ordinator, Head of Group, Asset Tracing Office, Money Laundering Squad; and Mr. Isidoro Blanco Cordero, White Paper Assessor, Head of Department of Criminal Law, University of Alicante.

Several countries and institutions have taken part as partners, and their work has been essential to achieve the good running of this project: Rey Juan Carlos University (URJC-KPMG Chair for Financial and Forensic Investigation); Poland (Mr. Rafal Wozniak, Head of ARO); Scotland (Mr. Graeme Everest, Deputy Head of the Scottish Money Laundering Unit; Mr. Garry Deans, Head of Scottish Money Laundering Unit; Ms. Fiona Bell, Mr. John Magilton, Mr. Arron Clinkscales, Scottish Crime and Drug Enforcement Agency); Belgium (Mr. Nico Geysen, Central Office for Seizure and Confiscation, Police Liaison Officer); Hungary (Mr. Attila Rigó, Hungarian National Bureau of Investigation, Economic Crime Division, Department against Financial Crime, Head of ARO; Ms. Judit Árvait, Hungarian National Bureau of Investigation, Economic Crime Division, Department against Financial Crime, ARO Hungary); Europol (Ms. Jill Thomas, Second Officer, Financial Crime Unit); Rey Juan Carlos University (Ms. María Pilar Laguna Sánchez, Dean of the School of Legal and Social Sciences; Mr. Jesús Palomo Martínez, Professor; Ms. Ana Vico Belmonte, Professor; Ms. Verónica Rosendo Ríos, Professor).

As you will be able to see, there are many interesting articles within this book and their authors have not yet been mentioned, so this is a good moment to do so: Ms. Bárbara Vettori, Assistant Professor in Criminology at the Faculty of Sociology of the Catholic University of the Sacred Heart in Milan (Italy); Mr. Mariano García Fresno, Money Laundering Prevention Centralised Body, Notaries General Council (Spain); and the Criminal Assets Bureau (Ireland).

Another important task is related to technical aspects, involving the following individuals: Mr. Manuel Palma Gómez, Technical Support; Mr. Domingo López Sanz, Ms. Cristina Rodríguez and Mr. Edward Ewing, Translation Team; Mr. Antonio López, and Mr. Durán, design.

The Asset tracing Office, within the Money Laundering Squad, has carried out many tasks, such as general support, logistics, communications, ... so we have to thank the following for their incommensurable help: Mr. Álvaro Rico González-Novo, Mr. Fernando Menéndez Martín, Ms. Pilar Guillén Catalina, Mr. Juan Aedo Cuevas, Mr. Joaquín Villegas Santiago, Ms. Ana María Verdejo López, Mr. Julio César Martínez Rodríguez, Ms. Tania Herrán Domínguez, Ms. Ana María García Álvarez, Mr. Fernando Romero Romero, Mr. Gregorio Sánchez Rodríguez, Mr. Eduardo Simón Castro and Mr. Javier Giménez Muñoz.

Also, the staff of the Money Laundering Squad has lent a helping hand when necessary, so we must be especially grateful to Mr. José Manuel Álvarez Luna, Head of Section.

As a partner in the CEART Project, the URJC has formally approved and started its own International Practitioners Course in Asset Recovery and Financial Investigation so we owe a special vote of thanks to the University's Governing Council for approving the proposal submitted by the Pro Vice Chancellor for Own Degrees, Postgraduate Study and Delegated Teaching Units. We must also acknowledge the significant participation in its design and management by Dr. Ana Vico Belmonte, professor at the Department of Business Economy and on the clerical side Ms. Amaya de la Fuente Marcilla and Ms. Lidia Muñoz Fernández, professors at the Department of Business Economy.

One of the seminars was held at the Police National Academy, and so we are very grateful to the Academy staff, especially Mr. Francisco Marcelino Pérez Pérez, its former Director, and Mr. Eusebio Heredero Salamanca, an instructor at the Academy.

As aforementioned, two seminars and a course were carried out, so we want to stress the important work of the speakers, which has helped us in

writing this book: Mr. Cedric Woodhall, Head of FIU, United Kingdom; Mr. Félix López, Europol National Unit; Mr. Daniel Vázquez Llorens, Head of Group, Money Laundering Squad; Mr. José Antonio del Cerro, General Prosecution Service; Mr. Frank H. Cassidy; Mr. Ed Weustenraad; Mr. Antonio Villalba García, Head of Group, Money Laundering Squad; Ms. Silvina Capello, KPMG; Ms. Isabel de Santos, Organised Crime Intelligence Centre (CICO); Mr. Fernando Lacasa Cristina; Mr. Javier Tanco Zuza, KPMG; Mr. Santiago Cuadro Ramírez, Head of Group, Money Laundering Squad; Mr. Álvaro Ibáñez Alfaro, Head of Group, Money Laundering Squad; Mr. Miguel Ángel Arce Argos, former Head of Operational Support Section; Mr. Manuel Morocho Tapia, Head of Group, Money Laundering Squad; Mr. Javier Antúnez, Criminal Intelligence Central Unit (UCIC); Mr. Martin John Forrester Collins, Senior Deputy Procurator Fiscal; Mr. Ernesto Stafetti, Rey Juan Carlos University; Mr. Luis López Fernández, Rey Juan Carlos University; Mr. Enrique García Pérez, Head of Group, Money Laundering Squad; Ms. Silvia Orna Martín, Head of Group, Money Laundering Squad; Mr. Emilio Navarro Heras, Rey Juan Carlos University; Mr. Jan Knobbe, Senior Asset Manager, AMO Netherlands; Mr. Apolinar Prado González, Head of Group, Money Laundering Squad; Mr. Ángel Guijarro Gómez, Head of Section, Financial Crime Squad; Ms. Louise MacDonald, NPIA; Mr. Roberto Romano, Deputy Director of the Command and Co-ordination Centre, ARO Italy; Mr. Giuseppe Giulio Leo, Deputy Head of Organised Crime Intelligence Unit – International Co-operation Office; Mr. Andrés González Canelo, Deputy Managing Director, National Plan on Drugs, Confiscated Assets Fund; Mr. Luis Fernando Montero Durán, Head of Area, National Plan on Drugs, Confiscated Assets Fund; Ms. Desi Martín Fernández, Head of Area, National Plan on Drugs, Confiscated Assets Fund; Mr. Andrés Pérez López, Organised Crime Intelligence Centre (CICO)

Within this project, a financial investigation training course was developed. This course was composed of three parts: an on-line phase, a residential phase, and the final stage, consisting on a defence of research projects. Twenty-four students from different countries took part and passed

the course, all with very good marks. We must thank them for attending, because those students not only studied: they also enlightened us about their professional procedures.

Two seminars were held during this project and attracted delegates from about thirty countries. We want to dedicate these lines to them, because they played an active role and that is very important for us.

Finally, we would like to thank all the partners in the Project for their invaluable collaboration, the European Commission for supporting the CEART Project, and all the participants in the rest of the CEART activities, who helped this project to become a reality. Last, but not least, we would like to thank the following bodies that with their generous welcome made it possible to conduct the study visits:

Spain: Organised Crime Intelligence Centre (CICO), National Plan on Drugs, Central Criminal Intelligence Unit (UCIC), Rey Juan Carlos University, Spanish FIU - SEPBLAC (Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences), Monetary Offences Squad, Economic Crime Central Unit (UDEF).

Belgium: Central Office for Seizure and Confiscation (COSC), FinShop Brussels, Asset tracing team in Antwerp

(UK) Scotland: Scottish Crime and Drug Enforcement Agency (SCDEA), Scottish Money Laundering Unit (SMLU) Strathclyde Police MCTIU, Crown Office National Casework Division (NCD) and Scottish Intelligence Co-Ordination Unit (SICU)

The Netherlands: Criminal Assets Deprivation Bureau (BOOM), Domeinen Roerende Zaken.

Hungary: National Bureau of Investigation (Economic Crimes Division), Hungarian Prosecution Office, National Law Enforcement Co-operation Centre (NEBEK), Police Academy

Bulgaria: CEPACA, Prosecution Service of Bulgaria

Germany: Police ARO (Bundeskriminalamt (BKA) – Wiesbaden), Judicial ARO (Ministry of Justice, Bonn)

Ireland: Criminal Assets Bureau (CAB)

Canada: Crown Law Office (Ontario)

United States: Department of Justice, Department of the Treasury

UK (England): Home Office, National Police Improvement Agency, Metropolitan Police, UK ARO, Civil Forfeiture Unit (SOCA), Derbyshire Constabulary

Poland: Asset Recovery Office (National Police Headquarters), Finance Ministry, Central Anti-Corruption Bureau, General Prosecution Office

Italy: Central Organised Crime Investigation Service (SCICO), National Agency for administration and destination of assets sequestered and confiscated from organised crime (ANBSC), International Police Co-operation Service (Central Directorate of Criminal Police)

I. INTRODUCTION

During the last decade, the awareness in relation to the importance of asset recovery has increased significantly worldwide. The European Union is not oblivious to this matter and in recent years has worked tenaciously to promote asset recovery, not only as a secondary factor in relation to the investigation of the crime, but as essential part of it. The sentence “crime does not pay” sums up the philosophy that must be present in the daily work of the people involved in the asset recovery process.

Along with previous European regulations, the cornerstone of the legislation concerning this topic is Council Decision 2007/845/JHA of 6 December 2007, concerning co-operation between Asset Recovery Offices of the Member States in the field of tracing and identifying proceeds from or other property related to crime.

In this context, the CEART project (Centres of Excellence on Asset Recovery and Training), financed by the European Commission within the ISEC programme, has tried to be a useful contribution in the awareness about the importance of asset recovery.

The Project, led by the Economic Crime Central Unit, Spanish National Police Force, has a marked pan-European spirit, shown in the partners taking part in it. The partners include Europol and the Rey Juan Carlos University (Madrid), and agglutinate representatives of Asset Recovery Offices of the following countries: Belgium, Scotland (UK), Poland and Hungary.

CEART had two main objectives: on the one hand, the establishment of a Centre of Excellence on Asset Recovery and Training of financial investigators, and on the other hand the elaboration of a White Paper on best practices in the field, which is the document that you have in your hands right now. This is a contribution to the commitment present in the Council Decision 2007/845/JHA of 6 December, which pointed out the relevance of the exchange of best practices as a part of the co-operation among Asset Recovery Offices.

It is important to point out that this paper has been a collective effort of all the partners of the project. Nevertheless, there is a part of the document (chapter VII), which has been fully drawn up by University sources, since the three special contributions included have been prepared by the Rey Juan Carlos University (Madrid) and the Catholic University of the Sacred Heart (Milan).

In addition, we will also point out that this is not a scientific paper. Apart from taking into account an historical evolution of the establishment of the AROs and a view on the current situation, this document is simply a compendium of best practices, of the most appropriate or practical solutions to solve the problems existing in every jurisdiction in relation to the asset recovery process. The idea is not to copy the practices, but to be inspired by them, implementing them in every legislation according to its own characteristics.

A significant part of the information related to best practices has been obtained during the study visits carried out to the following countries: Spain, Belgium, UK (Scotland), The Netherlands, Hungary, Bulgaria, Germany, Ireland, United States, Canada, UK (England), Poland and Italy.

The outcome of these visits is highlighted in two different ways: on the one hand, the best practice(s) identified in every country, trying to describe it and to point out its relevance for the success of asset recovery process (chapter III), and on the other hand, one template for every country, including the most relevant data concerning the institutions involved in asset recovery process in the country, which are gathered in appendix II.

We really hope that this White Paper can be a reference text for all the experts involved in asset recovery process. Therefore, the document will be published on paper and distributed among partners, participants in the activities of the project, judicial authorities, and police units in Member States and other international organisations engaged in the fight against organised crime such as Europol, Eurojust, Interpol and United Nations. An on-line version of the paper will be also available through Europol's restricted website.

II. THE CONCEPT OF ASSET RECOVERY FROM AN INTERNATIONAL PERSPECTIVE

1. ASSET RECOVERY

The proceeds from the perpetration of a criminal action are often transferred to other countries for laundering purposes. To this aim, all kinds of mechanisms are used – tax havens, corporate vehicles, financial transfers, etc. The investigation of such proceeds is thus made highly difficult, more so if the assets are hidden in other countries.

The recovery of assets refers to the environment surrounding assets originating in a crime, which are hidden in countries foreign to the one in which they appeared. This concept constitutes one of the most important innovations introduced by the United Nations Convention against Corruption, in force since 2005, in which special importance is given to the recovery of assets originated in corruption (chapter 5). The restitution of the assets obtained through crime is regarded as a fundamental principle, therefore the States Parties are obliged to provide each other with the deepest level of aid and co-operation in this respect (article 51).

The United Nations Convention against Corruption makes express reference to a series of instruments aimed at the recovery of the proceeds of crime, placing a special emphasis on the location of the origin, the freezing, the seizure, the forfeiture and the restitution of assets. These instruments are: a) the prevention and detection of the transfers of proceeds (article 52); b) empowering other States to bring a civil action in their courts, aimed at establishing the ownership of the assets obtained through the commission of an offence; c) empowering their courts to order compensation or restitution of the damages caused to another State through crime; d) enabling courts or competent authorities to acknowledge the legitimate right of ownership of another State over goods acquired through the commission of a crime when ordering their seizure (article 53).

Among all these instruments, the one which relates to international co-operation aimed at forfeiture is more extensively explained below.

2. INTERNATIONAL INITIATIVES ON ASSET RECOVERY

2.1 The United Nations

Asset recovery has been deeply examined within the United Nations. This fact notwithstanding, it can be said that this organisation's view on this issue is somewhat limited, since it revolves almost exclusively around **corruption-related crimes**. The first time the United Nations tackled this issue was December 2000, when the General Assembly passed *Resolution 55/188*. This resolution urges the Member States to drive international co-operation through the system, in the United Nations, for the elaboration of instruments which help avoid and combat the illicit transfers of funds, and send the illegally-transferred funds back to their countries of origin.

This resolution caused **asset recovery** to become a priority of the special Committee in charge of negotiating the Convention against corruption. In its Resolution 2001/13, of 24 July 2001, the Economic and Social Council asked the Secretary General to prepare a global study for the Special Committee on the transfer of illegally-originated funds. The study was presented in 2002, and was entitled *A global study on the transfer of illegally-originated funds, in particular the funds originated in corruption-related actions*¹.

The preliminary works facilitated the **negotiations on the United Nations Convention against Corruption** (Resolution 58/4 of the General Assembly)². The Resolution places special emphasis on the recovery of assets originating in corruption (chapter 5). The restitution of the assets is

¹ United Nations. General Assembly, Global study on the transfer of illegally-originated funds, in particular those which originate from corruption, *ibid*.

² Cf. document Analysis of the ways and means for reaching the objectives of the Conference of the States Parties, pursuant to paragraphs 1 and 4-7 of Article 63 of the United Nations Convention against Corruption. First meeting period in Amman, 10-14 December 2006, Topic no. 2 of the provisional agenda. Conference of States Parties to the United Nations Convention against Corruption. CAC/COSP/2006/6. 16 November 2006.

regarded as a fundamental principle, therefore the States Parties are obliged to provide each other with the deepest aid and co-operation in this respect (article 51).

The Convention makes express reference to the States' need to count on organisations or authorities specialised on the fight against corruption (article 36). Despite this fact, when the issue of asset recovery is tackled, vague reference is made to the competent authorities in each State for performing this task (reference is also made to the international co-operation among them, staff training, etc.), without explicitly naming the **organisations for asset recovery**. At the time it was being negotiated, it was probably thought that establishing such organisations was an internal issue of each State. However, the United Nations have huge international influence in this matter, as we will later see. Thus, we believe it is convenient that, just as the United Nations, in the international agreements, points to the need to have FIU³, it should make a pronouncement about the establishment of asset-recovery organisations. If possible, such organisations, as proposed in this paper, should not focus exclusively on the proceeds of corruption, but on any offence.

2.2 StAR Initiative

In order to solve the problems related to the theft of public assets from developing countries, the World Bank and the United Nations Office on Drugs and Crime (UNODC) issued the Stolen Asset Recovery (StAR) Initiative in September 2007.

StAR develops its activity in four main fields:

Empowerment – StAR helps countries establish the legal tools and institutions required to recover the proceeds of corruption, through sharing knowledge and information, and providing hands-on training in asset tracing and international co-operation on legal matters.

³ Cf., for example, art. 7. 1 b) of the United Nations Convention against Transnational Organised Crime, adopted by the United Nations General Assembly on 15 November 2000, through Resolution A/RES/55/25; Cf. also art. 14.1.b) of the United Nations Convention against Corruption.

Partnerships – StAR works with and helps bring together governments, regulatory authorities, donor agencies, financial institutions, and civil society organisations.

Innovation – StAR generates knowledge on the legal and technical tools used to recover the proceeds of corruption, promoting the sharing of global best practices.

International Standards – StAR advocates for the strengthening and effective implementation of Chapter 5 of the UNCAC and other international standards to detect, deter and recover the proceeds of corruption.

Likewise, we must highlight that StAR works together with the following organisations:

- United Nations Office on Drugs and Crime
- International Centre for Asset Recovery
- Camden Asset Recovery Interagency Network (CARIN)
- Interpol
- Transparency International
- Global Witness

2.3 G-8

The **G-8** group has proven to be very active in matters related to forfeiture and asset recovery. At the Paris meeting held in May 2003, the document called *G8: Best Practice Principles on Tracing, Freezing and Confiscation of Assets*, was adopted, in which the group acknowledges the importance, in the fight against organised crime and terrorism, of national legal provisions allowing for the fast and efficient freezing and seizure of criminal assets, and the facilitation of mutual legal assistance between countries on this matter.

The Ministers of Justice and Interior of the G-8 countries agreed in Washington, on 11 May 2004, to take steps aimed at promoting the recovery of assets based on the mandates of the United Nations Convention against

Corruption⁴. Some **measures** were proposed to help the States which are victims of corruption, and these were endorsed by the Heads of State of the Group at the Sea Island summit, held on 10 June 2004.

a) More specifically, the creation of *fast-response teams*, made up of experts in mutual legal assistance on forfeiture-related matters, which would be deployed at the request of the victim States. The teams from the countries which participate voluntarily would work with the competent authorities in the victim State on the form and content of its request for legal assistance, in order to facilitate fast actions.

b) G8 makes reference to the establishment, at the request of the victim States, of *co-ordinating groups for specific cases*, made up of volunteers from countries that are members / non-members of G8, which will help to handle the responses to the requests for mutual legal assistance and forfeiture.

c) One other measure is the implementation, at regional level, of *practical training courses* on asset recovery, in order to exchange information with the victim States on financial investigation techniques and mutual legal assistance. These efforts can be carried out in co-ordination with the existing regional and international organisations, including the United Nations Office for Drugs and Crime (UNODC). One of these practical courses was organised in December 2005 in Nigeria.

d) The ministers also agreed to ensure that the eight States making up the Group will adopt *laws and* legal procedures to detect, recover and restore the proceeds from corruption.

e) Lastly, the G8 Lyon/ Rome Group⁵ was allocated the task of analysing options for impeding that task recovery be frustrated by the death,

⁴ Recovering Proceeds of Corruption G8 Justice and Home Affairs Ministerial Declaration, meeting of G8 Justice and Home Affairs Ministers Washington – 11 May, 2004.

⁵ After the 1995 summit held in Halifax, New Scotland, a group of experts was established to effectively fight transnational crime. In 1996, this group (later known as the “Lyon Group”) launched forty recommendations to combat transnational organised crime which were approved by the G8 heads of state at their Lyon Summit in June 1996. After that, “subgroups” of the Lyon Group were created on specific topics connected with specific crimes (for example, the subgroup for technological or computer-related crimes, or the subgroup for immigration, fraud and trafficking in human beings). After the attacks of 11 September 2001 in the United States, there were some changes in the Lyon group. In October 2001, representatives from the ministries of Justice and Interior of the G8 group, at a

absence or immunity of the corrupt criminal. This group has also prepared a document on best practices for the administration of the seized assets⁶.

At the St. Petersburg summit, held on 16 July 2006, the leaders of the countries in the Group undertook to co-operate with all the international financial centres, and with the private sector, in refusing to give refuge to those responsible for high-level corruption obtaining wealth illegally. In this context, all financial centres are called on to assume and apply the most demanding international regulations on the issue of transparency and information exchange⁷.

In 2007 the G8 passed the Accra Agenda for Action, in which the member States committed to fight against corruption and take steps in their own countries to combat corruption by individuals or corporations and to track, freeze and recover illegally acquired assets⁸. Due to the events of the Arab spring, the G8 has intensified its efforts in the recovery of assets coming from corruption, in those Arab States that have started a transition process towards democracy. On 27 May 2011 the G8 launched the “Deauville Partnership” with the Prime Ministers of Egypt and Tunisia⁹. An essential element of this collaboration is the fight against corruption, which is the framework in which asset recovery is classified.

As we can see, G-8 makes **specific proposals** to guarantee the efficiency of the seizure and forfeiture of the proceeds from corruption. It does not, however, make specific reference to the need for creating asset-recovery organisations.

meeting in Rome, decided to take steps for combating international terrorism, and thus decided to combine the Lyon group (for the fight against international crime) and the Rome group (for the fight against international terrorism). The group, now called the Lyon/Rome group, aims at fighting international crime, and also terrorism.

⁶ Cf. G8 Lyon/Roma Group Criminal Legal Affairs Subgroup, *G8 Best Practices for the Administration of Seized Assets*, Final version dated April 27, 2005, available at apgml.org/issues/docs/15/G8%20Asset%20Management%20Best%20practices%20042705%20FINAL.doc (last visit 12/02/2007).

⁷ Cf. el texto “*Fighting high level corruption*”, in <http://en.g8russia.ru/docs/14.html>

⁸ ACCRA AGENDA FOR ACTION, available at <http://siteresources.worldbank.org/ACCRAEXT/Resources/4700790-1217425866038/AAA-4-SEPTEMBER-FINAL-16h00.pdf>

⁹ Declaration of the G8 on the Arab Springs (Deauville) May 27, 2011. Available at <http://www.g8.utoronto.ca/summit/2011deauville/2011-arabsprings-en.html>

2.4 International Centre for Asset Recovery

The *International Centre for Asset Recovery* (ICAR) was created in the academic field in July 2006, and it belongs to the Basel Institute for Governance, a non-profit organisation which started its activities in 2007. As an institute which is linked to the Basel University (Switzerland)¹⁰, one of its main targets is to provide information and assistance to developing countries in order to investigate and detect crimes of corruption and facilitate the recovery of the assets. In addition, it aims at equipping those countries with the most efficient information-technology tools for combating corruption. The Centre will conduct applied research on techniques and innovations related to the issue of asset recovery, through means such as case studies and surveys, employing training staff from Basel University. This Centre may be a good platform for guiding the States (mainly the developing ones) on the steps to be taken for the creation of asset recovery bodies, as well as on the training of their staff.

2.5 Other international organisations

Other international organisations¹¹ have to different extents looked at the issue of asset recovery, placing special emphasis on corruption-related crimes. However, as has been the case so far, these do not refer to the creation of asset-recovery organisations.

The **Organisation for Economic Co-operation and Development** (OECD), within which the so-called *Agreement on the fight against the corruption of foreign public officers in international business transactions* was passed, drafted in Paris on 17 December 1997, has dealt with asset recovery. The OECD's Working Group on bribery in international business transactions supervises the parties' enforcement of the regulations, as well as their policies and practices regarding the requests for seizure and forfeiture

¹⁰ Cf. <http://www.baselgovernance.org/icar/>

¹¹ As regards the references to the forfeiture of assets owned by organisations involved in fighting money-laundering, Cf. the document called Analysis of the ways and means for reaching the objectives of the Conference of the States Parties, pursuant to paragraphs 1 and 4-7 of Article 63 of the United Nations Convention against Corruption, cit., pages 6-7.

received from foreign jurisdictions. The Governance Network of the OECD's Committee for Assistance to Development (CAD), serves as an inter-governmental forum in which the international donors try to improve the efficiency of aid for development. Among the measures which CAD firmly fosters, one is the support to mechanisms for the recovery of the stolen assets, placing special emphasis on the ones proposed within the United Nations when enforcing the United Nations Convention against Corruption¹². Obviously one of these mechanisms could be the asset-recovery agencies, although, as has been explained, the United Nations makes no specific pronouncement in this respect.

The **World Bank Group** also supports the enforcement of the United Nations Convention against corruption and, in its strategy to intensify good governance and the fight against corruption established on 6 September 2006, it proposes – among other things – to help increase the countries' capacity to trace, seize and confiscate the proceeds from corrupt behaviours, also through the delivery of technical assistance for the recovery of assets¹³.

As regards the **Commonwealth Secretariat**, in December 2003, at the Abuja Summit, the Aso Rock Declaration on Development and Democracy: Alliance for Peace and Prosperity was approved. At this summit, the heads of government of the Commonwealth countries undertook to co-operate and aid each other to the highest possible extent, in order to recover assets of illegal origin and restore them to their original countries. To that end, the Working Group on Asset Repatriation was created (which met for the first time in June 2004 in London), with the task of analysing the issue of the recovery of illegally-originated assets and their restitution to their countries of origin, with a special focus on maximising the co-operation and assistance between governments, and preparing a report with specific recommendations for the promotion of an efficient work on this matter. At the Meeting of the Commonwealth Ministers of Justice and High Officials held in Accra

¹² Cf. Analysis of the ways and means for reaching the objectives of the Conference of the States Parties, pursuant to paragraphs 1 and 4-7 of Article 63 of the United Nations Convention against Corruption. First meeting period in Amman, 10-14 December 2006, Topic no. 2 of the provisional agenda. Conference of States Parties to the United Nations Convention against Corruption. CAC/COSP/2006/6. 16 November 2006, page 5, no. 14-16).

¹³ *Ibid*, pages. 5-6, no. 17.

(Ghana), on 17-20 October 2005, the Working Group presented a report with specific recommendations regarding the promotion of efficient measures for the repatriation of assets¹⁴. Among other things, the Commonwealth Secretariat has drafted model legislation on the recovery of illegally-originated assets, including terrorists' assets¹⁵.

3. THE CARIN NETWORK (CAMDEN ASSET RECOVERY INTER-AGENCY NETWORK)

Unlike the international initiatives explained above, in which no explicit reference is made to the need or convenience of creating asset-recovery agencies, there are movements aimed not just at the creation of such organisations in Europe, but also at facilitating co-operation between them. Thus, the CARIN (*Camden Asset Recovery Inter-Agency Network*) network was created at The Hague on 22-23 September 2004, at the initiative of Austria, Belgium, Germany, Ireland, The Netherlands and UK. It represents a **global network of professionals and experts** which intends to reinforce the common knowledge on the methods and techniques in the field of transnational identification, seizure, confiscation and forfeiture of the proceeds of crime and other crime-related assets.

The origins of the CARIN network date back to October 2002, in the framework of a conference held in Dublin and jointly sponsored by the Asset-Recovery Agencies of Ireland and Europol. Representatives from all Member States of the European Union attended this conference, as well as some states awaiting accession, together with Europol and Eurojust. It was a very active conference, in which practical workshops were held, with the aim of presenting recommendations on the identification, tracing and seizure of the proceeds of crime. One of the recommendations which were presented in the workshops was considering the establishment of an informal contact network and a co-operating group in the area of identification and recovery of

¹⁴ *Ibid.*, pages. 5-6, no 17.

¹⁵ Cf. Text of model legislation Commonwealth model legislative provisions on the civil recovery of criminal assets including terrorist property, drafted in coordination with the United Nations Office for Drugs and Crime (UNODC).

criminal assets. This specific recommendation caused the representatives from Belgium and The Netherlands to present an initiative and, in co-operation with Europol, a meeting was held with the representatives of the four Member States that had set up organisations dealing with the recovery of assets. Those countries were Belgium, The Netherlands, Ireland and the UK. Eurojust and Austria were also involved in the preliminary meetings connected with the initiative. A unanimous agreement was reached on the benefits of establishing, in the European Union, an **informal network** of organisations involved in the criminal recovery of assets¹⁶.

In June 2003, a meeting was held with the attendance of Belgium, The Netherlands, Ireland, UK and Eurojust, with Europol acting as Secretary. The **group** was named *Camden Asset Recovery Inter-Agency Network* (Camden Court Hotel, Dublin, was the initial location of the workshops where the initiative started). The goal of this network is to enhance the efficiency of the efforts aimed at depriving criminals of their illegal profits.

The **official establishment** of CARIN occurred during the *CARIN Establishment Congress* held in The Hague on 22-23 November 2004. Representatives of the 25 EU Member States, as well as some states awaiting accession and other European organisations (78 people in total) took part in this congress. Its goal was to establish an informal network of practitioners and experts aimed at improving the mutual knowledge on methodologies and techniques in the area of transnational identification, freezing and seizure of the proceeds of crime.

4. INFORMAL PLATFORM OF ASSET RECOVERY OFFICES OF THE EU (ARO PLATFORM)

There is an informal platform of Asset Recovery Offices (“ARO platform”) in the European Union that meets periodically and gathers information about the implementation of the European regulations in relation to this topic, as well as the progress of the Member States in the designation of their ARO. This platform has met periodically from the beginning of 2009, and includes the designated AROs in the Member States and the authorities

¹⁶ *Ibid.*, pages. 5-6, no. 17

participating in the establishment of the ARO, or those temporarily acting as an ARO.

4.1 Introduction. EU strategy in the fight against the proceeds of organised crime: (making sure crime does not pay)

The EU's strategy on the fight against crime dwells on the need to deprive the offenders, especially those integrated in criminal organisations, of their illegally-obtained assets¹⁷. Among the fundamental definitive notes of organised crime is the intention of obtaining financial benefits through the commission of serious crimes. In order to fight this crime, the EU has enacted a *criminal policy* which has been designed to financially choke the criminal organisations, depriving them of the gains they obtain through their criminal activities. The policy's underlying idea is the fact that the traditional responses to crime, such as the penalties of imprisonment and fine, are not very efficient against organised crime: a good complement of such penalties could be to act against the assets (and not just against the persons).

An essential instrument for this is the *confiscation of goods*. Until not long ago, little importance was given to the deprivation of property with a criminal origin belonging to criminals. One reason for that was the fact that the criminal proceeding was essentially aimed at punishing the crime, and not so much at recovering the assets. Another reason was indeed the scarcity of means at the judicial authorities' disposal for finding and identifying the illegal assets. This is changing now, and over the last years the establishment of confiscation has been acquiring great importance, to the extent of being considered as the "central weapon" in the arsenal aimed at dealing with the proceeds of crime. In the fight against criminality, great importance is given today in the EU to the cross-border prosecution of illegally-originated assets, and the confiscation of such assets.

¹⁷ Recently, in the EU Commission's communication to the European Parliament and Council entitled The proceeds of organised crime. Guaranteeing that "crime does not pay", from 2008, it is noted that "in order to suppress the activities of organised crime it is essential to deprive the perpetrators of the proceeds generated by those activities".

In this respect, the EU Commission understands that the confiscation of goods and the recovery of illegally-originated assets are instruments of great efficiency for tackling organised crime, whose clear goal is obtaining profit. Thus, the confiscation of goods hinders the use of the illegally-originated assets to “finance other illegal activities, undermine trust in the financial systems, and ruin legitimate society”¹⁸. This political-criminal strategy is based on the idea expressed in the phrase “*follow the money*”, which consists of tracking the illegally-originated money, and confiscating it, thus stopping the crime from being profitable. This has represented a change of paradigm, which places the emphasis not so much on the prosecution and punishment of the accused criminals, as on the deprivation of the assets generated by the crime.

The goal is to *deter* criminals from committing crimes which generate great financial profit. The confiscation and recovery of assets has a clear and general preventive effect, as the EU Commission states. Since it keeps the crime from being profitable, it discourages the criminals and “may contribute to reducing the influence of negative models on the local communities”¹⁹.

4.2 Political-criminal proposals on the issue of the fight against the proceeds of crime in the European Union.

The situation in the EU regarding the fight against the criminality which obtains financial profit from crime is not in the least satisfactory. Great progress has been made in the last years, but it is necessary to take urgent action for improving the efficiency reached in this field. With this aim in mind, this document now presents a list of political-criminal proposals which we believe need to be followed²⁰.

¹⁸ EU Commission’s Communications to the European Parliament and Council entitled “Proceeds of organised crime; guaranteeing that “crime does not pay”, Brussels, 20-11-2008. COM(2008) 766 ff.

¹⁹ Proceeds of organised crime. Guaranteeing that “crime does not pay”), cit.

²⁰ As reference point we are taking the proposals contained in the Commission’s communication to the European Parliament and the Council entitled “The proceeds of organised crime: Guaranteeing that “crime does not pay””, Brussels, 20-11-2008. COM(2008) 755 ff.

4.2.1 The need to recast the diversity of existing legislative instruments in the EU, on issues of seizure and confiscation of assets.

A negative note with regard to the wide and complex existing regulations in the EU on the issue of seizure and confiscation is the fact that these regulations are not *fully incorporated* into the internal legal frameworks of the Member States.

Thus, there are significant delays in the transposition of the *Framework Decision 2003/577/JAI*²¹, which applies the principle of mutual recognition to the orders of provisional attachment of assets and the guaranteeing of evidence²². There are difficulties in aspects such as the specific certificate required for the enforcement of an order made by a judicial authority from a Member State, directly transmitted to the judicial authority of another Member State.

The most important innovation in the *Framework Decision 2005/212/JAI*²³ is the figure of the extended confiscation, which, as we have seen, lightens the burden of the proof of the origin of the assets. Thus, the application report published by the EU Commission in December 2007²⁴ made it obvious that the majority of the Member States had made little progress in the adoption of measures enabling the enforcement of extended powers of confiscation.²⁵ The fact that several forms of extended confiscation are included makes the provisions of the text confusing, which has led to a fragmentary transposition of the text²⁶. Besides, the Framework Decision allows States to resort to procedures which do not have a criminal nature, in

21 Framework decision 2003/577/JAI of the Council of 22 July 2003 on the enforcement, in the European Union, of orders freezing property or evidence, DO L 196 from 2-08-2003.

22 Cf. "The proceeds of organised crime. Guaranteeing that "crime does not pay"". Cit.

23 Framework decision 2005/212/JAI of the Council of 24 February 2005 on the forfeiture of goods, products and instruments related to crime (2005/212/JAI), COM(2007) 805.

24 Commission report pursuant to Article 6 of the Council Framework Decision, on the forfeiture of the products, instruments and goods related to crime (2005/212/JAI), COM(2007) 805.

25 Spain has finally established extended confiscation in its legislation in 2010, through article 127.1 of the Criminal Code, which reads as follows: The judge or court will extend the confiscation to assets, instruments or proceeds coming from criminal activities committed in the framework of a criminal or terrorist group. For this purpose it will be understood that the assets of all people sentenced for crimes committed in the framework of the criminal or terrorist group come from criminal activities when the value of the assets is out of proportion to the legal income of the people concerned.

26 The proceeds of organised crime. Guaranteeing that "crime does not pay, cit.

order to deprive the perpetrator of the proceeds of the crime; i.e. it allows for so-called civil forfeiture, which, as will be explained, is making it very difficult to have mutual recognition of confiscation orders issued by the national authorities of other Member States.

*Framework Decision 2006/783/JAI*²⁷ applies the principle of mutual recognition to confiscation orders. The most important problem is the fact that this Framework Decision seems to apply only in cases of confiscation orders made in the context of a civil case. For this reason, the orders issued in the framework of confiscation procedures of a civil nature (or through the extended use of fiscal powers) are not necessarily enforced in all Member States.

A Draft Directive of the European Parliament and of the Council about the preventive seizure and confiscation of the proceeds of crime in the European Union is being processed. It aims to promote the use of seizure and confiscation of assets as, despite being regulated in various legal instruments in the EU, they are underused and not much developed in Member States.

In short, a large number of Framework Decisions have not been fully incorporated into the national legal systems. In addition, there is a feeling of *lack of co-ordination* among all of them, since some, for example, allow civil forfeiture, while others only allow for the mutual recognition of forfeiture orders made in the framework of criminal cases. Therefore, it is necessary to “recast” all these instruments in a way which simplifies, improves and co-ordinates all the seizure and confiscation measures, clarifying and giving consistency to the legal regime of the EU on this matter²⁸.

4.2.2 Guaranteeing that the obligation to provide information on bank accounts is fulfilled

If this legal framework is recast, it would be convenient to include some legal provisions which exist in other EU instruments regarding the investigation of property with a criminal origin. The most important

²⁷ Framework Decision 2006/783/JAI, of the Council of 6 October 2006, on the application of the principle of mutual recognition for forfeiture orders, DO L 328, of 24-11-2006.

²⁸ *The proceeds of organised crime. Guaranteeing that “crime does not pay, cit.*

regulation is the Protocol of the Agreement on legal aid in criminal matters between the Member States of the European Union, established by the Council pursuant to Article 34 of the Treaty on European Union²⁹. The problem with this Protocol is the fact that it is still not effective, since it has not been ratified by a sufficient amount of States. If its provisions are included in the recast regulatory framework, they can be of immediate application, without any need to wait for the entry into force. Specific investigation procedures would thus be included, which must be put at the disposal of the authorities of the other Member States. When a Member State requests, another Member State will be obliged to carry out such procedures. There is no doubt that this obligation requires that such procedures be foreseen at national level.

Among the measures provided for in this Protocol, we can point out the Member States' obligation, at the request of another Member State, to give information on bank accounts (art. 1), and on the banking operations of specific and identified persons; banking secrecy cannot be invoked for refusing to co-operate. Banking information, as well as the exchange of such information, is essential for finding and tracing the crime-originated assets in other Member States of the EU.

4.2.3 The need to create wealth-related ancillary proceedings on forfeiture issues (towards the civil forfeiture)

The fact that the forfeiture is ordered in the framework of the criminal case poses problems due to the strict guarantees which must be respected (which makes it very difficult to prove the origin of the assets). Besides, imposing an extended forfeiture is frequently linked to the sentence imposed on the person sentenced, therefore there can be no forfeiture of assets without a prior judgement. It seems more appropriate today to refer the issues which relate to the imposition of forfeiture to a *separate procedure*, of an ancillary or independent nature from the main criminal proceedings. This procedure

²⁹ Council session, of 16 October 2001, concluding the Protocol to the Convention on mutual assistance on criminal matters between the Member States of the European Union, DO C 326, of 21-11-2001.

would make it possible to order forfeiture once an illegal wealth-related situation has been confirmed as a consequence of a criminal offence, regardless of whether the sentence on a person has been handed down. In this way, difficulties are avoided with regard to the investigation of the criminal wealth and to other problems related to the ownership of the assets, which might hinder and slow down the main procedure aimed at the establishment of criminal liability.

In *Comparative Law*, two systems are observed on issues related to the deprivation of the proceeds of crime.

a) On the one hand, those States which believe that *forfeiture constitutes a penalty* (of a property-related nature), and, therefore, its imposition requires finding the subject guilty through a court judgement. This is certainly an obsolete system that is no good for fighting the phenomenon of organised crime.

b) On the other hand, those States in which forfeiture is not a penalty but a *consequence of a different nature* which may be imposed in any proceedings (criminal, civil or administrative) separated from the criminal proceedings aimed at determining criminal liability. In these systems there is generally no requirement – although there are exceptions – that the subject be sentenced before forfeiture can be ordered. In these legal systems, it is understood that the complexity of the issues dealt with in the enforcement of forfeiture (also as regards the protection of third parties) and the numerous persons who may be involved, makes it preferable to separate the two procedures. Besides, practice makes it obvious that the criminal procedural code is inappropriate for an efficient enforcement of forfeiture, since, among other things, it does not allow for in-depth investigation before depriving criminals of their illegal wealth. This determines the judicial institution to concentrate on establishing criminal liability, and to leave aside wealth-related issues, sometimes in order to respect the strict procedural principles.

3. FIRST-LEVEL SECTION TITLE

2.4 Second level section title

- * In this respect, in The Netherlands there is a so-called *ancillary procedure*, which constitutes a kind of procedure which is dependent on the main criminal proceedings (article 36e of the Dutch Criminal Code). Once the substantive criminal proceedings have finished with the sentencing of the subject, a new procedure is initiated for establishing the value of the forfeiture.
- * In other legal systems a *procedure which is fully autonomous and independent from the criminal proceeding* is set up, *in rem* (of a civil nature), aimed at depriving the individual of the crime-originated assets without taking into account issues related to the criminal liability of the subjects. Models for this legislation are those of the United States and Great Britain. But this system has also been implemented in the countries of Latin America, the most relevant example being that of Colombia, which deals with the seizing of assets in its Law 793 from 2002. The seizure of assets is the loss of the right of ownership in favour of the State, without any consideration or compensation of any kind for the owner. It is an autonomous action (art. 1). The seizure of assets is imposed through a legal order when it is proven, among other things, that the assets originated directly or indirectly in an illegal activity.

This being the situation, the EU Commission is in favour of introducing confiscation without a prior criminal judgement (i.e. civil confiscation). It thus proposes the introduction of a new legal instrument for those cases in which confiscation is enforced without a prior criminal judgement. This possibility, as explained above, is provided for in the 2005 Framework Decision itself. In this way a case could be brought in a civil court, in which the evidentiary requirements are less strict than in the criminal environment, such that a high degree of probability that the assets are of criminal origin suffices to decree their forfeiture. This would also make it possible to resolve the frequent cases in which a person is detected on the border carrying a large

amount of money in cash, in breach of the provisions of the Community Regulation on the control of money in cash³⁰. It is often about tax-evasion operations, which are not declared when entering or leaving the EU. The possibility of depriving the individual of such assets will normally require a legal order, which might emanate from the civil (or possibly administrative) legal jurisdiction.

In short an appropriate articulation of extended forfeiture, respecting human rights and proving efficient, needs adequate regulations and the provision of a procedure (ancillary or autonomous) different from the main criminal proceedings, in which the thorny issues linked to the deprivation of crime-related wealth can be resolved.

4.2.4 Guaranteeing the mutual recognition of seizure and forfeiture decisions in cases of civil confiscation

One of the most complicated obstacles is that of the mutual recognition of seizure and forfeiture decisions when these are based on civil procedures. Some Member States refuse to co-operate, arguing that it is not a matter of co-operation on criminal, but civil matters. It is necessary to guarantee the mutual recognition in the context of the EU, in all cases in which the seizure and forfeiture decisions are based on civil confiscation procedures (and even, as the EU Commission establishes, on proceedings based on an extended use of fiscal powers). In order to co-ordinate the efforts aimed at the mutual recognition of the seizure and forfeiture decisions, it would be convenient to involve Eurojust³¹. It may even be a positive thing for the judicial authorities to have access to the information related to pending seizure and forfeiture decisions.

³⁰ Regulation no. 1889/2005, of the European Parliament and the Council, on the controls of inflows and outflows of cash in the Community, DO L 309 de 25-11-2205.

³¹ Cf. The proceeds of organised crime. Guaranteeing that “crime does not pay”.

4.2.5 Is it necessary to classify a new crime of illicit enrichment (possession of “unjustified” assets)?

The EU Commission proposes the classification of a new crime, which it calls possession of “unjustified” assets³². In this way, a person owning assets of disproportionate value versus the regularly-declared income would be punished, so long as that person has frequent contracts with persons known to engage in criminal activities. This would be an offence for which, unlike what happens in other countries, the burden of proof would not be fully reversed³³, and very similar (though not identical) to the figure of illicit enrichment which exists in other countries.

Illicit enrichment is an offence which is mainly framed in the scope of corruption. In fact, the existence of this offence is normally used for punishing civil servants who cannot explain increases in their wealth. Despite this fact, truly in some countries the illicit enrichment of individual persons (for example, in Colombia) is also punished. In the field of the civil service, express reference is made to this offence in the *United Nations Convention against Corruption*, whose article 20 mentions the offence of illicit enrichment, and plainly provides that “*subject to its constitution and to the fundamental principles of its legal system, each State Party will consider the possibility of adopting the legal measures, and measures of any other kind, which are necessary to classify illicit enrichment as a crime, i.e. the significant increase in the wealth of a civil servant versus his or her legitimate income, which he/she cannot reasonably justify, when it is purposely committed*”. As can be noticed, this is not a compulsory provision for the States Parties, which must analyse if the existence of this offence is in agreement with their Constitution and the main principles of their legal system.

At regional level, the *Inter-American Convention against Corruption* also includes the offence of the illicit enrichment of civil servants in article 9, which is not a compulsory provision for the States Parties either. It is defined

³² So it is explained in the document entitled “The proceeds of organised crime: guaranteeing that crime does not pay”.

³³ The proceeds of organised crime: guaranteeing that crime does not pay, *cit.*

as follows: “*Subject to their Constitutions and the fundamental principles of their legal systems, the States Parties – if they still have not done so – will take all necessary measures to classify as an offence, in their legal system, a civil servant’s significant increase in income versus his or her legitimate income from the performance of his or her duties, which he/she cannot reasonably justify. Among the States Parties which have classified illicit enrichment as an offence, it will be regarded as an act of corruption for the purposes of this Convention. The State Party which has not classified illicit enrichment as a crime will provide the assistance and co-operation foreseen in this Convention with regard to this offence, to the extent that their law so permits*”. Some countries in Latin America punish the offence of illicit enrichment, among them Argentina³⁴, Brazil³⁵, Colombia³⁶, Ecuador³⁷, El

³⁴ Article 268 (2) of the Argentinian criminal code punishes persons “who, on being duly enquired, do not justify the origin of a significant increase in wealth, be it their own or belonging to an intermediary for the concealment of such increase, which occurred after taking office or taking up the position as civil servant, and up to two years after ceasing to hold office. It will be assumed that there was enrichment not just when personal property increased through money, goods or assets, but also in cases when debts or obligations have been settled. The intermediary used to conceal the enrichment will be punished with the same sentence as the perpetrator of the crime.

³⁵ Law no. 8,429, of 2 June 1992. Regulations on sanctions applicable to the public agents in the cases of illicit enrichment in the exercise of their functions or employment in the public administration, direct or indirectly.

³⁶ The Colombian criminal code punishes both the illicit enrichment of individuals and that of civil servants: Article 327 defines the illicit enrichment of individuals as follows: “Whoever, directly or through an intermediary, obtains, for himself/herself or for a third party, an unjustified increase in wealth, which in one way or another arises from criminal activities, will by that mere offence be subject to a term of imprisonment of 6 to 10 years and a fine which equals twice the value of the wealth, not exceeding the equivalent of 50,000 applicable minimum legal monthly salaries”. A civil servant who, during his/her period of attachment to the Administration, or having performed public duties, and also for two years after his/her detachment from such duties, obtains for himself/herself or for others an unjustified wealth increase, if such behaviour does not constitute another crime, will be subject to a term of imprisonment of 6 to 10 years, a fine which equals twice the value of the wealth, not exceeding the equivalent to 50,000 applicable minimum legal monthly salaries, and disqualification for exercising rights and public duties for a period of 6 to 10 years”.

³⁷ In Ecuador, Article 296 of the Criminal Code punishes illicit enrichment as follows:

Article (296.1) – Illicit enrichment occurs whenever there is an unjustified increase in a person’s wealth, which happens on occasions, or as a result of the performance of a public office or duty, generated by actions which are not allowed by the law, and which, consequently, is not the result of legally received income.

Article (296.2) – Illicit enrichment will be punished with a term of imprisonment of 1 to 5 years, as well as the restitution of twice the value of the illicit wealth, if the enrichment does not constitute a separate offence.

Article (296.3) – The two previous articles are applicable to those who, in their capacity as civil servants or administration employees, deal with funds from the Central Banks, the Development and Business Loan System, and the Ecuadorian Social Security System.

Salvador³⁸, Mexico³⁹, Paraguay⁴⁰, Peru⁴¹ and Venezuela⁴². However, other American countries such as Canada⁴³ or the United States of America⁴⁴ have made express reservations with regard to the Convention, arguing that the criminal punishment for illicit enrichment might be in breach of their respective Constitutions, since it represents a reversal of the burden of proof.

Likewise, the *African Union Convention for Preventing and Combating Corruption* defines illicit enrichment as the increase of a civil servant's wealth, or of the wealth of any other person who cannot reasonably explain such increase of wealth by his or her income (art. 1). Article 8 of the Convention recommends the States to punish this offence, if their national

38 Law on the Illicit Enrichment of Civil Servants and Public Employees. Royal Decree 2,833 from 1959. The law seems to be undergoing a current reformation process.

39 Article 224 of the Federal Criminal code punishes the offence of illicit enrichment as follows: "Whoever, by reason of his/her job, position or obligation within the public sector, has illegally enriched himself/herself, will be punished". Illicit enrichment can be said to occur when the civil servant cannot prove the legal increase in his/her property or the legal origin of the assets in his/her name, or of the assets of which he/she acts as owner, pursuant to the Federal Law on Liability of the Civil Servants".

40 Law 2523, which prevents, defines and punishes the illicit enrichment in the Public Service, and the peddling of influence, from 2004.

41 Article 401 of the Peruvian Criminal Code punishes illicit enrichment as follows "A civil or public servant who, by reason of his/her position, illicitly enriches himself/herself will be punished with a term of imprisonment of no less than five years and no more than ten years".

"It is deemed that there are signs of illicit enrichment when the increase in the wealth and in the personal economic expenses of the civil or public servant, according to his/her sworn declaration of goods and incomes, is significantly higher than the goods and incomes which he/she could have had by virtue of his/her salaries or the emoluments received, or of his/her capital increases, or of his/her income from any other legal source".

42 Law against corruption. Official Gazette 5,637. Special issue of 7th April 2003.

43 "Interpretative declaration of Article 9 – Illicit enrichment. Article 9 provides that it is the obligation of a State Party to classify the offence of illicit enrichment "pursuant to its Constitution and the fundamental principles of its legal system". Since the crime which is dealt with in Article 9 would disagree with the presumption of innocence guaranteed by the Canadian Constitution, Canada will not apply Article 9 as provided for in this Article".

44 "Illicit enrichment – The United States of America intend to provide assistance and co-operation to the other States Parties, pursuant to paragraph 3 of Article 9 of the Convention, to the extent that the internal legislation allows. The United States acknowledge the importance of combating undue enrichment of civil servants, and have criminal legislation in place hindering or punishing such behaviour. Such regulations make it compulsory for senior officials of the federal government to present true financial reports, an obligation which is subject to criminal punishments if not fulfilled".

It also allows for the prosecution of those civil servants of the federal government who have evaded tax corresponding to illegally-obtained wealth. However, the crime of illicit enrichment, as laid down in Article 9 of the Convention, places the burden of proof on the defendant, which is incompatible with the United States Constitution and the fundamental principles of the legal system of this country. Thus, the United States understand that they are not obliged to establish a new criminal offence of illicit enrichment, pursuant to Article 9 of the Convention".

provisions permit it. Some African countries like Benin punish this offence expressly.

Likewise, in Asia, countries such as Malaysia and Hong Kong (China) punish the offence of civil servants' illicit enrichment.

In *Europe*, the *Agreement on Corruption* (Agreement 173 of the Council of Europe) was signed in Strasbourg on 27 January 1999. However, it does not expressly provide for the offence of illicit enrichment. Thus, the fact that the EU Commission proposes the introduction of an offence which poses so many problems from the point of view of respect for Human Rights is striking. However, some EU countries have, in their respective legal systems, this criminal offence already classified, or rather, a similar offence which is not fully identical. Indeed, the French legal system includes the offence of non-justification of financial resources, which was introduced by an Act from 9 March 2004, known as Perben II, and amended by Act 2006-64, from 23 January 2006. Such an offence is included in the French criminal code in the context of offences connected with the receiving of stolen goods. French Article 321-6 CP punishes the impossibility of justifying the financial resources corresponding to a specific standard of living, or the impossibility to justify the origin of an asset owned, when a frequent relationship is held with one or more persons who commit frequent offences that are punishable with prison terms of at least five years, and which bring them direct or indirect profit. The established sentences are three-year prison terms and 75,000 euro fines.

The fundamental *problem* posed by the offence of illicit enrichment is its incompatibility with regulations related to human rights, since it *reverses the burden of proof* in the criminal field. Indeed, it is up to the accused (normally a civil servant) to prove that the assets he or she owns have a legal origin; failure to do so means that he or she will be criminally punished. However, the above-explained legislative models do not fully coincide with each other. In fact, it is possible to distinguish between two different models:

The model followed in the majority of the countries of *Latin America* which have been mentioned, in which a civil servant who does not justify the

origin of the assets owned will be punished. To our mind, a similar offence would not pass the test of the European standards for human rights, since it is in breach of the presumption of innocence, and represents an obvious reversal of the burden of proof; it is the accused person who must certify the legal nature of his or her assets.

The *European* model, exemplified by the French legislation and proposed by the EU Commission, cannot be said to represent a total reversal of the burden of proof. The offence included in French article 321-6 CP requires some elements to be proven by the plaintiff. Such elements are the ones that are used, for example, by the Spanish case law to punish on the grounds of money laundering, and by other countries resorting to the circumstantial evidence, which has been admitted by the TEDH. The French criminal code demands that the subject a) own assets that do not correspond to his or her standard of living; b) cannot justify the origin of those assets, and c) maintain a frequent relationship with one or more persons who are involved in the commission of offences. Indeed, these three elements are the evidence used by the Spanish Supreme Court to prove the offence of money laundering⁴⁵. The burden of proof is not reversed, since the plaintiff has presented elements which lead to conclude, looking at the circumstances of the specific case, that the assets owned by the subject are of criminal origin, and that other possible origins are ruled out.

4.2.6 The need for available statistics.

The assessment of the efficiency of the various instruments for fighting criminality generating great profits requires feasible statistical methods which should be comparable between all the states. Without such methods, it will be impossible to establish, at European and national level, whether the efforts made in this field are useful. Spain happens to lack reliable statistics on money laundering and on seized and forfeited assets. This task of collecting

⁴⁵ The well known Supreme-Court decision of 23 May 1997 systematises this evidence as regards money laundering. Extensive case law has later been established, which develops and applies these criteria. Such evidence is: 1 an unusual increase in wealth or the handling of money which, due to high quantum, form of transfer and the fact of being cash, demonstrates the existence of operations outside the realm of ordinary business practices; 2 the lack of a logical explanation for such transfers; 3 a connection with some criminal activity, or with persons or groups related to criminal activities.

statistics on seizure and forfeiture of assets could be commissioned to the ARO (just as the statistics on money laundering should be obtained by the FIU)⁴⁶. The availability of comparable statistics will make it possible to assess the efficiency of the ARO in the EU, and also to make assessments of the actions of the national ARO, even through *inter partes* evaluation, as is done, for example, in the context of the GAFI⁴⁷.

⁴⁶ Commission Communication to Council and the European Parliament – The Hague Programme: Ten priorities for the next five years: An association for the European renovation in the area of freedom, security and justice, COM/2005/0184, *in fine*. This document points out that data available are very limited, and these are mainly obtained from the national databases or the mutual-evaluation reports on the fight against money laundering published by GAFI, the International Monetary Fund and the Moneyval Committee of the Council of Europe.

⁴⁷ The proceeds of organised crime. Guaranteeing that crime does not pay, cit.

III. THE IMPLEMENTATION OF CONFISCATION AND THE NEED TO CREATE ASSET RECOVERY BODIES

1. INTRODUCTION

One of the essential distinctive notes of organised crime is pursuing financial gain through serious crimes⁴⁸. In order to fight against it, a criminal policy has been designed to deprive criminal organisations of the benefits coming from their illicit activities⁴⁹. The underlying idea is that the traditional response, such as custodial sentences and fines, is not very effective against organised crime: an essential complement could be to act against their assets (and not only against the individuals). This criminal and political strategy is based mainly on three pillars:

1. **Confiscation** of assets of criminal origin, in order to deprive criminal organisations of their illicit benefits.
2. The **punishment of money laundering as a crime**.
3. The last of the pillars rests on the so-called **“Al Capone” approach or strategy**, consisting in taxing the assets of illicit origin. This way, criminals are forced to pay taxes for their illegal profits, and if they don't do so, they are punished under criminal law for the commission of a crime against the Tax Administration.

Certainly, the most developed pillar is the one related to the fight against money laundering, which has led not only to a criminal category, but to the passing of laws and administrative regulations with the aim of preventing its commission and avoiding the access of dirty money into the financial system. Likewise, an administrative system has been created,

⁴⁸ On the characteristics of organised crime, SÁNCHEZ GARCÍA DE PAZ, Isabel, *La criminalidad organizada. Aspectos penales, procesales, administrativos y policiales*, Madrid, 2005, page 40/1, the author considers that those groups that pursue goals other than economic gains, such as political or religious advantages, would have to be included within the concept of “organised crime”.

⁴⁹ Cf. KILCHLING, Michael, “Tracing, Seizing and Confiscating Proceeds from Corruption (and other Illegal Conduct) Within or Outside the Criminal Justice System”, in *European Journal of Crime, Criminal Law and Criminal Justice*, Volume 9, Number 4, 2001, pp. 264-280, pages. 264 ff.

headed by **Financial Intelligence Units (FIU)**, whose basic function is to receive, analyse and communicate to the competent authorities information about suspicious transactions linked to money laundering⁵⁰.

Perhaps confiscation has received less attention. Up to a few years ago, the deprivation of assets of illicit origin in criminals' possession was not very relevant. One of the reasons was probably that the penal process was aimed essentially at the punishment of the crime, and not asset recovery⁵¹. But it was also the lack of resources at the judicial authorities' disposal to trace and identify such illicit assets. This is changing, and during these last years the institution of confiscation is acquiring great importance, so much so as to be considered the "central weapon" in the arsenal aimed at dealing with the proceeds of crime⁵². In the European Union context nowadays, fundamental importance is attributed to the cross-border pursuit of the assets of illicit origin and their confiscation. This has given rise, as occurred with money laundering and the establishment of the FIU, to a proposal to create national bodies to assist the judicial authorities in tracing and identifying such assets.

International organisations are placing special emphasis on the need to recover assets from crimes of corruption. In fact, the United Nations and other organisations recommend that States adopt measures to recover assets obtained by corrupt individuals. This is logical, since it has been proved that State leaders plunder their countries' wealth without scruples. Just to mention some figures, according to the Declaration on the Recovery and Repatriation of Africa's Wealth, in 2001⁵³, it is estimated that during decades, in the

⁵⁰ Cf. At great length, the work entitled *Financial Intelligence Units: General overview* – Washington D.C.: International Monetary Fund, Legal Department, Department of Monetary and Financial Systems: World Bank: Financial Market Integrity Unit, 2004.

⁵¹ CRIBB, Nicholas, "Tracing and confiscating the proceeds of crime", in *Journal of Financial Crime*, Volume: 11, Issue: 2, 2003, pp. 168–185, p. 180

⁵² *Payback Time. Joint Review of asset recovery since the Proceeds of Crime Act 2002* (<http://www.hmica.gov.uk/files/Full.pdf>), p. 42, nm. 2.20.

⁵³ The *Nyanga Declaration* was signed in March 2001 by representatives of Transparency International in Botswana, Cameroon, Ethiopia, Ghana, Kenya, Malawi, Nigeria, South Africa, Uganda, Zambia and Zimbabwe, (see text in www.transparency.org), mentioned by United Nations, General Assembly, Global study on the transfer of funds of illicit origin, especially funds derived from acts of corruption, **Ad Hoc Committee** for the **Negotiation** of a Convention against Corruption. Fourth period of sessions. Vienna, 13 to 24 January 2003. Chapter 3 of the provisional programme. Examination of the Project of the United Nations Convention against Corruption, with special emphasis

poorest countries of the world, most of them in Africa, between 20 and 40 billion dollars were corruptly misappropriated by politicians, members of the armed forces, entrepreneurs and other leaders, and subsequently sent abroad⁵⁴. There cannot be the slightest doubt about the need for the original States to recover those assets, often sitting in bank accounts in tax havens; this is why the essential aim of some international initiatives is to obtain the repatriation of those assets to their legitimate owners.

However, asset recovery can not be focused exclusively on the recovery of the assets coming from corruption. It must extend to assets coming from any crime, especially to those that generate great profits, usually carried out by criminal organisations. This recovery of assets from crimes can only be carried out in accordance with the instruments established by the penal legislation, and to be precise with the sanction known as asset confiscation. Its appropriate implementation needs those in charge of its implementation (judges and prosecutors) to have at their disposal the means to identify those assets and to establish their connection with the crimes giving rise to them. This has caused some countries to create **asset recovery bodies** in order to improve the effectiveness of the deprivation of criminals' profits, thus rendering crime a less lucrative activity.

The **European Union** is also aware of the importance of this topic, and therefore it approved Council Decision 2007/845/JHA on co-operation between Asset Recovery Offices of the Member States, forcing EU countries to establish asset recovery bodies and to ensure co-operation among them.

As the initiatives of the international bodies focused on asset recovery were explained above, we will now examine in detail this Council Decision through some examples of asset recovery bodies in specific countries. This

on articles 2 (pending definitions), 3, 4, 20, 30, 32 to 39 and 40 to 85. A/AC.261/12. 28 November 2002, paragraph 8, and note 4.

⁵⁴ About the situation in Africa, Cf. GILMORE, Bill, "The Return of Plundered State Assets: The Report of the Commission for Africa 2005", presented in the *Meeting of experts on cooperation with respect to the denial of safe haven to corrupt officials and those who corrupt them, their extradition, and the denial of entry and recovery of the proceeds of corruption and their return to their legitimate owners*, Organisation of American States, Washington, D.C., March 28-29 2005, available at www.oas.org/juridico/spanish/rexcor_gilmore.doc, casting doubt on the accuracy of stolen assets in Africa as mentioned in some fora.

analysis is made according to their nature: police, judicial or administrative. Finally, we will conclude by appealing to the need for these institutions to be created in order to increase the effectiveness of the fight against crime, and to the relevance of international co-operation and the free-flowing information exchange among these bodies.

2. COUNCIL DECISION ON CO-OPERATION BETWEEN ASSET RECOVERY OFFICES OF THE MEMBER STATES IN THE FIELD OF TRACING AND IDENTIFYING THE PROCEEDS OF CRIME AND OTHER ASSETS LINKED TO CRIME

In recent years, the European Union insists on the idea of depriving criminals of the proceeds of their crimes. There are two main instruments in this field: Framework Decision 2005/212/JHA of the Council of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property⁵⁵ and the Framework Decision 2003/577/JHA of the Council of 22 July 2003 on the execution in the European Union of orders freezing property or evidence⁵⁶. These deal with different aspects of the judicial co-operation in the criminal in question in the field of seizure and confiscation of proceeds, instruments and other assets related to the crime.

In relation to the issue discussed in this paper, the European Union had already commented in 2000 on the advisability of creating asset recovery bodies. The **Millennium Strategy**⁵⁷ against organised crime includes Recommendation 17 (b), according to which Member States will have to study the possibility of creating “units specifically dedicated to procedures for tracking, seizing and confiscating assets ...” and they will have to examine whether those units “have sufficient staff, technical and operational resources for the fight against money laundering”.

⁵⁵ Official Gazette L 68 of 15.3.2005.

⁵⁶ Official Gazette L 195 of 2.8.2003.

⁵⁷ *Prevention and control of organised crime. Strategy of the European Union for the beginning of the new millennium-* Official Gazette C 124 of 3/5/2000.

The European Commission has issued statements on the advisability of creating asset recovery bodies. In the Communication of 2004 on the **fight against organised crime in the financial sector**⁵⁸ it pointed out expressly that “the creation of specialist bodies for asset recovery can be the cornerstone in the effort to deprive criminals of the proceeds of their crimes by any legal means available pursuant to criminal and/or civil law”. Besides, it reaffirmed its support for the Europol Project to create a “knowledge centre for asset seizure” in order to facilitate the identification of criminal assets during major criminal investigations carried out by the member states, and it also proposed to go into partnership with Eurojust on this point.

In the Communication to the Council and to the European Parliament titled “The Hague Programme: Ten priorities for the next five years”⁵⁹, the Commission advised the reinforcement of the instruments to fight against organised crime in the EU Member States. So, in this context of the fight against organised crime moving large amounts of money, the Commission proposes the establishment of asset recovery bodies in the Member States and the swift exchange of information among them. Therefore, in 2007, the Council approved Decision 2007/845/JHA on co-operation between Asset Recovery Offices of the MS, obliging EU countries to establish asset recovery bodies, and to ensure co-operation among them.

Article 1 of this Council Decision obliges States to create or designate asset recovery offices and nominate a maximum of two of its Asset Recovery Offices as contact points.

The Council Decision has as its **objective** the co-operation among asset recovery offices, exchanging information and best practices (article 2). The **exchange of information** can be done on request or spontaneously.

A controversial point is the one established in article 5 of the Council Decision, referring to the **use of the information**. The information obtained can be used in any proceedings aimed at the seizure or confiscation of the

⁵⁸ Communication of the Commission to the Council and the European Parliament related to the prevention and fight against organised crime in the financial sector, Brussels, 16.4.2004, COM(2004) 262 final, point 2.4.

⁵⁹ COM (2005) 0184 final.

proceeds of crime or other assets related to criminal activities. So, whenever information is communicated, the requested Asset Recovery Body can impose restrictions or conditions on its use. The recipient must respect all such restrictions and conditions⁶⁰.

Of course, the information gathered implies that Asset Recovery Bodies can use **personal data**, the processing of which must be subject to the respective national and international legislation.

In relation to **best practices**, the asset recovery bodies established or designated must exchange their best practices in order to improve efficacy in the tracing and identification of assets related to crime (art. 6).

⁶⁰ These cannot refer to the use of information for the purposes of compensating the victims of the offences referred to in the information.

IV. FINANCIAL INVESTIGATION AS A BASIC INSTRUMENT FOR ASSET RECOVERY

The investigation of crimes generating great profits always requires the identification, by the authorities, of the assets originating in the same. In order to do this, there are different possibilities:

- 1) In some countries the financial investigation is carried out in parallel to the investigation of the crime.
- 2) In some countries a procedure has been created, so that all the issues related to the criminals' property can be discussed.

Only a serious and deep investigation of assets can lead to a good outcome in the fight against the criminality generating high profits.

Nowadays, fundamental relevance is given, in the European Union context, to the cross-border pursuit and the confiscation of criminal assets within the fight against criminality.

In this line, the EU Commission understands that the confiscation and recovery of assets of illicit origin are very effective instruments for dealing with organised crime, which acts with clearly defined profit goals. In this way, confiscation prevents assets with an illicit origin from being used “to finance other illicit activities, to undermine the confidence in the financial systems and corrupt legitimate society”⁶¹.

This political-criminal strategy is based on the idea “*follow the money*”⁶², which consists in tracking money with a criminal origin and confiscating it so as to render crime a less lucrative activity. This means the paradigm has changed, stressing the deprivation of the assets generated by

⁶¹ Communication from the Commission to the European Parliament and the Council- Proceeds of organised crime: ensuring that “crime does not pay” Brussels, 20.11.2008. COM(2008) 766 final.

⁶² NAYLOR, R. *Thomas*, “Wash-out: A critique of follow-the-money methods in crime control policy”, *Crime, Law & Social Change* 32, 1999, pp. 1–57.

the crime, and not so much pursuing and imposing a punishment on the alleged criminals⁶³.

The aim is to *deter*⁶⁴ criminals from committing crimes that generate major economic benefits. Asset confiscation and recovery have a clear preventive effect, as the EU Commission states, since they prevent the crime from becoming profitable, deter criminals and “may contribute to reducing the influence of negative models on local communities”⁶⁵.

1. INVESTIGATION STAGES

1.1 The beginning of the investigation

When it is known that a crime that could have generated assets has been committed, it is necessary to carry out a financial investigation. The objectives of the investigation have to be:

- *Identification* of the assets coming from the crime. This step is indispensable, because if the illicit assets are unknown they are unlikely to be confiscated in future.
- Once assets are identified, they must be traced, that is to say, their location (physical or legal) must be determined. The identification of assets is worthless if we don't know their location.

1.2 Advance planning

In order to optimise the outcome of the financial investigation it is convenient to plan in advance the steps to be followed. In the context of this planning, we have to take into account several aspects enabling action to be taken speedily and efficiently.

⁶³ JORGE, Guillermo, “Regímenes para prevenir y reprimir el lavado de dinero”, in Guillermo Jorge, *Recuperación de activos de la corrupción*, Buenos Aires, 2008, pages. 3-26, page 4.

⁶⁴ The deterrence effect of confiscation can be studied in BOWLES, Roger A. / FAURE, Michael G. / GAROUPA, Nuno. “Forfeiture of Illegal Gain: An Economic Perspective”, *Oxford Journal of Legal Studies*, Vol. 25, No. 2, 2005, pp. 275-295

⁶⁵ Proceeds of organised crime: ensuring that “crime does not pay” *cit.*

The planning of the financial investigation needs the preparation of a work programme where we have to consider several aspects:

- Objectives of the investigation, specifying what we want to achieve.
- Detailed description of the steps to take.
- Preparation of a time-line for the investigation, with the organisation of a schedule, taking into account the legal deadlines for the investigation (criminal and financial).
- Appointment of trained and experienced staff
- Assignment of material resources.
- Consideration of the entities and bodies (both national and international) that will receive the requests for information or co-operation.

States' resources to carry out financial investigations are, for the moment, limited. The optimisation of the resources suggests that the authorities may be able to choose the cases to be investigated.

Once the cases have been selected and assets of illicit origin have been detected, a good practice could be to allow the competent authority to decide what assets should be seized. And this is because not all assets may be interesting from the point of view of seizure. All illicit assets, such as drugs or weapons, should be seized in all cases to dispose of them properly. Others, nevertheless, could have no or limited interest. For instance, assets of little value where their custody and management would clearly show a deficit. Therefore, it might be advisable to authorise the non-confiscation of assets of limited economic value. This of course requires, on the part of the authorities, that they have a plan of which assets are going to be seized, and which ones are not.

After the identification of the assets, and before seizure, is advisable to appraise the assets, in order to anticipate their administration expenses.

2. IDENTIFICATION AND TRACING OF ASSETS

From the beginning of the investigation it is necessary to *identify* all the assets at the disposal of the people being investigated. It is advisable to identify the assets under their control through third parties, whether private individuals or legal entities. Likewise, it is necessary to determine their location.

The determination of the illicit origin of an asset requires the establishment of a connection between the asset and the crime. It is necessary, therefore, to plan the activities to be carried out to prove the illicit origin of the assets.

We have to resort to the forms of evidence admitted in national legislation (wire-tapping, tracking, search warrant, etc.), so as to investigate the crime and identify and trace the assets of illicit origin, with the aim of determining the assets at the disposal of the people under investigation and those at the disposal of third-parties (individuals or legal entities).

2.1 Co-operation of private entities

The investigation of assets with an illicit origin requires the co-operation of private entities. This is not always easy and therefore obtaining information quickly and efficiently is sometimes difficult. The private entities may send incomplete replies, raising the need to send additional information requests to obtain the missing data.

Therefore, it is necessary to force banks and financial institutions to collaborate with the authorities in charge of the investigation so that they can quickly obtain comprehensive banking and financial information in electronic format.

2.2 Difficulties identifying the beneficial owner of the assets to be seized

The existence of bank accounts and other assets in off-shore territories makes it extremely difficult to investigate criminal assets due to the difficulties in obtaining information from those territories. Usually the owner

of the assets is hidden behind a complex human chain, including fronts established in tax havens.

2.3 Difficulties establishing an evidential link between assets capable of being confiscated and the crimes:

- In the case of assets (real estate, movable assets subject to registry, movable assets, artworks, jewels, etc.) effectively owned by the suspects, but where the ownership is held by third parties, individuals or legal entities (foundations, associations, companies, etc.), in particular those located in tax havens.
- In the case of money transactions and capital flows through channels located in tax havens.
- In addition, the existence of a clandestine parallel banking system enormously hinders the investigation of the financial operations where assets with a criminal origin are involved.

In order to solve the evidential problem related to the connection between assets and criminal activity, it could be very useful to resort to presumptions. The use of presumptions that allow evidence contrary to fact (*rebuttable presumptions*) can be used by the authorities. This way it need only be proven that assets cannot come from legitimate income received by a person involved in a crime (if a series of requirements are met), so that it becomes his or her responsibility to prove the legitimate origin of the assets. Where this cannot be done, the criminal origin of the assets can be deemed to have been proved, at least by circumstantial evidence.

Likewise, it is appropriate to take into account that the evidential criteria admissible in this topic must be the ones typical of the civil proceedings, based on the balance of probabilities.

2.4 Difficulties related to time limitations

There are also difficulties to reconcile two relevant aspects: firstly, the need to carry out an exhaustive financial investigation when a crime is

committed and, secondly, the existence of a maximum length of time an investigation can last. Sometimes these deadlines are not enough to carry out a detailed financial analysis of the assets belonging to the subjects involved in criminal activities.

2.5 Difficulties related to the analysis of the information

The creation of units dedicated to the analysis of financial information, with multidisciplinary teams bringing together the specialised knowledge required for a quick investigation, should be foreseen.

Likewise, the examination of external signs of wealth should be systematically promoted in every legal system, using this information for future criminal and financial investigation.

It is convenient to intensify systematically the analysis of external wealth signs for future criminal and financial investigation. This can be done, for example, in relation to certain types of criminal activity (organised crime, financial crime) or prior judgements or on-going investigations into these crimes.

3. ASSET SEIZURE

The planning of a financial investigation must foresee certain aspects.

- Requests for warrants to seize the instruments and proceeds of crime.
- Request for seizing the assets – not directly derived from the crime-of the offender, but that can be used to issue the confiscation for equivalent value.

From the personal point of view, it is a good idea for the seizure or confiscation to fall on the assets belonging to a range of subjects:

- a) Firstly, on the assets of the alleged criminal under investigation. These could be seized as follows:

- Those objects that can be considered as evidence of crime.

- Instruments of the crime.
- Proceeds of crime, *inter alia* the profits.
- Other assets with an illicit origin that can not be proven but that may be useful for confiscation of equivalent value. Likewise, assets should be seized in order to cover liability for monetary penalties, legal costs, compensation for victims and others affected by the crime.

b) Likewise, on the assets belonging to non-bona fide third parties.

The assets to be seized will be the ones considered as evidence of crime, instruments and the proceeds of crime.

In relation to bona fide third parties, their rights must be protected whenever these are legitimate.

The action plan should also foresee the assets that can be seized, their nature and amount, so that the necessary means for their transportation and storage can be made available. As will be shown, it will also be necessary to place on record, at the moment of the asset's seizure, its nature, location, condition, etc.

It is also a good idea to have experts present when dealing with the seizure of certain assets, such as artwork, jewels, etc.

When necessary, the seizure of assets and the arrest of suspects alleged to be responsible for the crime should be organised and planned to take place simultaneously. This planning should also include co-ordination with the authorities of other countries in order to guarantee the success of the international operation.

The financial investigation must be an essential supplement to the criminal investigation and must continue after the assets are confiscated. As pointed out previously, it is necessary to have material and human means necessary to carry out the investigation. Appropriate co-operation between the different bodies involved in the investigation must be promoted: judges

and prosecutors, investigators, technical teams from the Treasury or Finance Ministry, etc.

An asset investigation providing results requires to establish centralised databases with information about the owners of certain assets (financial instruments, real estate, vehicles, etc.), so that investigators can have quick access. Especially in the case of financial products, the database must have information, at the very least, about the identity of the owners, co-owners, authorised persons and representatives, whether individuals or legal persons.

The legislation related to money laundering must establish the obligation of obliged parties, particularly banks and other financial institutions, to collaborate promptly with the authorities and provide the information needed for the seizure of assets.

Likewise, investigators must have access to the databases of certain bodies like the Social Security, Land Registries, the Treasury, etc.

It is convenient for the legislation to allow the spontaneous exchange of information between the authorities in charge of identifying, tracing and seizing the assets, at both national and international level.

It should also enable spontaneous co-operation, or else through a prior request, with the authorities of other countries for the investigation of assets of criminal origin. Likewise, whenever necessary, it is convenient to establish joint investigation teams with the participation of the proper authorities in the field of asset recovery.

In order to facilitate international co-operation, it is a good idea to use the channels offered by existing institutions such as CARIN, the European Judicial Network, Eurojust, etc.

V. ASSET MANAGEMENT OFFICES

1. INTRODUCTION

In order to manage the diverse forfeited proceeds from criminal activities, States have established **mechanisms** intended to guarantee their effective and profitable management. These mechanisms are based on developing a body whose task is to manage these assets, namely the Asset Management Office (AMO).

In terms of **comparative law**, it is possible to describe two different kinds of bodies, related to the competences assigned to them:

1. First of all, bodies with wide **functions covering everything** to do with the property-related aspects of the offence. They investigate the situation of the person charged in order to identify and trace any proceeds from crime, also assets with a lawful origin, in those cases where equivalent value forfeiture is ordered. These bodies also have to manage the forfeited assets, executing judicial orders and national and international distribution, once the seizure has been ordered.
2. Secondly, a more restrictive model assigning the body the exclusive **task of managing assets**. It has to look after, manage, and keep the assets according to national laws.

It is indispensable for States to manage forfeited assets in an effective and profitable way. An important factor in the management of confiscated assets is the appointment of a body responsible for such administration. In order to achieve this, Several States (among them, some G8 members) have established special government bodies with authority to look after, manage, and keep seized assets. Also, another task is providing support in activities to do with forfeiting.

2. INTERNATIONAL RECOMMENDATIONS ON SEIZED ASSET MANAGEMENT

2.1 G8 Best Practices for the Administration of Seized Assets

The G8 group of the world's most industrialised countries has taken great care in recent years when seizing the proceeds of crime. This interest has been shown in every aspect related to asset management. The G8 has developed **a document containing best practices in administration of seized assets**⁶⁶. This document highlights the importance of depriving delinquents of their fruits. It may so happen that the expenses caused by asset management cannot be recovered. Therefore, it is necessary to adopt good financial and tax decisions. Planning prior to the forfeiture is essential to estimate expenses and take decisions about whether goods are to be seized, then how, when, and which goods are going to be forfeited in first place.

According to the best practices document mentioned above, States have to establish effective and profitable **mechanisms** for asset management. In connection with this aim, they should think about establishing a Confiscated Goods Fund.

The document considers that **appointing a body** with competences over forfeited asset management is an important question depending on national legislation.

The States have to develop **strict controls** in asset management. There must be a clear division of duties, so nobody has full authority on every aspect related to asset management. If this is not possible, and there is someone who has full authority, guarantees must be given that this person is absolutely responsible to an administrative control body. Anyway, any person officially responsible for asset forfeiture cannot, in any official way, receive any **economic reward** linked to the value seized, nor can the funds intended for goods management be used for personal purposes.

⁶⁶ *G8 Best Practices for the Administration of Seized Assets*. G8 Lyon/Roma Group. Criminal Legal Affairs Subgroup. Final version dated April 27, 2005.

Forfeited assets have to be managed **transparently**. This management must be inspected, once a year, by independent auditors or similar experts, according to national laws. These exams can include financial reports certification, and the results must be put at everybody's disposal, when appropriate.

Likewise, States are recommended to use **Technical Information and Communication Systems** for managing assets. These systems might be extremely useful, for instance, in managing inventory or expenses caused by seized goods, so keeping the administration system transparent.

This document's basic premise is **keeping** assets; so, when goods have been seized, unless their sale is authorised prior to the hearing, they must be kept in the same condition as when they were seized. In addition, this document establishes that the **use** of forfeited goods by a defendant or a third person must be regulated by national laws. Sometimes, such use may clash with the aims and purposes of the confiscation. Unless there is a compulsory aim, for example reasons of evidence, seized goods cannot be used by law enforcement personnel during the judicial procedure.

There should be legislation regulating procedures that allow the **sale** of perishable or rapidly depreciating goods such as boats, planes, cars, animals and crops. Also, the States have to evaluate the possibility of authorising the sale of goods prior to the hearing when keeping them becomes too expensive.

According to national laws, asset management must bear in mind **the defendant's interest**.

Lawyer's fees and defendant's common expenses may be paid for with seized goods, but in a strictly controlled way; or such payments may be forbidden under national law. For example, the defendant may be required to show no other goods are available for such payments or that he or she is not entitled to a public defender, and that the expenses in question are reasonable.

Those with a lawful interest in the goods seized should be able to petition a judge to change a confiscation order or release assets under suitable controls. In order to achieve this, national laws should establish, in a clear way, **the rights of bona fide third parties** with regard to forfeited assets. For

instance, a person could go on with his lawful business, or a leaseholder could go on using commercial real estate. Also, national laws should bear in mind the establishment a fast procedure regarding *bona fide* third parties, in order to recognise their rights at an early point in forfeiting procedures.

Perhaps, valuing assets is one of the biggest matters. The document mentioned above states that assets should be **appraised** in order to fix their market value on the date of seizure. States could assign this task to qualified third parties.

2.2 FATF: Best Practices. Confiscation

The Financial Action Task Force (FATF) has developed a **best practices document related to asset confiscation**⁶⁷. The aim is to help comply with recommendations 3 and 30 against money laundering developed by this international body. This purpose of this document is to stress the importance of having a strong system regarding temporary measures and confiscation in order to deal with money laundering and the financing of terrorism. Confiscation prevents the laundering and re-introduction of proceeds from crime, either to facilitate another crime or to hide its unlawful origin. It also avoids the commission of crimes giving rise to proceeds, because of the risk of losing them, and it allows victims to be compensated, at least partially.

One of the main aspects of this document is **asset management**. In order to improve the effectiveness, there should be an asset management programme. The document mentioned above refers to management methods, depending on the nature and circumstances of the assets, or there may be a mix of methods. Specifically, it refers to:

- Existence of competent authorities for management.
- Delegation on contractors.
- Manager appointed by Judicial Court.

⁶⁷ GAFI, *Best Practices. Confiscation. (Recommendations 3 and 38)*.- 19 February 2010.

- The owner can manage his assets, with special restrictions related to use and sale (good practice 26).

According to the document, the ideal regime for administering seized assets should have the following **characteristics**:

- Existence of a **management framework** and proper control. This should include several responsible authorities on management. It should also include the legal authority for managing and keeping those assets.
- **Enough resources** to carry out all management aspects.
- Suitable **planning** before executing the seizure or confiscation.
- **Measures** such as:
 - Keeping and taking care about assets, in a possible way.
 - Dealing with individual and third parties rights.
 - Disposing assets.
 - Preserve registers.
 - Assuming responsibility for damage to assets, in the event of legal action by an individual for loss of or damage to his or her property.
- Those responsible for managing the goods (or supervising such management) **can provide immediate support and advice** to law enforcement agencies in relation with forfeiture.
- Those responsible for managing the goods must have enough **experience** in this field.
- Legislation gives Courts the ability to order the sale, even when the goods are perishable or their value decreases very fast.
- There is a mechanism allowing the Court to order the **sale of the goods** with the **owner's consent**.

- Goods that cannot be offered for sale to the general public will be **destroyed**. These include:
 - Goods that are likely to be used to commit new offences.
 - Goods whose property is a crime.
 - Fake goods.
 - Goods that constitute a threat to public safety.
- It is necessary to have mechanisms ensuring **the transfers of title to the same**, avoiding delays or complications.
- In order to guarantee **transparency and evaluate the system's effectiveness**, there should be mechanisms in place for: tracing assets, calculating their value at the moment of confiscation, and, later, keeping records related to their final disposal and, in the event of a sale, keeping records related to their final value.

2.3 Camden Asset Recovery Inter-Agency Network (CARIN)

The proposals for asset management from the CARIN network, explained in detail earlier, are described in the following paragraphs.

The **CARIN annual conference**, held in Paris in September, 2008, focused on the need to promote the creation of National Asset Recovery Offices and **improve the management of seized or confiscated assets**. Some recommendations were launched about asset management:

- Where possible and compatible with national laws and strategies, States should evaluate the establishment of an AMO (Asset Management Office). In this regard, every State must bear in mind:
 - The AMO should be independent from investigative units.
 - The AMO must have enough funds.
 - The stage prior to confiscation must be planned for by contacting all stakeholders.

- Independent auditors of AMO.
 - Establishing a centralised data base in order to seek out confiscated assets and achieve the forfeiture.
 - Existence of legislation related to international co-operation with other AMOs, whether for operational issues, or for the exchange of experiences related to asset management.
- Member States should provide, in their laws, for the possibility of selling confiscated goods, before definitive forfeiture, if management expenses are high or the value may decrease very fast.
- Member States should evaluate the possibility of allocating a percentage of assets per year with the aim of law application and another specific percentage related to assets forfeiture activities.

2.4 American States Organisation – Inter-American Drug Abuse Control Committee, BIDAL Project. Good practices on asset management.

In order to improve asset management and disposal, the Inter-American Drug Abuse Control Committee of the ASO has developed a project called Confiscated and Forfeited Assets in Latin America (BIDAL). One of the results of this project is a “White paper on good practices in asset management”. It is almost certainly the only document from South America to contain recommendations related to asset management.

It is an extensive document stressing the need for establishing a central body to manage assets (what we call AMO). Also, in this document, several asset management systems are analysed, making recommendations to ensure their proper operation.

This document has influenced legislation and practices in countries such as Argentina, Uruguay, Guatemala, Honduras, Costa Rica, Venezuela, El Salvador and the Dominican Republic.

3. BEST PRACTICES IN ASSET MANAGEMENT

- **Asset preservation premise.** Embargoes, seizure, confiscation and freezing are interim measures that do not involve depriving the defendant of his or her assets. These measures are temporary, and their aim is to limit the free disposal of assets in order to ensure any financial liability established in judicial proceedings and, of course, to guarantee forfeiture. Also, this measure has to respect **the presumption of innocence** of the assets' owner. These assets must be preserved in order to give them back if the court does not ultimately issue a forfeiture order; if this is issued, then in order to execute it. Because of this, asset management involves all activities aimed at preserving them in their original state, so as to give them back in the same condition, except for the normal deterioration caused by time, *force majeure* or misadventure. Definitively, the general rule must be the assets' **preservation** throughout the procedure in order to return them to the owner if he or she is declared not liable.
- **Planning before preventive seizure.** Asset management planning should be begun as soon as assets are identified and traced, and before their confiscation. It has to bear in mind the estimated value of the assets and the expenses they will generate. As indicated above, it would be better for the competent authority not to confiscate every asset but rather to have the possibility to decide which assets are not affected.
- **Receipt of goods.** Once the confiscation has been ordered, the next step is to **receive the goods**. To this end, **suitable procedures** have to be established, including a detailed inventory.

Goods reception must be carried out by a competent body and an official record will be taken at that moment by the body in charge. This is a function that should be done by an AMO. This activity requires the execution of several tasks:

1. Drawing up an inventory containing a description and the circumstances of the assets. Any irregularity (for example, in the case of cars, marks, scratches...) must be expressed.
 2. Identifying assets, using the most suitable techniques:
 - a) Photographs, filming and/or photocopies of the documentation for the item seized.
 - b) Real estate location maps (urban areas).
 - c) Real estate GPS location (rural areas).
 3. Provision of suitable measures in order to avoid destruction, damage or disappearance of the items.
 4. Registering measures on public registers.
 5. Technical report issued by an expert, related to state, depreciation, market value and quality. This report should include features such as perishable character or fast decreasing value.
 6. Availability of human and material resources related to the secure and effective carriage of the goods; this should be foreseen in the initial planning.
- **Assets Register.** An **updated and detailed register** of goods taken must be produced as received by the body in question. This register must describe, in detail, any change in their physical condition or legal situation. The register has to contain several points, including:
1. Criminal proceedings giving rise to seizure.
 2. A copy of the judicial order.
 3. Registry certificate noting the provisional embargo.
 4. A copy of any technical reports.
 5. A copy of the reception document.
 6. An inventory.
 7. Reception date and time.

8. Registration date and time.

9. The name of the civil servant recording the entry.

This register should be kept up to date with any judicial or administrative orders related to management, subsequent events or ultimate destination of the goods.

In order to maintain this register, it is advisable to have suitable technical means to ensure up to date information about the reception, carriage, judicial proceedings, legal situation, identification and location. This will make it easier to monitor the goods in order to produce statistics or reports on their management⁶⁸.

- **Establishment of controls.** The existence of strict controls on asset management is necessary in order to achieve transparency. Thus, in the division of competences regarding asset management, it is a good idea for no-one to have full authority over goods and management. A check must be carried out by a superior body with wider powers. This may be through periodic audits, internal or external. Also, any person officially responsible for asset forfeiture or management should not receive any economic reward for this.
- **Disposal.** The basic premise that must guide asset management is preservation during criminal proceedings. However, in some cases, their **sale** may **exceptionally** be authorised. Once the goods have been inventoried, in the case of lawful trading assets, their disposal or sale may be authorised prior to the definitive judgement, but some requirements must be present.

In the case of unlawful trading assets, the authorities have to achieve their **destruction**. If this destruction may cause harm to the environment, specialists have to be involved in order to have the minimum environmental impact.

The following circumstances make an **advanced sale** advisable:

⁶⁸ Organisation of American States – Inter-American Drug Abuse Control Commission (CICAD), Bidal Project. *Best Practices Document on Management of Seized and Forfeited Assets*.

- **Perishable goods.** *It is a good idea to allow in legislation for the disposal of perishable assets, i.e. those that may deteriorate or be destroyed easily.* The technical report has to establish this circumstance; also, it has to evaluate them, according to market value. In the event of deterioration, it may be necessary to destroy them, with the corresponding memorandum being drawn up. Each State is able to decide on the disposal system, for example, direct disposal or public auction.
- Goods specifically **abandoned** by the owner, i.e. surrendering ownership. In this case, there is no barrier to their disposal.
- Conservation expenses are greater than the asset's value. *It is evident that nobody can obtain a profit from holding on to the assets. Neither the owner, in the event that confiscation is not finally established, due to the expenses generated, which will lead to indebtedness, nor certainly the State, if confiscation is ultimately established.*
- Sale is suitable when conservation leads to an important decrease in the asset's value, or may seriously affect its normal use.
- Assets, without material damage, when their value decreases in the course of time. It is normal for criminal judicial procedures to take a long time, because of investigation difficulties. This means that a long time passes between confiscation and the sentence ordering forfeiture, possibly leading the assets to suffer a **loss of value** over time. When assets are goods such as vehicles, ships, planes, computers, mobile phones, ... their value decreases substantially with the passage of time. Also, it may happen that management matters, over the long term, may cause a important risk of devaluation, as happens in business, industrial, agricultural or shipping ventures. This devaluation is going to be **harmful** for the owner if the competent authority decides to return the assets; it would also be harmful for the State if forfeiture is ordered. In either case, the disposal of the assets avoids devaluation. This

option is **criticised** because it doesn't bear in mind the presumption of innocence and the premise that only unappealable judgements can be enforced.

- When the owner, following due inquiry about the destination of the asset, fails to respond. *This is tacit abandonment, with the same effects as express abandonment.*
- **Disposal procedures.** Assets disposal may be a consequence of an order by a judicial authority or the of decision another body.
- In some countries, a justified judicial order is required. This may be issued on the judge's own initiative, or on the initiative of the prosecutor or one of the parties, and always after hearing the defendant.
- *In other systems, an administrative authority (usually the AMO) effects disposal without a court order. Such sales can only be carried out with express legal authority.*

In any case, the aim of the procedure must be to ensure the best sale conditions, in order to obtain the highest possible value. Market **value** has to be established according to national laws. There may be an administrative body to establish this, or external experts can be appointed to appraise the assets.

Another case involves *assets confiscated or forfeited under a **foreign judicial order***. Some European countries, such as Spain, require the *authorisation* of a foreign court in order to dispose of assets. To be precise, point 3 of article 367 *quater* in the Criminal Procedure Law establishes that, *when the asset is seized due to a foreign judicial order according to the Law for the efficacy in the European Union of orders freezing property or evidence in criminal proceedings, its disposal will not be able to proceed without the prior authorisation of the foreign judicial authority.*

Disposal can be carried out in several ways: *through specialised bodies or persons, public auction*, or assigning them to *a not-for-profit body or the Public Administrations*.

- a) The most usual way is **public auction**. This is a sale procedure where the purchaser and the price are determined according to a system of competition among several possible purchasers. The item is sold to whoever offers the highest value. The main premise is its public character, so everybody can bid. It might be advisable to use new technologies so that public auctions can reach the widest possible audience, perhaps even international (for instances, auction platforms such as eBay).
- b) Several legislations contain another system, called “**public tender**”. Once published, participants have to submit their offers (usually, inside a sealed envelope) and the highest offer determines the purchaser and the price.
- c) Also admitted is a public offer through **special notification**, using a sealed envelope in order to submit the proposal, and with guarantees that the bids are serious. Legal entities and/or individuals are invited through public notices to submit offers related to assets they are interested in. These offers must be guaranteed by collateral representing a percentage of the reserve price.
- d) In some countries it is allowed to sell the assets through **specialised individuals or legal entities** with expertise in that market; such persons have to fulfil all the legal requirements demanded in order to act in that market. It would seem suitable for these persons to give a surety, in the amount established by the Court, to ensure effective sale. Also, the requirements for the asset’s disposal must be in accordance with the terms agreed by the parties.
- e) **Fixed-price public sale**. This is based on an immediate payment system. Some kinds of sales could be carried out through this system: when there are large amounts of goods in high demand from the general public in periods of high consumption; restricted use

goods or controlled items (these can only be acquired by authorised purchasers).

f) **Direct sale or disposal.** As a general rule, this kind of disposal is not used, and it must fulfil several formal requirements; in some countries, it only can be used in connection with certain items. For example:

- Easily perishable or flammable goods, when there is no suitable place in which to store them.
- Goods whose conservation becomes impossible to afford for the administration, or goods of minimal value.
- Goods that have not been disposed of at public auction, an initial clearance sale nor by public tender.

This system does not require public advertisement and the available goods are notified to potential purchasers through communication. In some countries, three potential purchasers, at least, must be notified when market demand so allows.

g) **Sale profit allocation.** *It may be suitable, as a first step, for any profit to be deposited in a bank account held by the competent authority in order to carry out the **allocation provided for in law**. Also, it may be advisable to anticipate how to handle cases where the asset sold has been confiscated or forfeited by a foreign judicial authority. For example, in Spain, the profit, once deducted any natural expenses, will be deposited in judicial payment account, at the court's disposal; this circumstance will be notified to the foreign judicial authority without delay.* Some national laws anticipate the profit being deposited in a **special fund to fight crime**.

h) **Storage of goods.** Usually, asset management is done through **deposits**, in order to preserve them. In the case of movables, such as money, shares or other legal currency instruments, it is suitable for them to be placed in a **special forfeited assets account**. It may be advisable to have a single centralised fund containing confiscated

and forfeited assets. Also, the asset management body should have resources at its disposal in order to deposit and preserve movable assets, with express consideration of the peculiarities of each item (for storage of jewels, artworks, etc.).

- **Rental agreements.** Some countries strive to guarantee the continued profitability of forfeited assets through rental, management or bail agreements signed with contractors. In order to achieve this, it is suitable to establish procedures to guarantee public knowledge of such agreements so that contractors are able to submit offers.
- **Donation.** Exceptionally, it is anticipated the possibility of **donating** or assigning assets in favour of public bodies, in order to be used for public services, especially social assistance, or by publicly-funded bodies. National laws have to establish a detailed procedure related to donations, containing the requirements for potential receivers.
- **On-going management of assets and companies.** Sometimes, the assets forfeited may be **a company or business group**, shares representing a majority of the share capital, rights or goods owned by the company, or attached to the company's operations. In money laundering cases, it is possible to encounter forfeited companies that were used to give a lawful appearance to the proceeds of drug dealing and other activities. When such assets are confiscated, it may be appropriate to order their continued management.

Within comparative law, there are three **systems**:

- 1) Existence of an AMO responsible for the administration of goods, carrying out the companies' management through its own specialised staff.
- 2) The AMO designates an external manager in order to carry out this activity.
- 3) The judicial authority ordering seizure designates an administrator.

In the first case, the **AMO** staff manages the assets. The office must be able to call on asset management experts to carry out the task.

In the case of designated external **managers**, the national laws must grant the possibility of hiring such managers, normally through the AMOs.

In Spain, the **judicial manager** is appointed by the judge ordering the criminal proceeding. This administrator has almost the same powers as the person being replaced; a judicial authorisation is required to dispose or or burden shares, real estate or any other matter indicated by the Court. In any case, the judicial authority must oversee the administrator's management.

It is advisable for national laws to provide for certain **requirements** that must be met in order to be appointed administrator or to hold assets on deposit.

With regard to the contents of the **administrator's position**, when replacing former directors, unless otherwise provided, the powers, duties, rights and responsibilities will be the same as the former executives. In any case, it seems suitable for assets' administrators to have enough powers to keep them in use and advancing.

It seems reasonable that only companies whose **activities can be funded** using their profits should be managed. Thus, some national legislation provides that, when the activities became unplayable, one of the following proceedings will be carried out: dissolution, liquidation, meeting of creditors, bankruptcy, merger, split or sale. The **administrator's fees** will be established at the moment of his or her appointment; in any case, it seems advisable for such costs to be deducted from the assets managed.

As a general rule, **administrators cannot dispose of or encumber** the goods making up a part of the fixed assets of the company. Administrators may exceptionally be allowed to dispose of or encumber a company's shares, or another company's shares owned by the first, real estate or other items.

Administrators **should submit a monthly report** to the competent body (judicial authority, AMO) about the company's operations.

- In justified cases, the **registered owner** may be authorised to remain in charge of the administration of the assets, especially shares or items with special characteristics (thoroughbred horses, pedigree dogs, luxury yachts), companies, factories, etc. In any case, the owner must provide regular reports about the operations conducted.
- **Use.** Some national laws expressly allow the use of seized goods. There is wide discussion related to the use of seized assets; when admitted, the discussion turns on who is able to use them. Usually, the use of seized goods, objects, profits and instruments is allowed in order to achieve the aims of bodies working on the investigation, prevention or fight against crime and the rehabilitation of criminals. Nevertheless, in other countries seized assets cannot be used in any way.

Usually, **deposit holders, administrators and auditors can be authorised in order to use** assets received according to guidelines issued by the competent body. This body usually establishes the consideration to be paid to deposit holders. It is advisable for deposit holders, administrators and auditors to be obliged to inform to the competent body (judicial authority, AMO) through a detailed report about their use of the assets. Deposit holders, administrators and auditors must cover any impairment caused by such use, where appropriate, in the event the assets are returned. Also, it may be advisable for asset users to take out an insurance policy in order to cover losses caused through such use.

- **Refunding.** It may happen that, once assets have been seized, the judicial authority orders them to be restored to those who holding related rights (registered owner, holder, etc.). Reasons for returning assets may be diverse. During the investigation, the Prosecutor may decide not to exercise penal actions against a person whose assets have been seized, or may consider some of them to have no illegal

origin. In this case, the competent authority will order their restoration. Likewise, the judge may order the return of one or more assets; or not order forfeiture, once an unappealable judgement has been handed down: in this case, assets must be refunded to the party holding the rights to the same. In some national laws, the refunding procedure is expressly regulated.

Once the return of the assets has been ordered by the competent authority (usually a judge), assets must be placed **at the disposal of the party entitled to them**. The body charged with returning the assets must verify certain aspects, such as the veracity of the legal order, the identification of the recipient, and the correct description of the assets.

For assets to be returned, the decision must be **notified** to the holder of the corresponding rights for the assets to be collected within the period stipulated. Consideration should be given to the possibility of warning the parties about abandonment of assets should the rights holder fail to collect them, with the aforementioned consequences. Also, the judicial authority will order the cancellation of any temporary embargoes made on public registers related to the freezing of assets.

Once the refund has been ordered, the body holding the assets **will deliver** it to the registered owner or a legal representative thereof. In order to complete this process, it is advisable to draw up a **memorandum** containing the entitlement of the party receiving the goods and any statements made by the same. Also, this memorandum will include the state of the assets, the time and date, a detailed **inventory** and the judicial document ordering their return. It is advisable for the party receiving the assets to sign the memorandum and the inventory, and to receive a copy of both documents. Lastly, the **assets will be handed over** to the corresponding owner or legal representative.

If the assets have generated **profits**, it seems suitable to deliver these, or their value, after deducting management expenses incurred in order to avoid deterioration. Also, it may be legally established that the assets returned must comprise the principal and any interest generated during their management. Likewise, thought could be given to deducting a percentage of the interest accrued by way of an asset management fee. **Returning money** or value represented by monetary instruments, bank, financial or trading documents, must be done using the same currency as when seized, or national currency equivalent. Also, the possibility of drawing a cheque or making a bank transfer should be considered.

In the case of the **return of companies or businesses**, the administrator should report to the party holding the rights to the assets about the company's operations, delivering all goods, objects, documents, money, ... everything under his or her management, after deducting the expenses incurred during the administration.

Prior to receiving the goods, the party entitled to have the assets returned will be advised **to check and inspect** the state of any goods in order to verify the inventory and, if appropriate, lodge a claim for damage and deterioration.

When **assets have been disposed of**, these are returned by refunding the sale value – deducting administration costs, conservation expenses, fees and another payments -, including profits generated since the sale date, according to the rate statutorily established.

With regard to **assets that have been used**, the deposit holder, administrator, manager ... will cover any harm caused by such use, if any. Deterioration caused by normal use is not considered damage.

Likewise, it would be suitable to establish a **clause** declaring the deposit holder (usually the AMO) **responsible** for **damage** caused by loss or deterioration, except for acts of God or *force majeure*. The party holding the rights will be able to claim payment thereof.

4. INTERNATIONAL CO-OPERATION

There is a wide international consensus related to **co-operation** among countries in order to trace and recover assets. Several international agreements envisage detailed procedures to execute judicial decisions ordering forfeitures in a foreign country, for example, United Nations Convention Against Corruption. However, there are no international regulations stipulating how the national court has to manage temporarily confiscated assets.

VI. IDENTIFICATION OF BEST PRACTICES

As we have pointed out before, some European countries have no asset recovery bodies, while others have created them recently. The origin of most of them go back to the first years of the current century, although some of them have a long tradition, for instance the Irish body, created in the mid-nineties of the last century. The functions and approach can vary from one country to another, maybe due to the lack of an internationally accepted model, although as we see some international and supranational efforts are bearing fruits.

The great variety of bodies is due, partially, to the different functions conferred to them. So, we can distinguish three types of bodies according to their nature: **police, judicial or administrative nature**⁶⁹. Despite this, we must warn that this classification is merely superficial as the basic functions coincide to a large extent.

In this chapter, we will not attempt to give a full description of Asset Recovery Offices, but rather to identify the best practices related to them, and other partner organisations or legal frameworks that have an influence on them. Sometimes the whole organisation can be considered as a best practice, but in other cases we will focus on a very specific practice, such as investigation techniques, legal procedures, software, training programmes, relationship with the AMO, etc.

1. IRELAND: CRIMINAL ASSETS BUREAU (CAB). A SPECIAL REFERENCE TO BAU (BUREAU ANALYSIS UNIT).

1.1. Introduction

The Criminal Assets Bureau was established by the Irish Government in 1996. In July 1996, following a number of murders, many drug-related,

⁶⁹ *The Council Decision 2007/845/JHA on cooperation between Asset Recovery Offices of the MS in the field of tracing and identification of proceeds of crime or other assets related to crime, refers to organisms of judicial, police or administrative nature (art. 2.2).*

culminating in June 1996 in the murders of Garda Detective Gerry McCabe and journalist Veronica Guerin, and in response to public concern about organised crime, the Irish Government enacted legislation concentrating on the identification of the proceeds of crime and the taking of appropriate action to deprive persons of such proceeds.

The role of the Criminal Assets Bureau (CAB) is to confiscate, freeze or seize criminal assets. Its work also includes ensuring that criminal proceeds are subjected to tax and investigation, and determining the eligibility of claims for social welfare benefits or assistance by criminals or suspected criminals.

A multi-agency approach was adopted with the formation of the Criminal Assets Bureau. Legislation was provided to exchange information between the police and revenue authorities and social welfare authorities to ensure that Revenue Acts and Social Welfare Acts were applied effectively to criminal activity.

Since its statutory inception in October 1996 and up to 31st December 2009 the Bureau:

- has obtained interim and “final” restraint orders to the value of over € 87 million and over € 41.5 million, respectively under the Proceeds of Crime Act.
- taxes and interest demanded was over € 160 million, with over € 129 million collected
- saved over € 3.7 million in social welfare payments and recovered overpayments of almost € 4.8 million.

1.2. Bureau Analysis Unit (BAU)

The Criminal Assets Bureau Act 1996 allows for the use of professional and technical expertise by the Bureau in pursuit of its statutory remit.

“9.—(1) (b) The Minister may, with the consent of the Minister for Finance and after such consultation as may be appropriate

with the Commissioner, appoint such, and such number of persons to be professional or technical members of the staff of the Bureau, other than the bureau legal officer, and any such member will assist the bureau officers in the exercise and performance of their powers and duties.”

Professional accountants and information technology experts were employed by the Bureau to assist investigation teams since the establishment of the Bureau in 1996.

The evolution of information technology combined with increased financial complexities in criminal investigations led to the recognition by the Criminal Assets Bureau of the need to develop and enhance its professional expertise. Criminals have in recent years developed sophisticated methods to launder the proceeds of their criminal activity. Investigations over the past few years increasingly reveal more complicated financial trails, often involving intricate money laundering techniques layered throughout legitimate business enterprises. Further the nature of investigations have more and more concentrated on elements of white collar crime such as VAT carousel fraud, Ponzi schemes and corruption enquiries. It is not unusual for a series of co-ordinated searches during an operation to seize vast quantities of information from accountants, solicitors, business and other premises, as well as information uplifted from financial institutions under Production Orders.

A key strategy adopted by the Criminal Assets Bureau in 2006 was the establishment and development of the Bureau Analysis Unit (BAU). The strategy envisaged the concept of an integrated unit of professional expertise within the Bureau that would act as a conduit to serve the needs of investigative teams which would incorporate:

- Forensic Accounting
- Computer Forensics
- Mobile Phone Forensics
- Financial Crime Analysis
- Open Source Internet research (OSINT)

- Database management

The Bureau employed a number of Forensic Accountants and Financial Crime Analysts that would form the team in the Bureau Analysis Unit. Key qualifications and training were identified in computer forensics, money laundering, analytical applications and other relevant areas for all members of the Unit. Part of the initial strategy of developing the BAU was that the Bureau would strive to maintain the highest standards of international best practice in the different areas of professional expertise.

The ability to complete investigations requires the requisite professional skills to properly interpret, interrogate and analyse large volumes of financial and other information. The financial crime analysts in the BAU work closely with the forensic accountants and investigators in the analysis of information from different sources. The disciplines represented in the unit, forensic accountancy and technical analysis are utilised in such a way as to compliment and support each other. The unit integrates seamlessly into CAB's multi-agency approach and is a resource which assists all of the state agencies represented in CAB's investigation teams. The unit is comprised of personnel with the appropriate professional expertise to a) assist teams in their investigations and b) to provide expert testimony in court.

1.2.1 Financial Crime Analyst.

Financial crime analysts are typically involved in conducting the Bureau's computer forensic work, mobile phone forensics, open and closed source intelligence, analysis of exhibits, assisting in search operations, preparing documents for court and appearing as expert witnesses, as the need arises.

The Bureau also targeted the expansion of a computer forensics capability as part of the initial strategy in developing the Bureau Analysis Unit. In relation to computer forensics, the unit has a number of state-of-the-art Digital Intelligence Forensic Recovery of Evidence Devices (FRED)⁷⁰ devices, and associated technical equipment so that acquisition of evidence

⁷⁰ *Forensic Recovery of Evidence Devices*

can be conducted and analysis of this evidence performed. For mobile phone forensics the unit employs specialist systems and equipment. All financial crime analysts are fully trained in international best practice in computer forensics and methodologies.

The Criminal Assets Bureau's investigations are rarely limited to Ireland, and most investigations will have some foreign aspects whether through bank accounts held abroad, or property or both. The BAU has developed extensive capabilities in locating and accessing foreign public records to locate assets and/or financial information, which can then be verified and evidenced by normal policing methods. The unit has extensive reach in terms of land registry and corporate records and both open and closed (subscriber) information services are widely used in pursuit of the Bureau's remit to locate and identify assets.

1.2.2 Forensic Accountant in Law Enforcement

There are many definitions of the term forensic accountant. "Forensic", according to the Webster's Dictionary means, "*Belonging to, used in or suitable to courts of judicature or to public discussion and debate.*" The word "accounting" is defined as "*a system of recording and summarising business and financial transactions and analysing, verifying, and recording the results.*" At its simplest, therefore, forensic accounting is the use of accounting for legal purposes.

In "*Financial Investigation and Forensic Accounting*", George A. Manning defined Forensic Accounting as the science of gathering and presenting financial information in a form that will be accepted by a court of law against perpetrators of financial crimes.

The essence of forensic accounting, properly so-called, is the application of accounting or auditing principles, theories and disciplines to facts with a view to either (a) reconstructing past events or (b) interpreting past events where that reconstruction or interpretation has the potential to be or is to be used in a judicial proceeding.

A simpler explanation that best describes the actual work that a forensic accountant does is that forensic accountants are trained to look beyond the numbers and deal with the business reality of the situation. Crime for the most part is perpetrated for financial gain and forensic accountants should treat it as a business, the difference being that the activity engaged in by these individuals for profit is illegal. These business enterprises have purchases, sales, debtors, creditors, inventories and of course cash and bank balances the same as any normal business, except the records they maintain can be difficult to locate or where they are found during the course of searches, can prove difficult to interpret.

1.2.3 Holistic Approach

The BAU since its inception has adopted an holistic approach within the different professional disciplines in the unit as part of the multi agency approach taken by CAB to fight organised crime.

A forensic accountant or a financial crime analyst should ideally have access to all information in the possession of law enforcement. This holistic approach empowers them to better analyse and understand the business of crime and ultimately give a more educated and rounded professional report to investigators and where appropriate in the form of evidence before the court.

Investigations within the Criminal Assets Bureau incorporate information from the different sources that make up the multi agency organisation that is the Bureau. These will comprise information from the Revenue Commissioners; Social Welfare; Customs; Police Intelligence and criminal records as well as financial and other information obtained during the course of investigations. The ability of the forensic accountants to take all this information into account as part of their analysis, to weave these different threads together, grouping the facts into a cohesive and comprehensive analysis whilst maintaining professional independence through proven methodologies and techniques is vital to the successful conclusion of cases.

There is an inherent weakness in any forensic accounting exercise in which only certain financial information in an investigation is analysed in

isolation and a professional opinion taken on this isolated set of facts. Take for example an accountant who analyses a number of bank accounts in relation to an individual and from this analysis concludes that the individual ran a successful car sales business. This set of facts when analysed in isolation supports the conclusion that the individual's recorded car sales income financed his lifestyle. However when one includes the Revenue and Social Welfare information into the analytical model, which in this example say, shows that the individual had not made any tax returns and was in fact in full time receipt of social welfare assistance as his sole source of income, the initial conclusions may be flawed. The forensic accountant must strive to obtain all available information in an investigation from the different multi agency partners so as to be in a position to perform the fullest analysis thus enabling sound conclusions to be drawn from as complete a set of facts as is possible.

1.2.4. Information Sharing

Investigators in law enforcement need to be educated as to the value of sharing in full the information in their possession with their forensic accountant. This sharing of information is perhaps the most important factor in the successful completion of a multi agency investigation and any subsequent court outcome. Such shared information is of particular relevance and importance in the preparation of the reports, analysis and any evidence given by the forensic accountant involved in the case.

It is in the nature of investigators to protect sensitive information pertaining to their investigation such as case specific intelligence regarding the individual targeted. Such information whilst not directly relevant to the analysis conducted by the forensic accountant is nevertheless essential background in assisting the accountant to better understand the criminal enterprise or business of the criminal – or to put in another way, an essential ingredient in the “*know your customer*” section of the investigation.

Naturally such sharing of information is entirely dependent upon the development of trust in the working relationship between investigator and forensic accountant. Law enforcement organisations should be encouraged to

promote better communication between their forensic accountants and investigators. This can be achieved by actively developing these working relationships through the education of investigators as to the role the forensic accountant can play in their investigation and more importantly the added benefit brought to their investigation through the use of the forensic accountants' analytical capability and expert witness evidence in any subsequent court process.

It also follows that where forensic accountants are employed by law enforcement organisations a rigorous training process should be put in place to educate their accountants about all aspects of investigations into criminal activity so that they might better understand the role they play and thereby assist the forensic accountants in understanding the necessity of developing an atmosphere of trust in their working relationships with investigators.

1.2.5 Role of Forensic Accountants

The different roles of the forensic accountants can be summarised as follows:

- Providing forensic accounting assistance to the investigation teams
- Assist in search operations
- Investigating and analysing financial evidence
- Interpreting and reporting on financial status of targets
- Pinpointing areas of concern requiring further investigation.
- Review of documentary evidence
- Carry out objective verification
- Communicating findings relating to financial issues in reports and charts
- Familiarisation with legal concepts and procedures
- Providing assistance in legal proceedings including witness statements, affidavits and visual aids to support court applications

1.2.6 How do Forensic Accountants assist Investigators?

Preliminary Analysis of Financial Information

Forensic Accountants in the Bureau will at the early stage of an investigation perform an analysis of banking and other financial information obtained on foot of production orders executed by Garda Bureau Officers. An early pictorial of the target's financial profile is communicated to the investigation team outlining statistical data and pinpointing areas for further investigation. Such a preliminary analysis will often necessitate the interpretation of complex financial crimes such as VAT carousel fraud, Ponzi schemes or complex corporate structures. Forensic accountants will also assist investigation teams and management in understanding complex business structures where it is suspected that the proceeds of criminal activity have been laundered.

The communication of these findings by the forensic accountant to the investigation teams is critical in determining how to progress with the next stage of an investigation. The use of clear and concise tables and charts by the forensic accountant form the central part of the process by which these preliminary findings or indeed the interpretation of complex financial scenarios are communicated to investigators and to management.

Operational Role

As part of the planning process in preparing for an operation, research is conducted by members of the BAU using open source internet research (OSINT) to assist investigators. Visual analytical charts are prepared using i2's Analyst's Notebook charting software which display organised crime gang structures or family tree groupings of the individuals being targeted. These charts have been proven to be of vital assistance in communicating to search teams the interconnectivity and relationships between the individuals being searched.

Forensic accountants and financial crime analysts take part in the search operations conducted by the Bureau. The effectiveness of the search teams is enhanced by the presence of professional accountants who provide

on site expertise in the identification and interpretation of financial information and also in the interview of witnesses where business and professional premises are searched.

The BAU provides on site computer forensics expertise and mobile phone forensics. Forensic accountants are on hand to assist in the interpretation and analysis of data located on computers and other digital media which is of crucial importance where individuals are detained are being questioned.

Attendance on searches and inclusion in the interviews of witnesses provides forensic accountants and financial crime analysts with a unique insight into the business activities and behaviour of individuals targeted by the Bureau which cannot be obtained from sitting in an office. This on site operational experience forms an essential part of the holistic approach the Bureau Analysis Unit have adopted in the investigation and analysis of the business of crime.

Review of documentary evidence

During the period immediately after search operations, investigations often yield large volumes of paperwork seized from residences, business premises and professional offices as well as data recovered from computers and other digital devices seized. Both forensic accountants and financial crime analysts take part in a comprehensive review of the documentation and data seized alongside the multi agency members of the investigation team. Their sets of analytical skills are put to good use in the trawl through large volumes of documents and records, sorting, analysing and interpreting those records of relevance to the investigation.

Expert Witnesses

A further evolution in the Bureau's strategy of setting up the Bureau Analysis Unit was the development within the Bureau of an in house expert witness capability to give expert evidence in forensic accounting and computer forensics. This is often a joint enterprise with Forensic Accountants and Financial Crime Analysts working together to provide an accurate and

coherent account to the court, from each area of expertise. For example, a series of affidavits might be prepared which would contain the forensic accountant's analysis of a series of transactions related to a property purchase, and this would be complimented with an analyst's computer forensics report of files located on the suspects' computer which match that series of transactions, and might report on spreadsheets containing rental payments received by the suspect.

Both forensic accountants and financial crime analysts will where necessary make witness statements for use in prosecutions before the courts and appear as expert witnesses to give testimony when required. The Criminal Assets Bureau ensured expert witness training was provided to members of the BAU to help maintain the highest standards of best practice.

1.2.7 What Information do Forensic Accountants analyse

The types of records that forensic accountants analyse will vary from case to case but in general the categories of data examined can be summarised as follows:

Banking and Financial Data

This will include bank statements, supporting documentation and account opening documentation. Information received from banks and financial institutions on foot of production orders also include investment policies, hire purchase agreements, leases, loans and mortgages.

Solicitors' and Accountants' Files and Documents

Extensive records are maintained by solicitors and accountants in relation to property conveyances, business records and personal taxation. Forensic accountants assist their multi agency colleagues to examine and interpret this type of documentation and report findings to the investigation team.

Business Records

Criminals have in more recent years invested in business enterprises as a means by which the proceeds of their criminality are laundered. Business records examined during the course of an investigation can range from the simplest diary recording monies in and monies out to the most complex set of financial records maintained by a criminal perpetrating a VAT carousel fraud. The forensic accountant must be prepared to interpret and analyse any type of business model imaginable.

Documentation and Searches of Residences

Often the most relevant documentation in relation to the assets and finances of an individual can be found during the course of the searches of residences. Where an individual has purchased, renovated and fitted out a residence using in part the proceeds of their criminal conduct it is not unusual to locate key invoices and receipts. For example, where kitchen and electrical appliances are purchased we are often reminded that in order to avail of a guarantee on such products the customer is required to keep the original receipt as evidence of purchase. Criminals who purchase these types of goods, mostly for cash, will often keep such receipts at their residence for the very same reason. Notwithstanding the location of receipts, the forensic accountant can conduct in effect a “stock-taking” of the makes and models located at any such residence and factor this into any subsequent analysis.

Computers and other Digital Media

The financial crime analysts examine forensically the data located on computer and other digital media seized during the course of search operations conducted by the Criminal Assets Bureau. The forensic accountants in conjunction with the financial crime analysts interrogate the records located on these devices and use the data located there as part of their analysis where the information is relevant.

All other Relevant Financial Data

The forensic accountant will also take into account as part of their analysis the information provided by their multi agency colleagues from the Revenue Commissioners, Social Welfare and an Garda Síochána as well as all other information obtained using open and closed internet searches.

1.2.8 Financial Analysis “Products”**Interpretation of complex financial scenarios – VAT Carousel Fraud**

Members of the BAU through their professional qualifications and experience are skilled in interpreting complex financial scenarios such as VAT carousel fraud or Ponzi schemes. The forensic accountants play an important role in the early stages of such investigations using a combination of research and examination of evidence to present a clear summary to management and investigation teams of how these criminal enterprises operate. Extensive use of i2’s Analyst Notebook charting is employed to visually demonstrate these overviews and summaries.

A classic example of this is the interpretation and explanation of a VAT carousel fraud. Intra EU VAT regulations were exploited by the VAT carousel fraudsters on a large scale to the extent that Customs and Excise authorities in different jurisdictions were being defrauded of several billions of euros on an annual basis. The height of this type of fraud occurred in or around 2002. Set out below is an example of how this type of fraud operated between the Republic of Ireland (ROI) and the United Kingdom (UK).

Goods exported from one EU country to another carry a 0% rate of VAT. In effect what this means for the legitimate UK exporter is that when he sells his goods to an ROI company he charges the ROI customer a rate of 0% VAT. He has already purchased the goods from another UK company inclusive of 17.5% VAT. When making his VAT return he receives a VAT refund from HM Customs and Excise equal to the 17.5% VAT.

The legitimate ROI customer having purchased the goods at the 0% VAT rate sells the goods on to another ROI customer at 21% VAT. When making his VAT Return he is deemed to have acquired the goods fully

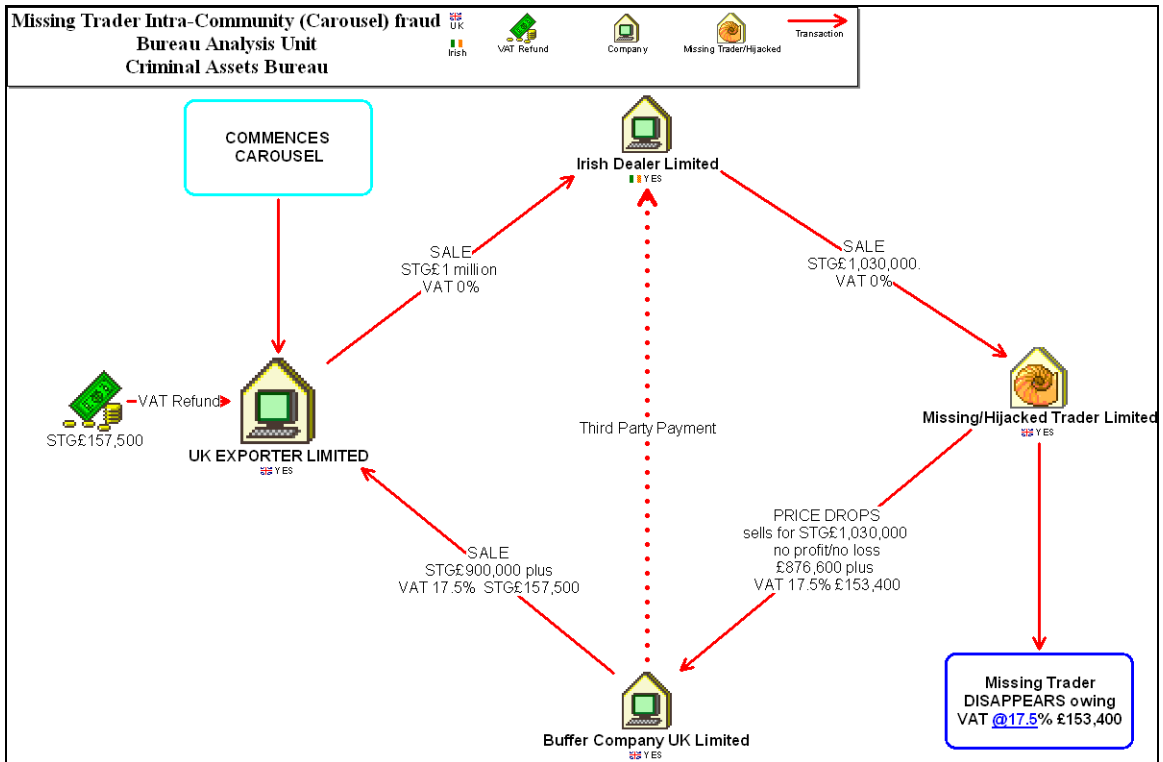
inclusive of VAT and must pay ROI Revenue the 21% he has charged his customer. This is the means by which normal business operates.

The successful operation of a VAT carousel fraud involves the export from the UK of goods to an ROI company and the immediate re-exporting of those same goods back to the UK. From the ROI companies standpoint they have imported goods from an EU country at 0% and exported goods to a UK company at 0% and consequently have no VAT liability to the ROI exchequer.

In a VAT carousel fraud the UK importing entity (*missing trader*) is liable to pay HM Customs and Excise 17.5% VAT on the further sale of the goods to a legitimate (*Buffer*) UK company. This importing entity then “*disappears*” or has been “*hijacked*”. By the time their disappearance has been discovered by UK Customs the goods have been sold on to other UK Companies, VAT returns have been made and HM Customs & Excise incur a loss in unpaid VAT.

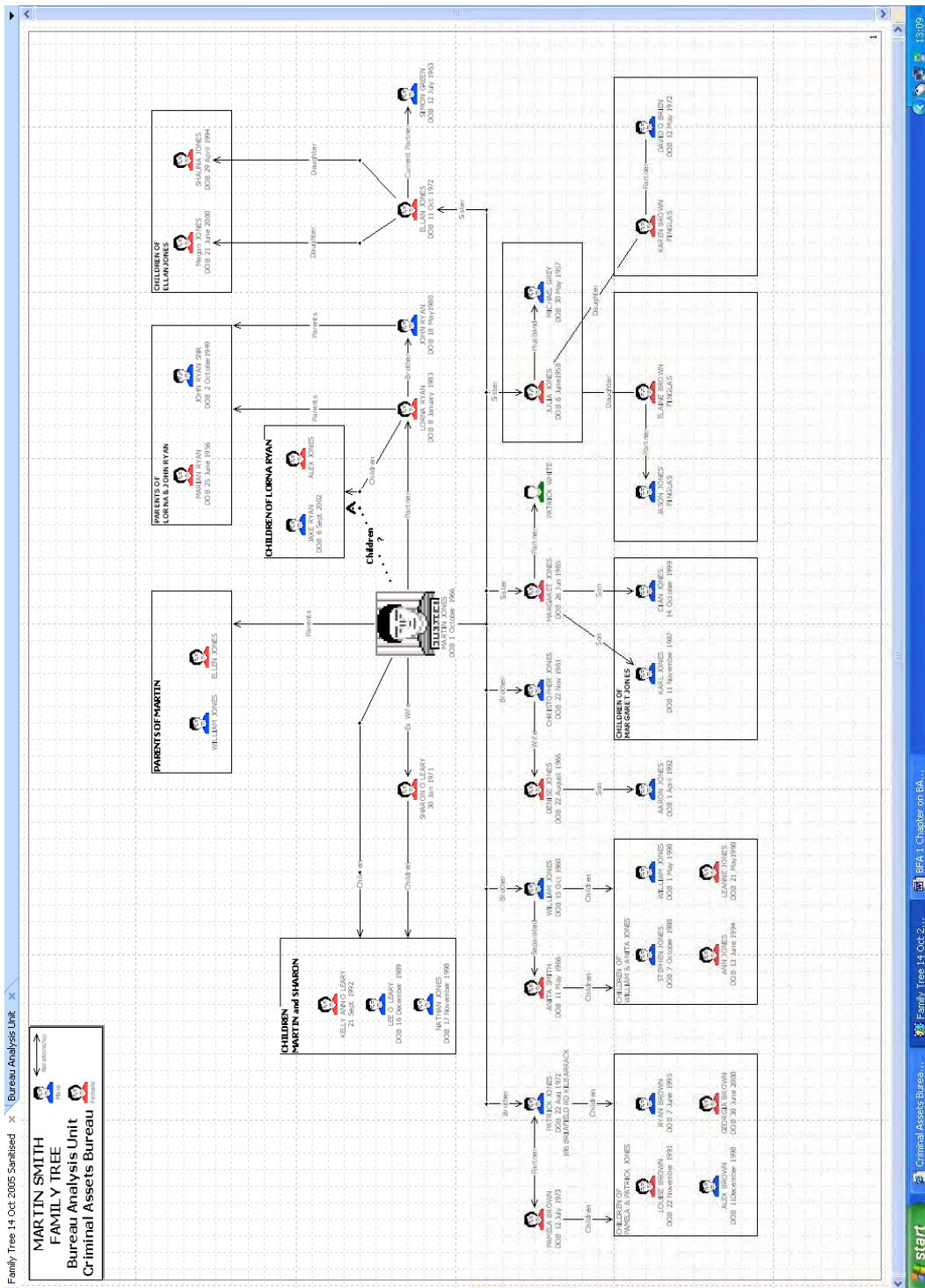
The goods are sold on several times in the UK before being eventually sold back to the company that supplied the ROI company in the first place. This company then re-exports the goods to Ireland or other EU country and claims a VAT refund of 17.5%. These funds represent the proceeds of the fraud.

The explanation above is read in conjunction with the i2 chart below which demonstrates visually how the fraud operates. As is clear from the chart below, a picture tells the story of a thousand words, and whilst detailed explanations and supporting schedules are essential components in the work performed by the forensic accountant, they are ultimately of little use unless the message can be clearly communicated to the investigation team and to management.



Family & Associate Trees

During the initial stage of an investigation, members of the BAU will assist investigators in organising and understanding the different relationships and connections between the family members of the individual or organised crime group targeted. The investigator and the members of the multi agency investigation team provide the BAU with all the detailed information in their possession regarding relationships between family members or in the case of organised crime gangs, the structure and hierarchy of the group. Using their charting methodologies, the BAU members construct the family tree or crime gang structure. These charts are important in understanding the key relationships within family groups and assist in providing the necessary leads to further the investigation. The charts are also of assistance in briefing management and search teams and ultimately as aide memoirs for use in Court.

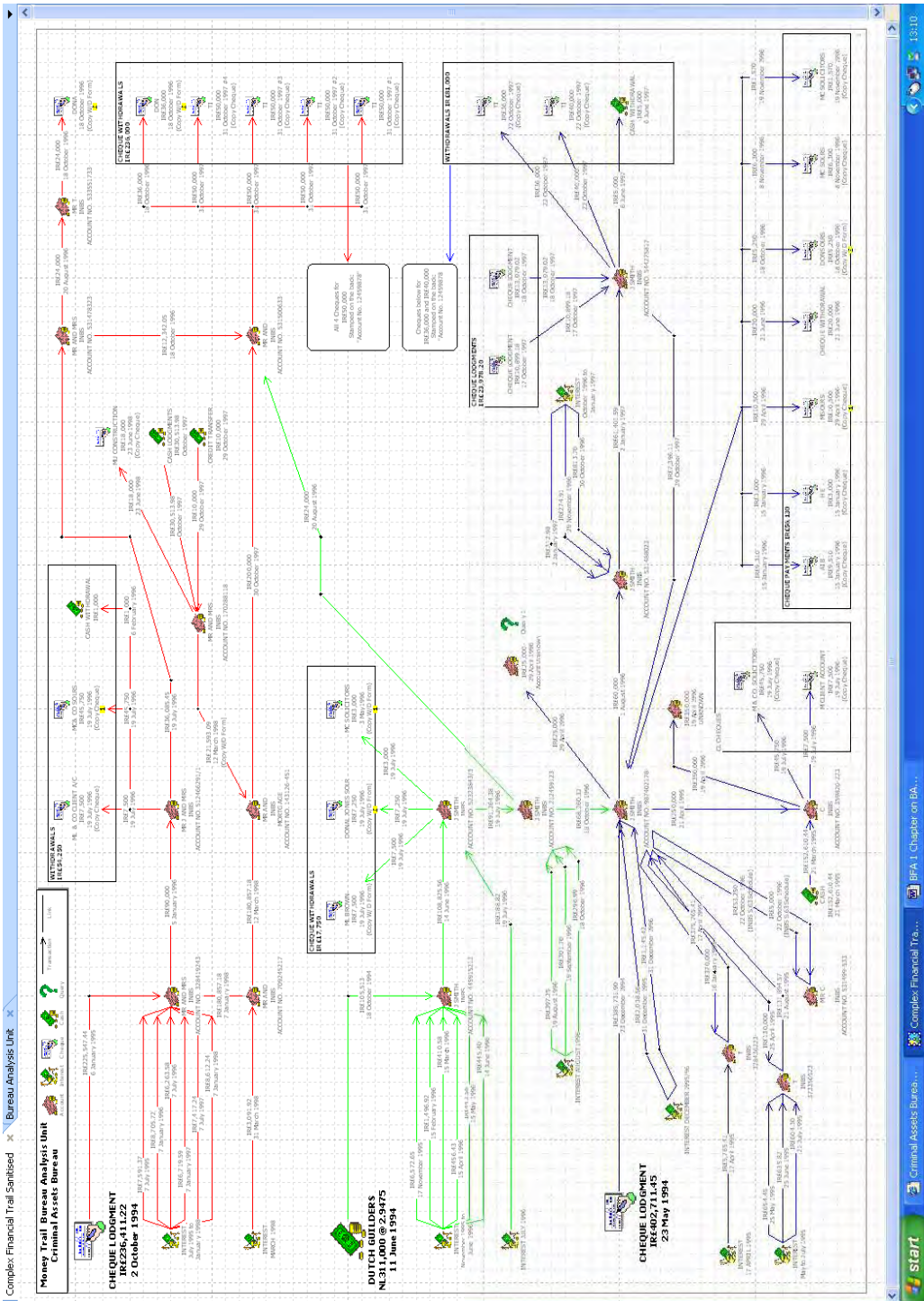


Complex Financial Trails

Forensic accountants in the BAU often are faced with the analysis of multiple sets of bank accounts relating to an investigation. The analytical techniques used to organise and interrogate this data are complex in nature, using detailed schedules and formulae within tools such as Microsoft Excel, which do not lend themselves to ease of communication of any findings to investigation teams or for that matter before the Courts. The arduous task of organising, sorting and categorising data from multiple bank accounts and underlying documentation generates numerous complex schedules and reports.

The forensic accountants have developed a number of different techniques that assist in the communication of complex financial trails employing i2 Analyst's Notebook charting as the medium through which these sets of transactions can be displayed. Set out below is a sample chart which displays how three separate sets of funds were laundered through over 20 different bank accounts and ultimately invested in properties through the use of solicitors client accounts. The written explanation underlying the movement of these funds and the supporting schedules and bank accounts would form numerous volumes of paper files.

The use of the charting techniques allows the forensic accountant to clearly communicate to the investigator, management and to the Court how these funds were moved between the different bank accounts and to clearly demonstrate the totality of the financial trail from the lodgement of the initial funds in the bank accounts through to their ultimate investment in properties. The simple use of colour coding the three separate financial trails allows the reader to take in visually the flow of funds prior to reading any reports and supporting documentation. As can be seen from this example the funds flow through the bank accounts from left to right and exit the bank accounts in the form of cheques and drafts.



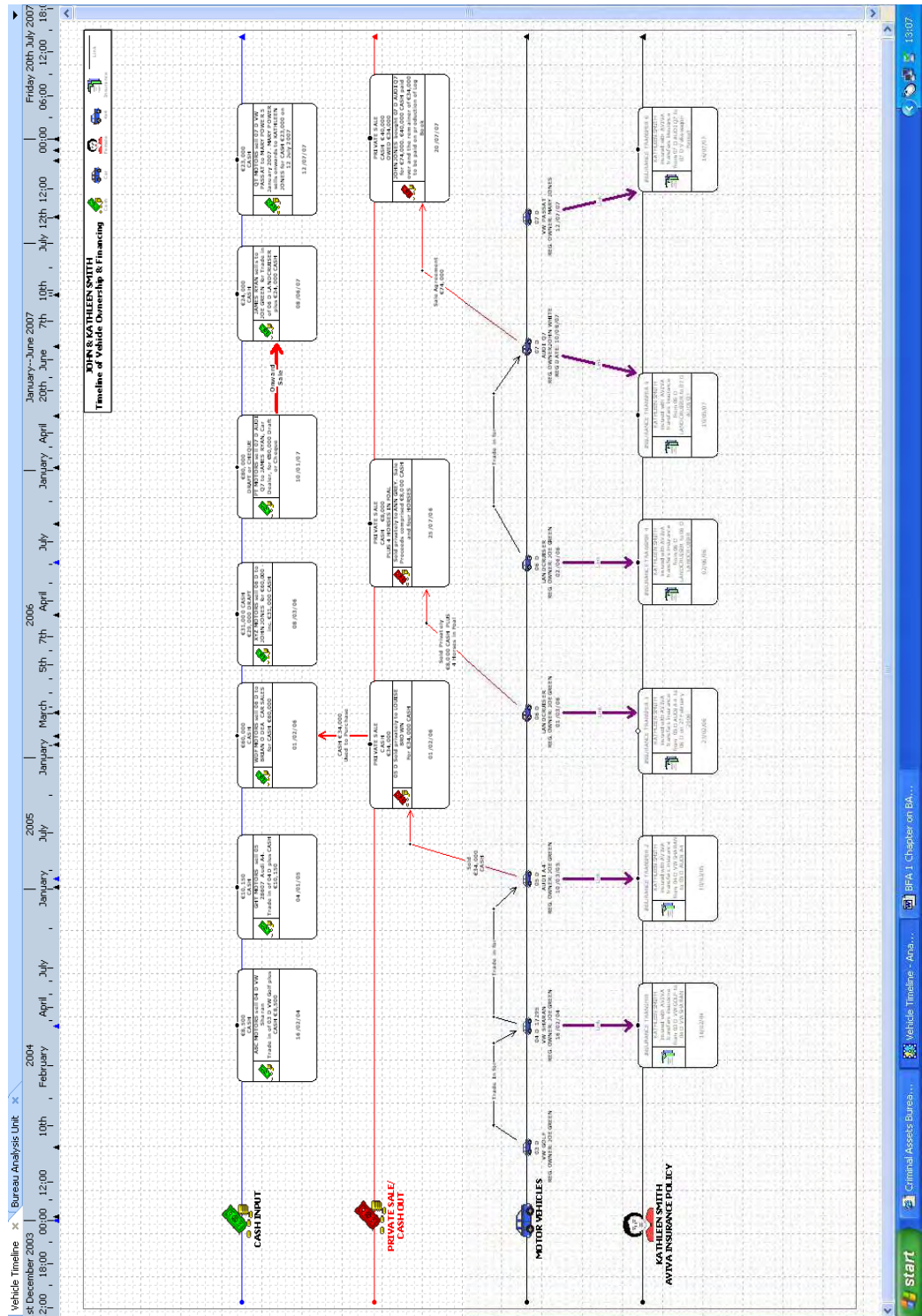
Time-line Analysis

During the course of investigations complex scenarios are encountered in relation to the acquisition of assets and the mechanisms used by criminals to finance the purchase of their assets. It can prove difficult if not unwieldy to explain these larger sets of transactions in a clear and concise manner to investigators and before the courts. Take for example the acquisition of motor vehicles over a period of time where a number of trade-ins take place, numerous cars are bought and sold, cash and other funds are added at each stage and where the true ownership of the asset is constantly disguised through the use of family members and associates. In this type of scenario it is more appropriate to use a time-line chart as the means by which the financing and ownership of the assets can be best explained.

A time-line uses what are described as “*themes*” as the subject matter for a series of “*events*” that occur over a period of time in relation to that theme. A theme could be a person, a bank account, an asset etc. The specific events that occur in relation to each of these themes tell the story, in this example, of how the assets were accumulated.

The supporting documentation and reports underlying the time-line analysis are substantial, comprising financial data, witness statements, insurance data, vehicle ownership information etc. The merging of all this information into a clear time-line format with an emphasis on the visual impact of the charting display is cross referenced by the investigators and by the Court with the documentation evidencing the story the time-line tells.

Time-lines have the added use of providing, during the course of an investigation, the status of a particular theme or set of themes at a point in time that empowers investigators, financial crime analysts and forensic accountants to develop further leads and to link different events within the investigation.



Other Financial Analysis Products

There are numerous other analytical products that the forensic accountants will use throughout the different investigations. Some of the other types of products employed by forensic accountants in the BAU are:

- Financial Profiling of Targets
- Property Portfolio Reports
- Asset Profiling
- Asset Tracing
- Property & Asset Financing
- Lifestyle Analysis

Forensic accountants must be capable of adapting to face new as yet unknown business models or money laundering techniques employed by criminals. The ability to develop new methodologies to interpret and explain the constantly evolving schemes employed by criminals is an essential skill in the repertoire of a forensic accountant in law enforcement. The forensic accountant will always be challenged by having to react to new developments and in doing so must maintain a measured and scientific approach in the analysis of the business of crime. The building blocks of any analysis should comprise sets of indisputable facts to which the methodologies and techniques employed by the forensic accountant are applied.

2 POLAND: TRAINING EXPERIENCES.

Polish ARO participates actively in the process of training the police officers and representatives of other authorities involved in cost-effective methods of fighting crime.

Training within police structures has been accomplished in various ways:

A) assisting Police educational units in preparing teaching staff to conduct specialised classes as specified in Polish Police Commander in Chief's Decision of November 2010.

B) assisting these police units in accomplishment of the aforementioned programme course,

C) conducting local trainings within the structures of and for the internal application of the local Police units,

D) development and distribution of the reference materials useful in the course of action aimed at offenders' assets.

A) Organising specialised trainings in assets securing in the local police schools and in the Police Training Centre, with the participation of police teachers, seconded by other schools.

The aim of the workshops was to develop unified principles and scope of substantive knowledge to be disseminated in all police schools. Exchange of experience in teaching between lecturers and representatives of particular schools, elaborating together with Polish ARO representatives the solutions to the reported problems and concerns as well as concerting the principles and scope of co-operation between schools and ARO – all this allowed schools to join the implementation of specialised training. The effects of this are visible in the conduct of activities in the subsequent editions of the training.

B) Asset Recovery Department representatives participate as lecturers in training courses described in paragraphs A. This has been done upon the demand of particular schools, where the time, place and scope of substantive proposals is indicated. In most cases, the substantive scope of activities carried out by ARO officers mainly comprises national law regulations, but also the international exchange of information on the assets maintained via the Polish ARO and the EU Network of Asset Recovery Offices as well as the CARIN network. In 2011, for instance, ARO officers conducted eight such trainings, attended by 183 students. Unfortunately, because of great attention paid to Euro 2012, number of the planned courses for individual

schools has been reduced, which has already negatively reflected the number of trained officers.

C) Polish ARO representatives conduct also professional trainings for police officers in local police units. Formally, individual Province or District Police HQs are the organisers of such activities (exactly - Asset Recovery Co-ordinators) and all the teaching issues are performed by ARO.

In 2011 there were 14 such trainings conducted in 10 police garrisons. About 800 police officers attended the trainings, in majority these were officers from local departments to combat economic crime.

The courses are mainly in the form of lectures combined with discussions. Similar trainings were also conducted for Internal Security Office⁷¹ - 3 trainings, about 100 participants. There were also trainings for combating economic crime units' and local criminal divisions' executives (2 trainings, 45 people) within the meetings organised in Higher Police School in Szczytno.

The choice of method is due to two reasons: the limited time possibilities and a large number of participants in such trainings. If the conditions are enough, then during such trainings case studies are exercised. Noteworthy is the fact of local prosecutors' offices representatives (of all levels) participation (often active) in such trainings.

D) Polish ARO elaborated the so-called assistant materials: Assets' Hunter Decalogue (general and in reference to assets' searches outside Poland), which are concise, clear and somewhat amusing in their form recommendations concerning the tactics of the disclosure and identification of assets of persons in law enforcement and justice interest. These materials are distributed during the trainings conducted by ARO officers and later also via e-mail.

Practical guidelines referring to preliminary investigation, criminal investigation, restraint of real property, seizure of money and other assets, model request form, all the needed contact details and pattern of preparatory

⁷¹ Internal Security Office is situated within the National Police Headquarters structures and is a separate unit from the Internal Security Agency, mentioned in the following part of this overview.

proceedings (etc.) – all which is found useful in assets securing and provisional seizure have been issued in an electronic form and disseminated to all police schools and all Province Police Headquarters.

All the aforementioned activities have resulted in significant increase in assets securing: in 2010 in about 11%, in 2011 in 57% in relation to previous years.

Polish ARO also provides training activities outside police. The training programmes are conducted at the request of non-police departments and institutions that are involved in combating crime. These are both: trainings fully carried out by ARO officers as well as conducting teaching courses in the school curriculum. This part of training activities was carried out for prosecution, Central Anticorruption Bureau, Internal Security Agency and Boarder Guards as well as through participation in projects involving multiple actors simultaneously (universities, banks, etc.). This co-operation is the most widely implemented in co-operation with Border Guard services. This is because of similarities in structures, nature of profession and scope of tasks.

Trainings are in great interest of these authorities. In 2011 a total of over 300 people, including 64 representatives of prosecution as part of LEA, participated in such trainings.

Remarks and conclusions

Proposals for training delivered or supported by Polish ARO in 2012:

- Trainings for heads of all divisions of criminal service, particularly at the district / province /municipal level - separately from the typical trainings.
- Trainings addressed to officers carrying out operational work and / or preparatory proceedings should be directed to investigation, criminal and anti-corruption departments.

3. BELGIUM: AN EXAMPLE OF ARO: COSC

The Central Office for Seizure and Confiscation (COSC) was established in 2003 following the example of BOOM in THE NETHERLANDS, by law of 26 MARCH 2003 – Law concerning the establishment of a Central Office for Seizure and Confiscation and containing provisions for the value-safeguarded administration of seized goods and the enforcement of certain financial sanctions (published in Belgian State Gazette of 02-05-2003).

The Belgian Central Office for Seizure and Confiscation is established within the Office of Public Prosecutions and the President is a magistrate. The advantage of the Office is that it also disposes of liaison officers from Justice, Finance department and police.

The role of COSC is to:

- A) assist the judicial authorities, police and finance department in criminal cases in the following areas: the seizure of assets, the implementation of criminal proceeding with a view to the confiscation of assets and the enforcement of final and conclusive sentences and orders involving confiscation of assets;
- B) provide advice on its own authority, or at their request, to the minister of justice and to the College of Chief Public Prosecutors;
- C) provide centralised and computerised management of the data relating to its various responsibilities;
- D) sell seized assets, after authorisation by the public prosecutor or the investigating judge;
- E) take charge of the administration of seized assets (obligation for cash – possible for money on account, shares, bonds), in consultation with the public prosecutor or with the investigating judge;
- F) co-ordinate the enforcement of sentences and orders involving confiscation of assets;

- G) assist the public prosecutor and the investigating civil service jurist;
- H) provide information on particular subjects to civil service jurists, police services and relevant civil service departments;
- I) help in providing judicial assistance to other countries, establish and maintain professional co-operation with equivalent institutions abroad and collaborate with them in such regulatory frameworks as are established by treaty or statute.

The COSC legislation put in place a procedure of value based management of seized assets.

The public prosecutor will be responsible for the value-safeguarded administration of the seized assets. During the course of the judicial investigation, said administration will be the responsibility of the investigating judge.

Value based management can mean 3 things:

- 1 the sale of seized assets, so that these can be replaced by the revenues raised;
- 2 the return of seized assets subject to the payment of a sum of money, so that these can be replaced by said sum;
- 3 the holding in kind of seized assets in accordance with the resources available for this purpose.

The procedure for selling seized assets is as follows:

The authorisation of sale relates to replaceable assets, the value of which is simple to determine and which, if held in kind, might lead to depreciation, damage or costs which would be disproportionate to their value. The magistrate will inform the parties concerned in this procedure by registered letter or by telefax which will contain the text of the present article. These persons may object to the selling to the Court of Appeal within fifteen /thirty days (if person is abroad) following the notification of the ruling. In the case of sale, the public prosecutor will put the assets at the disposal of the Central Office or, if so requested, of an appointed agent.

After receipt of the authorisation for sale the Central Office will authorise the sale of movable goods, other than securities, to be carried out by the Finance department (receiver) or call on the services of a specialised agent. Assets may not be sold for a price lower than the value which has been established in mutual consultation between the Central Office and its agent.

The sale will be public except where special circumstances justify the holding of a private sale. The costs of the sale, including those costs arising out of the intervention of the agent, will be borne by the purchaser. The sums obtained from the sale, those which have been deposited with a view to the return of the seized asset and those which arise from the pledging of a surety will be administered by the Central Office with all due care and according to the principles of a careful and passive administration.

COSC has special powers in the field of the recovery of criminal assets: before giving back money, administered by COSC, it has the possibility the check for depths from that person towards the Belgian State. COSC also has the power to locate any assets of a convicted person in view of the execution of confiscation orders.

COSC is also the contact point for CARIN and ARO.

4. BULGARIA: ARO EXAMPLE - LEGAL FRAMEWORK

The Commission for Establishing of Property Acquired from Criminal Activity (CEPACA) has been established in 2005 with the adoption of the Bulgarian Law of deprivation in the Favour of the State of Property Acquired from Criminal Activity (LDFSPACA). **The aim of this law is to introduce new legal instruments for eradicating the economic roots of crime, applicable against property of natural and legal persons, as well as against property acquired directly or indirectly from criminal activity.**

The Commission is a specialised, independent government body in charge of identifying proceeds of crimes that fall under certain provisions of

the Law, namely: acquisition of property of significant value, for which it could be reasonably presumed that it has been acquired from criminal activity by persons against whom prosecutions have been started, for an exhaustive list of crimes in the Criminal Code, such as terrorism, human and drug trafficking, money laundering and preparation for it, and associations with such aim, fraud, bribery, extortion, embezzlement, smuggling etc., and in some specific cases, even if the prosecution has been terminated or suspended.

CEPACA is a collegial body consisting of five members. They are appointed, respectively elected, for a term of five years. The Chairman is appointed by the Prime Minister of the Republic of Bulgaria, while the Deputy Chairman and two of the members - by the National Assembly, and still another of the members: by the President of the Republic. The aim is to guarantee a full independence of the members of the Commission from the government, although the Commission is an administrative body. For this same purpose, the Commission submits an annual report on its activity, which is presented to the National Assembly, the President and the Prime Minister. The Commission has its own budget.

The activity of the Commission is carried out with the help of general and specialised administration. The specialised administration is organised in functional and territorial directorates which are directly subordinated to the Commission. The territorial directorates carry out the activity on identifying property acquired from criminal activity.

Following the Law, the Commission has the authority to initiate the following proceedings:

- Proceedings for asset tracing and identification – When the Commission receives information related to investigations or judicial sentences, the Commission makes an initial check that aims to assess whether the person has assets valued at more than 30.000 € .
- Proceedings for imposing injunction orders – In case enough evidence has been gathered in the course of the proceedings for asset tracing

and identification, the Commission comes up with a decision to take into court a motivated application for the imposing of injunction orders on the basis of a report drawn by the respective territorial director.

- Asset forfeiture proceedings – When the defendant has been convicted and the conviction from the criminal proceedings comes into effect, the territorial director draws a report which specifies the type and amount of the property which could be reasonably acquired from criminal activity. Based on this report, the Commission comes up with a decision to take into court a motivated assets forfeiture claim.

Important issues to highlight related to the new law

The Ministry of Justice initiated the adoption of a **new law** based on criminal asset forfeiture. The new draft contains rules reflecting the interference between public and private interest. It also includes **provisions regulating the civil confiscation procedure**, as well as to empower the CEPACA to **target assets acquired from illegal and not only criminal activities**. This increases significantly the possibilities of the law, extending its scope to certain offences of administrative and not just criminal character. The Commission will be entitled to begin such a procedure immediately after a person has been indicted for a crime that it may be presumed he has benefited from. Thus it will be no longer necessary for the Commission to await the end of the three-instance procedure initiated with the Criminal Courts.

Indeed, the draft law has to establish an entirely new legal framework for the Commission's work. The current legislation permits a claim by the Commission only after a final conviction has been put in force. The draft law proposes the possibility for the Commission to take action at the moment of indictment, **even without criminal prosecution**, in the case of conflict of interests or discrepancy between tax declaration and real income.

The Commission would also be entitled to act against third persons, but only if they knew or it was impossible not to know that the property which they have acquired had an illegal origin. It is foreseen that property which has been transferred to relatives or third persons may also be subject of forfeiture. Those persons shall have the opportunity to prove in the court that they didn't know about the illicit origin of the acquired property.

An innovation of significant importance will be the introduction of the **“tainted funds”** concept which is based on the French legislation and targets funds where part of the assets are from criminal origin, allowing them to be subject of the forfeiture.

Under the proposed new law, the burden or onus of the proof for the licit origin of any property is the responsibility of the respondent (**reversal of the burden or onus of proof**). The threshold for starting an investigation is 250,000 BGN (about € 125 000) The Commission would be entitled to investigate the property acquired during a period of 10 years before the beginning of the investigation.

This new draft law also concerns the **management and storage of restrained and forfeited assets**. The new draft law includes provisions regulating the management, but **there are no clear provisions stipulating the reuse and redistribution of forfeited assets for social, cultural or any other public needs**. It is envisaged that the creation of an asset management process should be determined by the Ministry of Finance and the President of the Council, and will be the Deputy Minister of Finance. The Council submits the forfeited assets to Council of Ministers in order to donate them for public use or sale. This provision is very general and there is no exact definition for what type of human/social purposes the forfeited assets will be used. Therefore, a European legislative framework or instrument, based on the management of forfeited/confiscated assets, is needed for all EU countries.

The aforementioned law complies with the International legal framework developed within the Council of Europe and United Nations, and also with the Bulgarian legal traditions and realities; this fact becomes

remarkable because of the efforts made by a country from the former communist bloc in order to adopt the legal standards from international institutions.

5 UNITED KINGDOM (ENGLAND): FINANCIAL INVESTIGATION TRAINING AND NATIONAL ASSET SEIZURE AND CONFISCATION DATA BASES

5.1. Best Practice: Financial Investigation Training

Financial Investigator Training in the UK (England, Wales and Northern Ireland)

Financial investigation training is written into the national legislation in the UK. In 2003, the Proceeds of Crime Act 2002 (POCA) Part 1 S3 established a system for the accreditation of financial investigators (FIs). In 2007 this statutory function moved to the Proceeds of Crime Centre (POCC) at the National Policing Improvement Agency (NPIA). As part of this function the NPIA trains, accredits and monitors the performance of all financial investigators with powers under the Act.

Under S453 of the Act the Secretary of State may, by order, provide a list of those organisations that have access to the financial investigation powers under POCA. The current Statutory Instrument listing those Organisations is SI 2707/09.

Training

A key part of the POCC's work is therefore the training of FIs, which is delivered via a wide range of different resources. All students access the POCC Financial Investigation Support System (FISS) website Professional Register and study the POCA and associated legislation.

Knowledge of the legislation and many procedures are delivered via desk top interactive training packages. Assessment of this learning is also

conducted using the FISS website system thus minimising personnel abstraction times and cost.

Classroom based training events are kept to a minimum, with assessment a key theme to ensure compliance with the legislation prior to awarding temporary access to the powers of POCA. The student must then complete an on line professional development portfolio within the workplace based on National Occupational Standards (NOS) which once validated by POCC gives them full access to the POCA financial investigation powers. Senior Authorising Officers (SAOs), designated under the Act, are also subject to training in a similar programme.

Training Delivery

Training is delivered within the local policing area to reduce the cost of personnel abstraction and travel. Working with the local police the trainer will identify the level and demand of training required. This ensures no waste of resources and ensures that the national training product meets the demands and problems within individual force geographical areas.

Training Curriculum

Training is delivered at various levels:

- Financial Intelligence Officer
- Financial Investigator
- Confiscation and Restraint
- Enhanced Financial Investigation
- Proceeds of Crime Management
- Senior Authorising Officer

Full details of these modules are available on the Europol FCIC Website⁷².

⁷² Applications to access this website can be requested from Europol at fcic@europol.europa.eu

Statutory Performance Monitoring of Accredited Financial Investigators

Under POCA 2002, all FIs are subject of a programme of performance monitoring once accredited. This involves the spontaneous, ad hoc review of a FIs work, including case papers they deal with in the workplace, along with monthly assessed continuous professional development activities, requested via the FISS website register. Only those financial investigators whose performance is below the acceptable standards when viewed quantitatively will be the subject of any further in-depth review. Any Financial investigator whose work does not meet required standards will be suspended from the use of the POCA financial investigative powers and an action plan agreed between an assessor and the FI to remedy this situation. Any FI who fails to meet this action plan will have their powers withdrawn.

Together with the performance monitoring outlined above, the national regulatory team POCC work closely with all 43 UK Police Forces, and the 18 addition agencies with POCA powers, to provide both education and operational support.

The POCC team is currently composed of 14 staff who are based within the current police regions. Operational support is delivered by these staff members and is collated centrally.

Training demands are co-ordinated and delivered by the regional trainer in conjunction with local requirements, but based on National competencies and standards.

As part of the commitment to the mainstreaming of financial investigation, putting it at the front line of policing, local events are organised and delivered in force to promote and integrate financial investigation as an crime problem solving tool. Key deliverables in this area are evidence requirements in money laundering prosecutions, cash detention and management training in the use of financial investigation.

A growing number of non-law enforcement organisations, such as the Government Department of Work and Pensions (DWP) and local government authority trading standards, have access to the POCA powers. It is equally

important to provide operational support within this arena and also to ensure compliance with the POCA powers by accredited financial investigators.

Financial Investigation Support System (FISS)

The professional register that manages the training, accreditation and performance monitoring of those persons with investigative powers under POCA is a website known as the Financial Investigation Support System (FISS). FISS is available over the internet, to authorised users only, via a two stage authentication process. FISS currently has a user base of approximately 5000 UK staff.

FISS carries out a number of important functions:

- It is used to track and monitor the training, accreditation and ongoing professional development of all registered and/or accredited Financial Investigators and Intelligence Officers.
- It provides a portal for the Regulated Sector, to the Financial Intelligence Gateway (FIG). This function allows the regulated sector employee (banks etc.) to verify the details of a financial investigator who may be requesting access to sensitive information, for example banking data. There are approximately 400 individuals from over 100 financial institutions (for example banks) currently registered.
- It offers an extensive resource library of information including legislative and practical guidance and advice, news items, training materials, a contacts centre, official court templates and a case law database.
- A large number of automatic management reports, enabling mandatory monitoring processes to be carried out.
- Moderated discussion forums for users across all sectors of financial investigation to share information and intelligence, or to ask opinions, advice etc.

5.2. Best Practice: National Asset Seizure and Confiscation Data Bases

The National Monitoring of all Investigations and Prosecutions Involving Asset Recovery: The Joint Asset Recovery Database (JARD)

JARD (Joint Asset Recovery Database) is a national information database used by approximately 4,500 users, including financial investigators, prosecutors and enforcement staff across the UK asset recovery community. The database records information of asset recovery cases as they pass through the criminal justice system.

JARD has three objectives in support of asset recovery and crime reduction:

- to improve the effectiveness of asset recovery by the active involvement of Financial Investigators, Prosecutors and Courts Service in enforcement;
- to provide a single source of historic information about asset recovery actions, for the use of ongoing investigations;
- to support a joined-up approach to the operational processes concerning asset recovery, from investigation at the beginning to enforcement at the end.

6 GERMANY: A SPECIALISED SERVICE ON FINANCIAL ANALYSIS – AROs SUPPORT

The BKA's Serious and Organised Crime departments have a specialised service on financial analysis ("*Wirtschaftsprüfdienst, Forensic Auditing Service*"), composed of specialists in company structures and bank account analysis, which gives support to the BKA or the Prosecution Office.

Although at the beginning of this service, in the late 70's, this service was only used to assist preliminary proceedings related to economic crime, in 1994 the service was extended to money laundering issues as well. Nowadays the service is still focused on these matters, but if it is necessary it can also

provide support to any kind of investigation (organised crime, pharmaceuticals, environmental pollution, state security, etc.), although always centred on the economic and financial structure of the perpetrators.

Just as the criminals count on the economic expert's advice, in order to increase the complexity of the economic crimes and therefore, to hide more easily the criminal activity, it is essential for the Law Enforcement Agencies to have the support of economic experts, whose knowledge and previous professional experience can be a key point to fight against the criminality.

Nowadays there are more than 300 people who work in this service all over Germany, in more than 70 police facilities. Usually the members of the Forensic Auditing Service are not police officers, but administrative clerks. Most of them have got several years of previous professional experience. The number of years required for being part of this service depends on their function, e.g. for example, a certified accountant should have more than 5 years of relevant professional experience.

This previous experience is really appreciated since the service has to deal with very complicated tasks, such as analysis of tax and business documents, accountancy and analysis of balance sheets and bank accounts.

The previous experience and knowledge of the people working in the "*Wirtschaftsprüfungsdienst*", along with *the* possibility of obtaining easily financial information, (e.g. the German legislation enables special access to the centralised bank account register of the BaFin - German Financial Supervision Authority - if preliminary proceedings legally started. The requests on this database are usually prepared by the Forensic Auditing Service on behalf of the prosecutor), make easier the development of a financial investigation, obtaining the most possible information from the financial documentation to be examined.

7 THE NETHERLANDS: CJIB – AN EXAMPLE OF AMO AND CRIMINAL PROCEEDING OF CONFISCATION.

Probably, the Netherlands is a syncretism example, because its legal system combines a criminal proceeding with another that, being criminal too, is very similar to “civil confiscation” procedure existing in other countries as United Kingdom and Ireland.

This system re-uses existing institutions, bodies and procedures, with proved effectiveness; through their functions widening, they have been recycled as tools aimed to recovery and management assets; for example, the CJIB (Central Fine Collection Agency).

7.1 CJIB (Central Fine Collection Agency). An example of AMO.

It started as a small office in 1990, with the aim of executing fines payment. Before its creation, only were paid the 30% of fines; a year later, 95% of fines were paid in the term of twelve months.

This effectiveness led to taking on more functions, so when a judicial court issues a fine or a judgement, CJIB ensures the achievement. Its acting scope covers from a small traffic fine to ensuring that police has acted if there is imprisonment and of course as AMO.

Functions related to fine payments and recovery assets:

- Traffic fines.
- Criminal fines.
- Confiscation measures.
- Compensation measures.
- Out-of-court settlements.
- Punitive decision.
- European fines.
- National co-ordination of custodial sentences and arrest warrants.

- Co-ordination community service orders.
- Routing probation release.
- Victim Information System (SIS).

As Asset Management Office, CJIB is located at the end of a chain where other actors take part: police during investigative stage, besides other experts from other collaborating agencies, prosecutors, investigative judge, and BOOM in order to reach the judgement stage (when can take part in District courts or the supreme appellation court, if required). At the end of this chain, as told, is CJIB, although it can perform an important role in previous phases, co-operating with investigators, for instance, in planning apprising goods in a house search (vehicles, works of art, ...).

7.2 Confiscation system in the Netherlands

The first legal initiative entered in force in March 1st 1993, modified the 1st of September 2003 and with late amendment the 1st of July 2011.

In each of these amendments the legislator try to overcome practical problems that prosecutors, investigation judges and investigators found in the application of the law. At the beginning:

- It was necessary a direct link between the offence and the assets suitable to be confiscated.
- The confiscation has to take place during and within the criminal case session which implied that in many cases there was not enough time to carry out the financial investigation.
- There was no option to freeze assets prior the sentence.
- If the offender did not comply the confiscation resolution, there would be the possibility of an alternative 6 months imprisonment: a short period to make the criminal to pay.

The amendments to the law make it possible to solve these restraints still common in other jurisdictions of the EU.

- Confiscation is possible in the case of offences other than those under the original investigation. So it is not necessary that the illegally obtained profit was directly related with the case under investigation or judged.
- In the estimation of the advantage the required burden of proof it's not as demanding as in other criminal proceedings.
- It is possible to try the criminal case and the deprivation case separately, so there is more time for the financial investigation. This Financial Investigation can be open 2 years after the judgement of a criminal case.
- The law shows the possibility to freeze assets or precautionary seizure to preserve the possibility to confiscate the assets.
- There is the possibility to reach an agreement or settlement as long as the Criminal Financial Investigation (CFI) is open.
- With the last modification (1st July 2011) it's even possible to start a CFI with the possibility to use coercive measures to help the investigator to execute a confiscation order after a the sentence

Two procedures in the Criminal Code: Art. 36e. 2 and 36e 3.

While in the first procedure the confiscation is more linked with the proved offence, the procedure established in subsection 36e. 3 includes more possibilities in a criminal confiscation case and final the result is quite similar to a Civil Confiscation Procedure or NCB Confiscation System.

- Even is the accused has been convicted of a crime subject to a fine, a deprivation measure can be imposed if there is an enrichment due to other offences than the crime he has been convicted.
- In this case he needs not to have been involved in committing these offences (as an offender or participant), it's enough that he obtained profit as a result of the offences.

- For that purpose it is necessary to open a CFI. It has to demonstrate the link between an offence and an illicit enrichment (very similar to the “criminal lifestyle” in the Proceeds of Crime Act (POCA)).

The calculation of proceeds of crime:

This is established in art. 36 with a few regulations:

- Proceeds include the saving on expenses.
- Claims legally allocated to injured third parties must be deducted.
- The judge must take into consideration previous confiscation measures.

As there are no a clear rule the first approach it's consider to confiscate the balance between the initial financial position and the final position the offender had and so brought back this person to the situation he had before he committed the offence.

One method is to calculate the proceeds and then take into account the expenses incurred to commit the criminal offence.

Another method of calculation the proceeds of crime not implies the profit and the expenses of the criminal activities, but just focus in the balance of the assets of the investigated person prior to the criminal acts. This approach also takes into consideration the legal incomes of the person during this period.

- This approach includes a kind of reverse burden of proof, because the investigated person has to demonstrate that part of the increase in capital was originated by legal means. This implies the application of the rules of the Civil Procedure: there are no restrictions regarding the strength of the evidence.

Criminal Financial Investigation (CFI)

To implement a deprivation claim, there must be a conviction of a criminal offence and an illegally obtained advantage. When this is not possible the legislator created the possibility to conduct a CFI. On the one hand, the CFI focuses on proceeds of crime and also on tracing capital assets from the person investigated.

To initiate a CFI the following conditions must be met:

- There must be a suspicion of criminal offences.
- There must be a suspicion that the criminal offence resulted in a significant illegally obtained advantage (more than 12.000 €)

The initiation of a CFI implies:

- Each investigator with CFI authority is entitled to order anyone to provide statements and to access and seize written documents.
- During the CFI, the Prosecutor is entitled without further judicial authority to order the precautionary seizure of objects within the scope of a further confiscation.

A CFI is initiated under the supervision of a Prosecutor following authority from the Examining Magistrate. Because in many cases a CFI is a complicated investigation, the legislator has determined that a deprivation claim may still be filed 2 years after the accused has been convicted. It is also possible that a CFI as a preliminary enquiry, also can be conducted simultaneously or even independent from one another.

8 ITALY: SOCIAL REUSE, CONFISCATION TYPOLOGIES AND SOFTWARE

Social re-use of assets

In Italy, AMO functions are carried out by the “Agenzia nazionale per l’amministrazione e la destinazione dei beni sequestrate e confiscate alla criminalità organizzata” (ANBSC)

The orientation with regard to the social use of forfeited goods must be highlighted; Italian law establishes two ways: first, similar to other countries in Europe, part of the goods are transferred to the central administration, in order to achieve some effects which will be explained later; second, restoring the heritage to the communities. Up to May 1, 2012, the first way has received 13.06%, and the second way, 86.94%.

About concrete goods assignment, the Italian law has rules depending on the nature of goods:

- Real estates:
 - o Part of the goods can be assigned to the State to be used in justice, public order, civil warning, and other public or administrative uses.
 - o Transferring, for institutional or social purposes, to the communities heritages were the good is located
- Industrial goods:
 - o Free or onerous transfer
 - o Sale
 - o Liquidation
- Goods and chattels:
 - o Sale through private agreement.
 - o Free transfer or destruction.

Once assigned, the ANSBC goes on controlling and overseeing about the use of the goods. The ANSBC can cancel the transfer or nominate a representative when the good is not used as provided on agreement, or has not been used along one year.

Previously, have been explained about industrial goods and chattels; related to real estates, the sale has a secondary character, it is used only in case became impossible to assign the properties to public interest. There are some conditions to achieve the sale:

- The price cannot be under 80% of value established by the judicial receiver valuation.
- Only some entities can acquire the properties:
 - o Public entities allowed making real estates investments.
 - o Associations that ensure guaranties for the achievement of public interest.
 - o Bank foundations
 - o Real estate co-operatives, established by members of army and police forces.
 - o Public territorial entities.

The sales will take place through a public auction mechanism with a restricted character for the reasons mentioned above.

With regard to the aforementioned social re-utilisation, we must talk about a problematic issue: the existence of some properties whose ownership does not get transferred: for instance, a series of hotels, managed by the ANSBC, in order to avoid a social problems with the unemployment of hotel employees. Also, there is another aspect in the social image: the ANSBC must not give rise to any sense of yearning among the population (“the Mafia gave us a job, the State took it away”).

Assets forfeiture typologies

Italian laws provide two kinds of confiscation:

- Carried out during a judicial procedure
 - o Usual – Confiscation of assets from crime proceeds.
 - o Equivalent – It is a value based confiscation, not object.
 - o Because of disproportion – It is understood that the convicted people’s assets are caused by illegal activities when the value is disproportionate to legal incomes.

- Non conviction based – It is a procedure very similar to others in the European scope. It facilitates assets forfeiture without an unappealable judgement. In order to achieve it, it is required a justification based on social danger, criminal records, indictments, social relationships, ... related to right holders. This procedure is based on reverse burden of Proof; the right holder has to prove the asset's lawful origin.
- o The following authorities have the competence to apply for it:
 - Office of the Prosecutor of the Republic.
 - Questore (highest regional police authority)
 - Head of the Anti-Mafia Investigation Directorate
- o The decision only can be issued by a judicial authority.

New technologies in order to improve investigations and information analysis

There is a remarkable practice developed by the Servizio Centrale Investigazione Criminalità Organizzata (SCICO) (Organised Crime Investigations Central Service), within the Guardia di Finanza, involving the use of computer tools focused on acquiring, centralising and analysing all the information this service can obtain.

For this purpose, powerful software called “Progetto Molecola” has been developed. By introducing the files obtained from several databases, using some parameters, the programme shows information crossings and relationships, which become a great help for the investigator, because it is able to manage a huge amount of data.

Another remarkable feature is the automatic warning system that notifies the existence of incoherences in the information, which is very useful for the investigator. An example of this system would be the notice of a disproportion between the income and the expenses (declared and effected).

Also, offers the possibility of exporting the obtained data to the programme “Analyst Notebook”, a powerful application used in investigative visual analysis

It is necessary to highlight that SCICO has no investigative functions, only supporting; offers collaboration to another Italian police forces, such as Carabinieri, Polizia Nazionale and Guardia di Finanza, becoming this collaboration very important.

9 HUNGARY: INVESTIGATION TECHNIQUES AND TRAINING

The lack of the central bank account register – the Hungarian solution

There isn't a unified central bank account register, what causes a lot of difficulties. There are more than 200 banks, financial institutes and saving banks exist in our country and it would be impossible to send a request to each of them. So, a solution was needed to elaborate for that situation.

Till summer 2011, a designated unit within the Hungarian Financial Supervisory Authority took on the task of sending a request based on our request to them. The procedure was the following:

According to the request of the Hungarian Financial Supervisory Authority the requested data were checked by each bank. After that, all the banks sent us the result of their searches. The Hungarian Financial Supervisory Authority could send only a positive or negative answer referring to whether or not there were bank accounts. In the case of a positive answer, an additional request had to be sent for asking the particular details of bank accounts. This procedure required a lot of time because of the administration and posting.

In this way, all the domestic authorities sent their requests to the Hungarian Financial Supervisory Authority, which caused the result that their tasks piled up and it has not taken on this responsibility since July 2011.

After a short temporary period, a domestic unit– within the National Police Headquarters – has begun to work on this issue. The profile of the

designated unit is to do criminal analysis and beside it, has an electronic contact to the GIRO system, which is the Hungarian central bank administration system – all banks are connected to it and all transactions go through on it. GIRO system isn't only a check-point, but all of the transactions are registered there.

This police unit forwards our request to the GIRO system, which sends it – still electronically – to all of domestic banks. Afterwards, the banks check the requested data and send us – directly – a positive or negative answer (yes, or no, the requested entity has or has no any accounts at them). If we need any of the detailed data, we'll send a new request – directly to that bank, which replied positively.

The training system in the field of asset tracing and asset recovery

Basically, the investigation of financial and economic crimes is a part of the domestic police education system. The students study the methodology, the steps, phases and techniques of the investigations, they have criminal studies in general and they study all of the special sciences that have a connection with the police.

Since 2009, the Hungarian ARO took on the responsibility of the training in the field of asset tracing and asset recovery. As this area was a brand new one within the criminal sciences, the Hungarian ARO had to hand over all of the knowledge.

For that purpose, were carried out the following projects:

- **Investigative methods and techniques in the field of asset recovery (2008-2010)**

The Economic Crimes Division (where the ARO is within) had being doing the EU-financed project with the name of „Investigative methods and techniques in the field of asset recovery” among 2008 and 2010.

The participating countries were: United Kingdom, Germany (with 3 provinces), Spain and Portugal; the domestic participates were: the National

Police Headquarters, the Ministry of Interior, the headquarters of the Hungarian counties, the Supreme Prosecution and the Police College.

The project consisted of 7 conferences, among them there were 4 international meetings, the other 3 were further courses for the domestic local police stations. This further course concerned 135 domestic police organs that were divided into 3 parts (which meant 3 regions in practice), thus we did 2-day-meetings in each regions of the country.

During the courses were shared experiences that had been obtained in the partner states' study visits. Besides, we informed our colleagues about the legal background (concerning ARO matters), the practical possibilities and the accessible registers.

Thanks to this project in several county police headquarters 2 police officers were designated to have asset recovery tasks. These colleagues are responsible for collecting, register and send us the statistical data of the half-year damage values, the number of recovered values in the area of crimes against property.

Based on a Hungarian inner direction, there is an obligatory for all domestic police organs to collect the detailed data of the recovered values, make a report about them in every half year, and inform the Hungarian ARO about the barriers and difficulties which impede the appropriate handling of these data. These report are must be given to the ARO which has to analyses the data and make some proposals for improving the procedure.

The other great result of our courses, that the quality of the half-year reports has been highly increased.

- **OLAF (2010-2011).**

The features and results are as follows:

Initial objectives:

1. To improve investigation, detection and criminal intelligence capacity of operational police units in the fight against fraud and corruption

2. To facilitate detection and prevention of financial criminal activities and corruption detrimental to the interest of the EU and Hungary (with special attention on the use and the importance of international organisations concerned through transnational co-operation with them);
3. To assess the possibilities of tracing and recovering assets arising from fraud and corruption criminal activities, with special regard to the fact, that after the integration of Hungary into the EU, majority of the perpetrators place their assets and economic interests not in Hungary, but out of it, into one of the neighbouring EU member states);
4. To train regional police staff and prosecutors (by whom the investigation are supervised) and also judges delivering sentences on crimes committed counter interests of the EU and Hungary (result to be used to enhance co-operation and effectiveness in the field of fraud prevention);

Specific results achieved in relation to those objectives:

To present and disseminate the latest developments, methods and techniques to police officers on prevention, detection and investigation on financial crimes (fraud), corruption, and also the linked to it tracing and recovery of assets arising from financial crimes.

In our opinion the participants from the side of the police, the courts and the prosecutor's offices obtained the necessary information and knowledge in connection with the Hungarian criminal rules on corruption with case studies, the information concerning the related institutions (National Development Agency, Transparency International, the Hungarian Agricultural and Rural Development Office). Beside the representatives of the OLAF gave presentations on the Office itself (including history, functions, task and statistics) and EU and domestic asset recovery legislation including the legal possibilities of it.

In most of meetings the partnerships developed between the presenters and the audiences on the topic and the difficulties mainly the proving the

earliest stage of corruption and during a case study the importance of the international information exchange. In some events the participant gave an account of their own experiences during their work.

We can state the needs of the Project have been met the participants' claims, they were curious about the new information in this field. Only a couple of clearing questions rose up during the meeting of the Project.

The Department against Financial Abuse invited the representatives of the National Development Agency, the Agricultural and Rural Development Office, the Transparency International, the Prosecutor's offices and the National Tax and Customs Administration who have relevant knowledge and experiences which could be shared with the participants.

Advantages

- 1) Thanks to the meetings the number of the requests has been increased;
- 2) Because of the dispute formed between the prosecutors and the judges all representatives was able to get to know their points of view;
- 3) The conferences were a great occasion that the police officers, the prosecutors and the judges were in the same place and that's why the personal connections had been developed.

Key successes

First of all, participants learnt of the activity and function of the OLAF. The participants also had knowledge of the existing, function and activity of the Hungarian Asset Recovery Office within the National Bureau of Investigation (after the conversation following the conferences the Hungarian ARO received requests concerning asset recovery).

It was very significant that during the introduction of the case studies permanent dialogues formed between the presenters and the audience on the practical problems from the side of the police, prosecutor's offices and the judges.

In the field of the criminal offences against the financial interest of the European Union we partly succeeded clarify the competence between the Hungarian Police and the National Tax and Customs Administration.

Apart from these, if there is an indication (from a domestic LEA) for a claim of education, we do it without any project.

10 UNITED STATES OF AMERICA: TREASURY FORFEITURE FUND AND ASSET FORFEITURE PROGRAMME

In US there are two special funds devoted to receive the deposit of forfeited assets. The features of every fund will be explained following:

10.1 The Treasury Forfeiture Fund.

It was established in 1992 with the aim of receiving the non-tax forfeitures made according to laws enforced or administered by Treasury and Department of Homeland Security (DHS) law enforcement agencies – U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, U.S. Secret Service, and Internal Revenue Service Criminal Investigation.

The fund is managed applying the principle of transparency, which can be seen in the fact of having a private and a public auditor, and the sales through auctions (in a two-monthly basis).

At first almost every confiscation was carried out in the domestic area, although with the phenomenon of globalisation this trend has changed. Besides, over 80% of the profits obtained by the Treasury Department come from cash forfeitures or bank account forfeitures.

With a few rare exceptions, assets are not used by the agencies, so usually assets are sold after an unappealable judgement. Nevertheless, sometimes pre-forfeiture sale is used as a means of preserving asset value and mitigating asset management costs, for example, if the assets are perishable,

the price can be reduced, the asset is a company, etc. In these cases the money is deposited into a bank account until the unappealable judgement.

The management of assets is carried out in a very practical way, since it is made by private companies, which are contracted by every agency linked to the Treasury Fund. These private companies can also provide advice in the previous phase before forfeiture. The selection of the assets in this previous phase is essential to obtain a productive forfeiture, trying at least not to forfeit assets which could be an onerous charge for the Treasury Fund.

Upon forfeiture, seized currency that is initially deposited into a suspense or holding account, is transferred to the Fund as forfeited revenue. The **Super Surplus** represents the remaining unobligated balance after an amount is reserved for Fund operations in the next fiscal year. Super Surplus can be used for any federal law enforcement purpose.

In order to use this Super Surplus, agencies can present proposals to the Treasury Department, which makes a decision through the application of a general vision. Many of the proposals are focused on automation and systems development initiatives, computer forensic technologies and operational enhancements.

10.2 The Justice Asset Forfeiture Programme

The **Department of Justice** has an asset forfeiture programme where the Asset Forfeiture and Money Laundering Section of the Criminal Division holds the responsibility of co-ordination, direction and general oversight of the Programme. This programme is a key element of the federal government's efforts to tackle major criminal activities, and deals with the seizure and forfeiture of assets that represent the proceeds of, or were used to facilitate federal crimes.

The Justice Asset Forfeiture Programme includes activity by DOJ components⁷³ and several members outside⁷⁴ the Department.

⁷³ Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), United States Marshals (USMS), United States Attorneys' Offices (USAOs), Asset Forfeiture Management Staff (AFMS).

The Comprehensive Crime Control Act of 1984 established the Department of Justice Assets Forfeiture Fund to receive the proceeds of forfeiture and to pay the costs associated with such forfeitures, including the costs of managing and disposing of property, satisfying valid liens, mortgages, and other innocent owner claims, and costs associated with accomplishing the legal forfeiture of the property.

The Attorney General delegates the administration of the Fund to the Director, U.S. Marshals Service under the supervision of the Deputy Attorney General

Any civilly or criminally forfeited property can be retained for official use by any federal agency. No seized property shall be placed into official use until a final determination of forfeiture has been made and the request to place the property into official use has been approved by the appropriate official.

Upon the successful completion of the forfeiture action and if the property is not placed into official use or transferred to a federal, state or local agency, it shall be promptly sold and the proceeds of sale promptly deposited in the Fund.

The proceeds of the realisation of the confiscated assets are used for victim's compensation, supplementary financing of the law enforcement agencies and support programmes for the community.

Assets can be shared with other foreign countries after unappealable sentence and the victims have been satisfied. It is essential that the requesting country has facilitated, directly or indirectly, the assets confiscation in US. This can be done through the mutual legal assistance or specific agreements ad hoc. Besides, it is necessary the authorisation of the Attorney General or the Treasury Secretary. Assets can also be shared with other US states.

There are two key moments, the first one is the pre-seizure phase, where it is necessary to plan thoroughly which assets should be forfeited, and

⁷⁴ Food and Drug Administration (FDA), United States Postal Inspection Service (USPIS), United States Department of Agriculture, Office of the Inspector General (OIG), Department of State, Bureau of Diplomatic Security, Defense Criminal Investigative Service (DCIS).

the management and realisation phase, where it is important to know the right moment to sell the assets.

In relation to the pre-seizure phase there is a planning guide that tries to provide guidance and checklists to be used by all members participating in the Department of Justice, Asset Forfeiture Programme.

The goal of these checklists is to help in anticipating and making informed decisions about what property is being seized; how and when it is going to be seized and, the most important thing, whether it should be seized.

The checklists included in the guide are:

- Pre-Seizure Summary Sheet: It is a summary of all of the assets involved in a given case.
- Real Property Checklist: A separate Real Property Checklist should be completed for each piece of real property. A separate Net Equity Worksheet accompanies the Real Property Checklist.
- Business Checklist: A business checklist should be completed for each business being considered for forfeiture.
- Conveyances: A Conveyance⁷⁵ Checklist should be completed for the seizure of multiple and/or unique conveyances. A Net Equity Worksheet for conveyances is also included.
- Personal Property: A Personal Property Checklist should be completed for unique or complex assets such as livestock, furniture/household items, precious items, collectables, and fine arts.

As each case is unique, the information included in these checklists sometimes can not be applied to all assets in all cases, more or less information may be necessary. Therefore, these checklists must be used as a starting point, adding any additional information that may be useful in the forfeiture process.

⁷⁵ Aircraft, vehicles, vessels and other transportation vehicle capable of conveying persons or property.

11 CANADA: USE OF CONFISCATED FUNDS: CIVIL REMEDIES ACT

Ontario was the first province in Canada to have a Civil Remedies Act. The aim of this Act, previously known as the Remedies for Organised Crime and Other Unlawful Activities Act came into force in 2002, is to take the profit out of unlawful activities and compensate victims. Several Canadian provinces have followed the example of Ontario concerning its civil forfeiture legislation.

In order to implement and enforce the Civil Remedies Act the Ontario province established the Civil Remedies for Illicit Activities (CRIA) Office, which is a branch of the Legal Services Division of the Ministry of the Attorney General. CRIA has a specialised team of civil lawyers who bring civil forfeiture proceedings to court on behalf of the Attorney General.

The office works with stakeholders in Ontario, including police, ministry enforcement personnel and prosecutors. CRIA also pays attention to training, so about 2,500 police officers are trained annually in civil forfeiture procedures.

The Civil Remedies Act allows the Attorney General to ask a civil court for an order to freeze, take possession of, and forfeit to the Crown, property that is determined to be a proceed or an instrument of unlawful activity.

In Ontario, civil forfeiture legislation focuses only on the connection between property and unlawful activity, and it is not related to any criminal charges or convictions. The standard of proof required for civil forfeiture is a balance of probabilities.

The legislation establishes four kinds of proceedings:

a) Proceeds of unlawful activity

Involves property (which can be anything- cash, cars, jewellery, real estate, etc.) that was acquired in whole or in part as a result of an unlawful activity.

b) Instruments of unlawful activity

Involves any property that is likely to be used to engage in unlawful activity that would be likely or is intended to result in the acquisition of other property or in serious bodily harm to any person.

c) Unlawful activities related to road safety

Mainly involves street racing and impaired driving.

d) Conspiracies to harm the public

Involves two or more people conspiring to engage in unlawful activity, where at least one of them knows or ought to know that the activity would result in injury to the public.

The process for civil forfeiture under the Civil Remedies Act begins when an institution designated in the act, such as a police service or government ministry, submits a case to the reviewing authority, an independent Crown Counsel in the Office of the Attorney General.

The Counsel reviews the case and decides whether the criteria in the Civil Remedies Act have been met. The case information is then forwarded to the ministry's CRIA office, which is responsible for enforcing the act.

CRIA lawyers bring proceedings to court on behalf of the Attorney General. The court can grant an interim order to freeze property pending the outcome of the forfeiture proceeding. If the lawyers can prove that the property in question is a proceed or an instrument of unlawful activity, the court can issue orders forfeiting the property to the Crown.

After the forfeiture the property is converted to cash, if it isn't cash already, and deposited into a special purpose account. The cash can be used as follows:

a) Victim compensation

Direct victims of the unlawful activity may submit a claim for compensation.

A public notice directed to victims, municipal corporations and public bodies regarding claims for compensation is published for each case,

although the notice may also be sent directly to individual victims if their addresses are known.

In order to be considered for compensation, claims must normally be filed within a specific time frame identified in the notice.

Independent adjudicators determine eligibility for and the amount of each payment. All victims' claims must be adjudicated before payment can be made.

b) Cost recovery

Funds can also be used for cost recovery to the Crown. In theory the Crown is entitled to recover its costs first, but in fact victims are compensated first.

c) Grants

After victim compensation and cost recovery the remaining funds may be disbursed for grants for programmes to assist victims or prevent victimisation.

The act establishes the organisations eligible for grants, including law enforcement agencies and Ontario government ministries, boards and commissions.

These institutions must meet the established criteria and submit a project proposal explaining how the grant will assist victims of unlawful activities or prevent victimisation. All applications are examined by the approval committee, which consists of members from the CRIA office, the Ministry of the Attorney General and the Ministry of Community Safety and Correctional Services.

12. SCOTLAND: CIVIL CONFISCATION – THE CIVIL RECOVERY UNIT (CRU)

Civil recovery is sometimes referred to as “non conviction based forfeiture” and both terms are inter-changeable. So, civil recovery in the UK can be pursued even when there has been no preceding criminal conviction.

Nevertheless, the civil recovery should be used only where prosecution is not possible or where prosecution has failed.

Although the Scottish legal system is separate and distinct from the legal system used in other parts of the UK, Scotland is subject to UK legislation, and this includes the Proceeds of Crime Act 2002 (POCA). UK legislation such as POCA is enforced and implemented in Scotland through Scotland's own distinctive legal institutions

The régime of civil recovery in the UK is established in Part 5 of POCA. In Scotland the enforcement authority for the purposes of Part 5 of POCA is the Scottish Ministers.

The Civil Recovery Unit (CRU) plays a key role in the civil confiscation in Scotland, as is the agent for the Scottish Ministers in the discharge of their functions under Part 5 of POCA. The CRU is part of the Operations Group of the Crown Office and Procurator Fiscal Service (COPFS). The COPFS is the sole prosecuting authority in Scotland.

The mission of the CRU is to use civil proceedings to disrupt crime and to make Scotland a hostile environment for criminals.

Here are some facts regarding the CRU:

- Based in Edinburgh
- Multi-disciplinary team
- 8 lawyers (a mixture of civil and criminal litigators)
- 6 Investigators
- 5 Administrators
- 1 Forensic Accountant
- 1 Trainee Solicitor (changes every 3 months)

All members of the CRU are security vetted to a high level, in order to minimise the risk of any CRU officer being susceptible to corruption/bribery.

Furthermore, some CRU officers operate under pseudonyms since they come into direct contact with major criminals, and it is necessary to protect

their private identities. The Unit works also from covert premises somewhere in Edinburgh, so that safety and security of CRU and its personnel can be guaranteed.

The CRU will use Part 5 of POCA to disrupt crime at all levels. Criminality in the UK is classified in terms of the UK National Police Intelligence Model:

- **Level 1 crime**: criminality which is restricted to the community in which the criminal lives
- **Level 2 crime**: crime which crosses police force/divisional boundaries
- **Level 3 crime**: crime at its most serious level and crossing national boundaries

All property recovered under Part 5 of POCA vests in the Trustee for Civil Recovery once the appropriate recovery order is made. Remains vested in the Trustee pending sale/disposal

Assets of all descriptions may be forfeited in the Court of Session (highest civil court in Scotland located in Edinburgh) **if** :

- the property has been obtained through unlawful conduct (through crime)

Cash may be forfeited in the Sheriff Court (lower court which exercises a mixed civil/criminal jurisdiction) **if**⁷⁶:

- The cash has been obtained through unlawful conduct (through crime)

OR

- The cash is intended for use in the furtherance of unlawful conduct

All actions under Part 5 of POCA are civil and in rem actions (actions directed against property and not against individuals).

⁷⁶ There are Sheriff Courts situated throughout Scotland, not just Edinburgh

In all cases the onus of proof is on the Scottish Ministers and the standard of proof is on a balance of probabilities.

13 SPAIN: SPANISH NOTARIES DATA BASE AND SOCIAL REUSE OF CONFISCATED FUNDS (NATIONAL PLAN ON DRUGS)

13.1 Public action to fight money laundering and terrorism funding

In order to fight the risks related to Money laundering and terrorism funding, States have designed **two fronts**:

1. Traditional front of **criminal prosecution**: Money laundering is an offence punished by judicial courts, supported by criminal police. Besides restoring social order, depriving of freedom to defendants, another aim is depriving of proceeds, through instruments such as confiscation or equivalent value seizure.

2. The new front of **prevention**, focused on obstructing access to lawful economy of proceeds of crime, before the laundering get developed, starting from issuing of several duties “of care” to certain obliged individuals.

From a global perspective, both fronts need each other and must work together, as a necessary condition to achieve the effectiveness of the system. Criminal prosecution of money laundering and economic crime loses a great part of its effectiveness if police agencies do not receive information about prevention activities. Likewise, implementation of prevention measures by the obliged individuals requires those people notice that their efforts are useful to criminals get imprisoned and their assets, forfeited.

Due the difficulties given in unlawful origin proving, the traditional front must be accompanied with administrative laws aimed to “obliged individuals”; those laws forward the criminal protection barrier to the moment previous to offence committing.

What is the aim of those laws? To make it difficult that obliges individuals get used in laundering procedures. Preventive law are not useful to avoid the participation of obliged individuals in money laundering.

Notary's stand related to laundering prevention law: evolution

Spanish notaries have shown a clear compromise in detection and communication of money laundering suspicious activities before getting the “obliged individual” condition.

The starting point that allows the notary a full co-operation in fighting against Money laundering is the obtaining of “obliged individual” character (instead of mere collaborators); this character is established on the amendment of the Money Laundering Prevention Regulation, that came into force in mid 2005.

Until that moment, notaries notified directly to SEPBLAC⁷⁷ suspicious deeds or policies. Based on this approach, cents of public documents were sent to the authorities by the, about 3.000) notaries in Spain.

However, this approach was realised to have clear flaws:

- a. On the one hand, Notaries are not experts in the prevention of money laundering, making such a key task as risk operation analysis less effective than that done by experts.
- b. The ability of an individual notary to detect complex operations developed by individual or legal people on different places (inside or outside of Spain) is very limited. The growing complexity in money laundering schemes clashes with the tasks a notary is able to notice in the acts he or she takes part in.

Since mid 2005, the authorities were noticed of these limitations, and, at the end of that year, new tools were developed that make the performance of their duties easier, as public employees, in a more efficient and useful way.

The key landmark is the issuing, by Finance Ministry, of the **Order 2963/2005**, September⁷⁸ the 20th. That order came into force in 2006 and

⁷⁷ Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales. Spanish FIU

provides the establishment of a specialised unit within the Notaries General Council, the Prevention Centralised Body (OCP). This creation was widely asked by notaries, and constitutes a valuable tool in money laundering prevention, aimed to notaries and the authorities that receive the information.

Operation of the Money Laundering Centralised Body

This unit (OCP) comprises several professionals with great expertise in investigation and money laundering prevention systems. It also has experts in information technologies, something necessary in order to manage the “Unique Index” (database where notaries record all their activities), establishing links between operations carried out in different moments and places.

Simply put, the following functions are carried out by the OCP:

First of all, co-ordinating notaries’ activities related to Money laundering prevention.

Co-ordinated activities of a Group of about 3.000, based on centralised mechanisms of information management, gives unquestionable advantages for public interest, instead of fragmented management of every notary.

The establishment of common interpretation criteria related to applicable rules to notaries’ group, doubt solving, or different aspects of a law ... are valuable elements whose centralised management gives undoubted advantages for public interest

Analysing detected operations in the Unique Index, as well as those notified directly by notaries.

The developed co-ordination from centralised management makes up the system cornerstone. Its effectiveness improves exponentially with the co-ordinated management of recorded information on the Unique Index.

The analysis result gets better because adds more elements than those sent by every notary; integrating elements from operations carried out by the

⁷⁸ Complemented with Ministry Order 114/2008

same person before another notaries, as well as public external information related to the parts.

From the starting date, notaries have sent to OCP 37.579 risk operations, in order to be analysed. Also, OCP has analysed more than 1.500 operations downloaded from Unique Index, operations that weren't noticed by the notaries.

Noticing SEPBLAC suspicious money laundering operations.

When, as analysis result, the money laundering signs still or increase, it is notified to SEPBLAC.

These communications involve an exception (Art. 32 Notaries Law and art. 274 Notaries regulations) to notary secret, justified by risk factor presence and previous operational analysis. This secret never can be allocated above the public interest (money laundering prevention and terrorism funding, tax fraud, etc.)

3.860 operations have been sent to SEPBLAC, among those sent by notaries and those sent as result of analysing information from Unique Index, during the time OCP has been working.

Not every operation containing risk elements must be sent to SEPBLAC. There is a need of leaking and analysing the operations, notifying only those whose risk elements can be ruled out. If there is no leaking and analysing by obliged individuals, the system may collapse.

Almost the whole communications to SEPBLAC are made up of several linked operations developed in different places and before different notaries (among the 3.860 communications are attached 6.943 public documents, such as deeds and policies)

Answering the requests from judicial or administrative authorities in order to develop investigations related to money laundering

The replies from notaries to judicial or administrative requests also improve in a substantially way, through centralised information supply.

The requests, related to acts and agreements made by a person before every notary in Spain are replied in an almost immediate way by OCP. The requesting procedure is developed through a safe web platform on the Internet, by using cryptographic cards containing digital signature; this system is used to get information such as:

- A person's activities (natural/legal).
- Copy of a registry/policy or attached documents.
- Registry or policy summary.
- Request for an alert regarding a person's activities.

About one hundred cryptographic cards have been delivered to members of law enforcement (Police forces, Anti-Drug Prosecutor Office, Anti-Corruption Prosecutor Office)

Since December, 2005, OCP has answered:

- o 50,046 information requests related to people, sent by judicial, administrative or police bodies.
- o 8,261 documents requests, sent by judicial, administrative or police bodies.

Setting internal procedures related to Money laundering prevention.

Holding a manual of money laundering prevention in every notary office constitutes a key element that gives clarity and transparency to the system, clarifying the notary duties established by money laundering prevention laws, and the specific way to perform them.

Training notaries and their employees

The system effectiveness is conditioned on development of specific tools related to prevention, and on knowledge available tools. Obtaining this knowledge contributes actively to right using of available prevention tools (objective elements or risk and the notary activity related to this).

From the starting date, OCP has contributed with an important added value to money laundering prevention; also, has contributed in avoiding or making difficult the using of notaries in money laundering schemes.

Unique Index and money laundering and fraud prevention procedures

All the aforementioned tasks related to money laundering prevention and fighting against terrorism funding, wouldn't have become possible without the so called "Computerised Unique Index".

This index is a database containing All Spanish deeds and documents signed by notaries. There are three noteworthy aspects:

- a) It contains all the elements included in every transaction: the kind of legal business (sale, rent, incorporation of a legal person, ...); identification data of parties (name, document used, address, ...); position (buyer, seller, founder, ...); amount of the transaction; the object (real estate details, the legal person shares are related to) ... among another elements.
- b) It reflects the public document authorised by the notary.
- c) It enables the automatic management and establishing of cross-tabs between the information and the relationships, endowing it with extraordinary potential.

From the initial internal use, it has been changed to a use aimed to add value, related to information, for public administrations. So, the use in detection and communication of suspicious operations is one of the possibilities of this index. Notaries, as public employees, are sensitive to the possibilities given by information management, related to public interest; as well as public administrations, who become receivers of this information.

13.2 National Plan On Drugs

The National Plan on Drugs is a governmental initiative created in 1985 to tackle the complex phenomenon of drug-dependency with an integral and multidisciplinary approach. This plan established co-ordination of the

different departments of the central, regional and local administrations, along with a number of non-Governmental Organisations.

A few years later, in 1995, the Government decided to establish a Fund of seized assets, within the aforementioned Plan. This Fund manages the assets coming from Illegal Drug Trafficking and related offences. This establishment has made a major innovation in our legal system.

The Fund has remarkable social character goals as:

- Improvement of the prevention, investigation, pursuit and repression of these offences.
- Prevention of drug-dependency, social and working integration of the assistance and drug-dependency programme.
- International co-operation.

Co-ordination panel

The Co-ordination Panel, currently attached to the Ministry of Health, Social Services and Equal, is the bureau that decides about property included in the Confiscated Assets Fund from illicit drug trafficking and other crimes related.

Composition:

- Government Delegate for the National Plan on Drugs.
- Management Deputy Director.
- 3 members from the Economy and Finance Ministry.
- 1 member from the Interior Ministry.
- 1 member from Justice Ministry.
- Health and Social Services Ministry lawyer.
- Panel Secretary

Human resources

In addition the Management Deputy Director includes:

- Two Heads of Area, both law graduates.
- 4 Heads of Service.
- 1 Graduated with a formal contract
- 7 assistants and administrative support services.

Beneficiaries

The beneficiaries of the Fund can be different public and private Spanish Institutions, as well as the Police Forces and foreign governments even:

- a) National Plan on Drugs.
- b) Regions and municipalities (development and implementation of drug plans in their respective areas, provision of facilities to the respective officers; NGO's of its territory)
- c) State level NGOs
- d) Law Enforcement Forces (state level)
- e) Customs Department
- f) Special Prosecution Office against drugs
- g) Other public agencies to develop specific programmes
- h) International agencies, supranational entities and foreign governments.

Procedure for the disposal of assets

1. Declared finality of a judgement by the court, it shall be notified by that court, within three working days, to the President of the Panel.

2. Assessment of suitability: once received, a report will be written, in order to decide about the suitability of seized goods not consisting of money or other bearer instruments:

- If it becomes unsuitable its assignment (or abandonment) will occur immediately.
- If it becomes suitable, it will be identified and valued; also, it will be included in the Seized Assets Inventory.

3. When seized goods consist on liquid amounts of money and other payment instruments, they will be transferred to the Treasury, in order to its later revenue in the fund.

4. Assignment

4.1. The General Rule is the public auction.

4.2. Direct assignment

4.3. Abandonment

The assignment will be registered in that inventory, noting the duration and the beneficiary of it.

The money seized by a court that had been included into the Fund, as well as those others subsequently incorporated therein as a result of the disposal of other assets and accrued interest, shall be distributed annually by the Panel among the different beneficiaries.

Provisional assignment of assets

The State Security Forces unit that seizes assets from actions against illicit drug trafficking or their precursors, money laundering proceeds of such trafficking and related offences, at the time of the police report presentation or the immediate aftermath, shall apply to the Judicial Authority, for destruction or disposal of the seized assets property early if they have any of the requirements of Article 367 quater of the Criminal proceeding Law and all other related legislation. The judicial authority may decide that, during the judicial procedure, the seized assets (lawful commerce nature) can be used

temporarily by the Judicial Police. If there is a condemnatory judgement, the assets would become definitively assigned by the panel to the Judicial Police, or whoever were using the seized assets.

Criteria for cash effective amounts distribution

The criteria are annually set by the Ministers Council; the last time they have set has been the January 14, 2011, as follows:

1. In the field of **demand reduction**: drug prevention programmes, assistance to drug addicts and social integration and employment of the same, consisting of:
 - Awareness programmes.
 - Care for drug addicts with legal problems or interned in penitentiaries and high-risk populations
 - Training and updating.
 - Research projects on the addictions.
 - Projects and programmes in the addictions that include a gender perspective.
2. In the area of **supply control**: programmes and activities undertaken by the State Security Forces in the fight against drugs and money laundering aimed at improving communications and computer systems, increasing the material and promote the training of human resources devoted to this activity.
3. Finally, **programmes and activities of international co-operation** in these matters.
4. **Costs** of administration and management of the Fund.

Control mechanisms

Within the first quarter of each year, the President of the Panel will sent to Parliament, through the Presidents of the Congress of Deputies and the

Senate, a full report on the activities of the Fund, which collects the main operations and economic data.

In late 2009, the head of the Delegation of the Government, appeared in the Senate to clarify the contents of the Fund report.

Moreover, the Fund will be subject to proper control of the State Comptroller, within the scope of its powers, and the Court of Auditors.

Activity 2010

- 2,740 court decisions reported
- 1,991 goods seized:
 - o 955 vehicles
 - o Other goods, 722
 - o Jewellery, 146 items.
 - o 140 ships
 - o 28 properties
- 2,146 seizures of cash (amounting to 30,813,489.89 euros).
- 1,758 agreements were adopted on the final destination of the assets in the Fund:
 - o 995 (57%) are agreements abandonment of property that have lost their tenders in the sale or whose market value is negligible.
 - o 27% have been agreements on disposals (469).
 - o Public auction 338 agreements (19% of all adopted).
 - o 131 direct sale agreements (7% of total).
 - o The assets definitively assigned to the Security Forces represent 5% (96 agreements).
 - o Finally, 11% of the goods were declared unsuitable (198 agreements).

Problems in real estate management

We must highlight the problems related to the management of a lot of real estate: there are lots of tasks to be solved before they can be sold at public auction or through a direct sale. Those problems are very complicated to be solved:

- Existence of liens and charges on the property.
- Ownership shared with third owners.
- Difficulties on physical identification.
- Occupation of the buildings by third parties.
- Urban infringements on seized real estates.

VII. TRAINING

1. INTRODUCTION

Along the following pages of this White Paper we are trying to show the importance of university institutions as research entities and knowledge spreaders, as well as the necessary collaboration between academic scope and law enforcement.

The **Rey Juan Carlos University** is one of the six public universities in Madrid with the Latin motto *Non nova, sed nove* (“Not new things, a new way”). This axiom is present in most of its academic activities and this project is a clear example of its ability to contribute in different fields and collaborate with international institutions.

Within the University structure, we must remark the Postgraduate studies Deputy Rector and the current Dean of the Social and Law Sciences Faculty, which have promoted and co-ordinated the collaboration between the University and other Institutions (both national and international) and have developed new curricula degrees. Also, it is remarkable the “Financial and Forensic Investigation Institute KPMG-URJC”, that establishes a forum in order to develop academic and research activities related to fighting against money laundering, terrorism funding, tax fraud and economic crimes committed through new technologies.

Due to all aforementioned aspects, the University accepted the request to act as a partner in the so called “CEART Project”, led by Spanish National Police. The motivation for the invitation was:

- National Police knows about the importance of university scope in order to design and establish training activities.
- Both institutions are located at the forefront of application of laws related to Superior Education European Environment.
- Both institutions try to do their best, in a new way, trying to improve their daily running.

- The University international experience was and is an important asset to bear in mind.
- The existence of a Financial and Forensic Investigation Institute constitutes another contact point among both institutions.

2. A NEW DEGREE ON ASSET RECOVERY AND FINANCIAL INVESTIGATION

Following the recommendations of the different *fora* introduced in the previous sections, the CEART project considered as one of its main activities the training in the success of asset tracing and recovery. To achieve this goal, and as a first step towards an Asset Recovery and Financial Investigation Training Centre of Excellence, a new degree was designed. The International Expert Practitioners Course in Asset Recovery and Financial Investigation was based on consensual contents and presents, from a pragmatic approach, asset recovery, management and financial investigation aspects. Finally, the Rector of Rey Juan Carlos University and on his behalf the Deputy Rector of Postgraduate Programmes agreed on the syllabus, and approved the first edition of the Expert Practitioners Course.

The course consisted of 120 lecture hours, divided in a three months online part starting on March, and a residential part of two weeks in Aranjuez (Madrid) from June 20th to July 1st. The online part was based on an ad-hoc eLearning platform, which was developed to guarantee both the learning process and the information security of the presented documentation. Given the characteristics of this pilot course, several pre-requisites were imposed to the attendants in order to obtain a richer feedback from them after the course. These were:

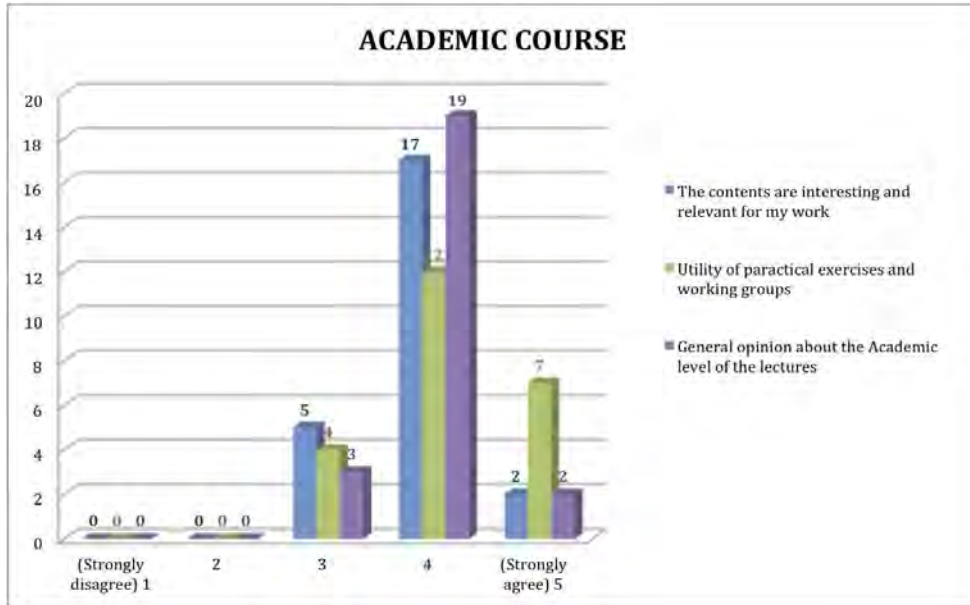
- a) currently employed as law enforcement personnel,
- b) minimum experience of 2 years in asset recovery and/or financial investigation, and
- c) to be fluent in English.

The syllabus was divided into five modules (see appendix I). and the Course was taught by 25 experts and professors from 7 EU member states to 24 students from 15 European countries. During the residential stage the following lectures were given:

- Stages of the investigation
- Sources of investigation
- Criminal intelligence analysis
- Operational support devices
- Obstacles when gathering evidence
- Open sources. Practical issues on asset tracing
- Spanish Financial Intelligence Unit
- Civil recovery in Scotland
- Proceeds of crime in Scotland
- Polish asset identification and recovery system
- Asset recovery networks in Europe, Southern Africa and Latin America
- Financial training
- Introduction to financial accounting
- Investigation on social networks
- Decision support techniques;
- Social Marketing
- How important is the strategy in the organisation
- Art appraisals and fakes
- Statistics to improve efficiency

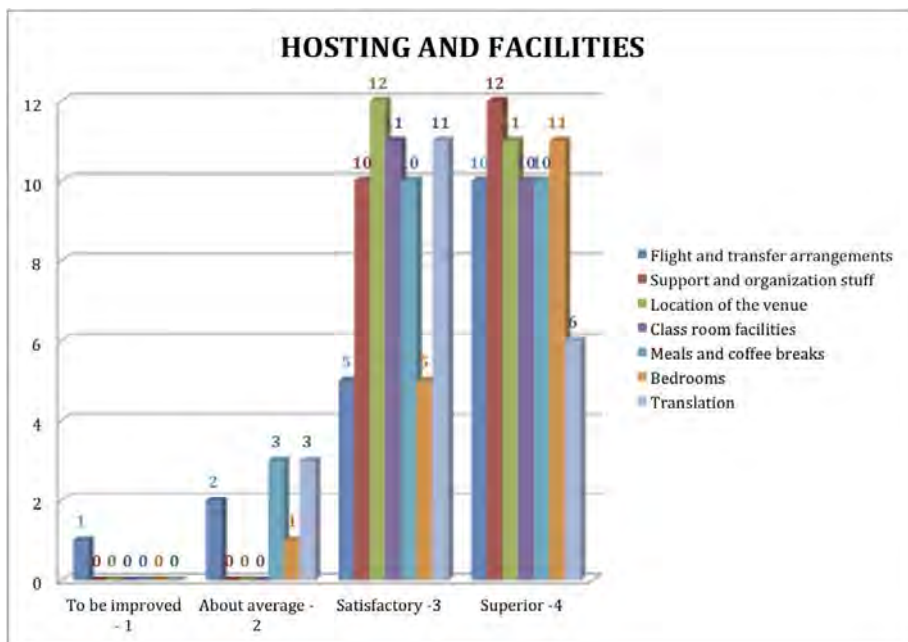
Lectures and practical activities were mixed; including operational support devices, surveillance devices, house search training, shooting exercises, etc. All the sessions were recorded to enhance the learning curve of the course attendants after the residential part.

In order to obtain a useful feedback from the attendants and to improve future editions of the course all the activities were surveyed, and these are the main conclusions:

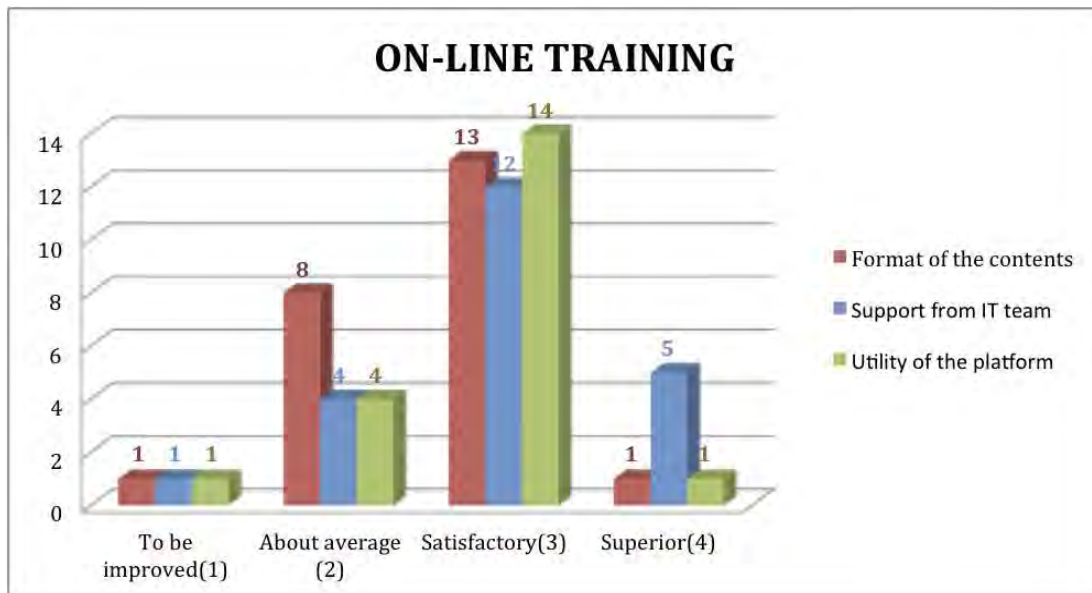


The contents were considered interesting and relevant for their work by 79.17%; 69.57% agree with the duration of the residential part (2 weeks); 82.61% agree that the practical exercises and working groups are useful; the general opinion about the academic level of the lectures was a score of higher than 4/5 from 87.5% of participants.

Regarding the selected hosting and facilities for the course:



The flight and transfer arrangements scored higher than 4/5 for 83.33% of participants; 100% evaluated the support and organisation at higher than 4/5; 100% evaluated the location of the venue higher than 4/5; 100% evaluated the classroom facilities higher than 4/5; 86.96% evaluated the meals and coffee breaks at higher than 4/5; and 94.12% evaluated the bedrooms higher than 4/5; 85% scored the translation services higher than 4/5.



60.87% consider that the format of the contents were satisfactory or superior; 77.27% consider that the support from the IT team was satisfactory or superior; 77.27% agree that the utility of the eLearning platform was satisfactory or superior.

Some examples of personal comments made by the attendants are:

- “Many of the topics were very well selected with reference to our daily works” “Most of the topics of the course were very useful and suitable for all of us”
- Support of the IT team: “The assistance was superior”
- Utility of the eLearning platform: “Very good web site. Easy to follow”

- Flight and transfers: “The flight and transfer arrangements were highly appreciated”
- Support and organisation: “We were very well looked after, tips, etc. Organised and always somebody available to help”
- Location of the venue: “A very fine place. Small city that make us ‘stick together’ after class”
- Class room facilities: “The conference hall was appropriate for our course”
- Meals and coffee breaks: “Amazing food! Expensive cuts of meat, excellently seasoned, very imaginatively decorated deserts. I am inspired to copy receipts :-)”
- Rooms: “I travel a lot all over the world! I must say that I had the best cleaning ever of my room during this stay. Phenomenal!”
- Translation: “The two-way translation was satisfactory.”

Final general comments:

- “Good to meet some people that I spoke to on e-mail.”
- “Very valuable course. It will help me a lot in my coming work in my country and especially the use of ‘new angles’ to combat money-laundering connected to organised crime. A lot of experience from the speakers was given! Will help co-operation with other countries. The directors have done a terrific job making this course!”

We would like to include also the main concerns of the attendants, so that we can look for their causes and we can learn from them:

- Presentations available only in the eLearning platform. The reason for this was the security level of the information presented in the course, which was demanded by the teachers”
- The length of the course: it is a problem to be out of the office for 15 days, specially in the case of small units.
- Widen the spectrum to the law system of other countries

The final part of the course (module 5) was devoted to a research project that had to cover some of the aspects introduced in the course. It had to require the active involvement of the attendant and was graded by a committee of experts on asset recovery and financial investigation during the closing CEART project conference in Avila (Spain). The main topics of the projects were:

- The importance of social marketing
- Social networks analysis
- Asset valuation and management
- Establishing an ARO
- Establishing an AMO
- Sources of investigations
- Analysis of case studies on international co-operation on Asset Recovery
- The strategy in the organisations

The final grades achieved by the attendants were really outstanding, showing that they were properly motivated and directed by their supervisors. Two special mentions were awarded to the best grades, acknowledging their effort and enthusiasm during all the modules of the Course.

3. ECONOMIC TRAINING

One of the tasks carried out by the University is research, as well as knowledge spread. Every investigation tries to look for innovations and applying them; the searching for efficiency and excellence. Following this paradigm, and as a consequence of the interest showed by the attendants of the course on specific topics of the economic training, the CEART team decided to include an extended version of the professors' and expert's works in this paper. In the following sections you will find:

- A reference to art market and the use of art pieces as a mechanism for money laundering operations, since they can be really suitable to develop this activity. This is a new scope, and

there haven't been significant cases for the moment, although it is an increasing tendency.

- An article related to “social marketing”, defined by Kotler as “the use of marketing methods aimed to an objective audience, so that they accept, refuse, modify or leave, in a free way, a determined behaviour; this will benefit determined individuals, a group of them or the whole society”. We must emphasise the possibilities that offer this social marketing in order to fight against crime, because this is not an explored field and can produce important benefits.
- A study related to statistics. Throughout this White Paper reference has been made to correct information management in order to obtain intelligence. Likewise, the use of statistics in a correct and innovative way may enable intelligence to be gathered for use in prevention or investigation.

THE ART MARKET AND ITS RELATIONSHIP WITH MONEY LAUNDERING

Ana Vico Belmonte

Jesús Palomo Martínez

REY JUAN CARLOS UNIVERSITY

Artwork has awakened great interest in recent years among consumers. Whether motivated by artistic enjoyment, the profitable revaluations in artwork today, or by the prestige that their possession offers, this interest has consistently increased artwork prices since the beginning of the 21st century. Precisely for that reason, this market has been well studied on an economic level through consumer studies of luxury goods, investment in artworks or collectibles, with valuation studies for these kinds of goods.

At the same time, the great number of artworks directly or indirectly related to police investigations is striking. In fact, in economic-patrimonial studies, it is common to find investments made with capital of criminal origin in this market. In these cases, the investigation requires specialists in the field capable of doing expertisations of the artwork whereby they authenticate and appraise the work in question. This is a task in which different variants have an influence that results in important variations in prices depending on the variables that have been taken into consideration. For that, it is a job that requires great knowledge of the art and commercial sectors as well as the pertinent legislation, qualifications that are difficult to find in the cultural-academic field. With this paper we aim to contribute the information necessary for the undertaking of these activities and in this way help to compensate for the lack of resources and contacts that on occasion we find in the different sectors in this market.

It is important to point out that among the crimes related to money laundering, the activities connected to investment in artwork or collectibles are relatively abundant. This is no doubt derived from the suitability that these goods present for such criminal activities given that, in general, the monetary figures are high, yet they do not have a single price, nor even an objective one, which could be referenced in the expenses of a transaction. On

the contrary, they are easily manipulated and justified, at any given time, by high demand. At the same time, artworks present the benefit of being goods whose possession requires significant expenditure but are not publicly registered, as occurs with real estate, so that the offender can make a transaction with great freedom of movement, which in turn complicates the investigation.

In short, if what money laundering tries to achieve is to give an appearance of legality to wealth generated through criminal activities in such a way that one can justify an increase in assets, we find in artworks and collectibles some highly apt and favourable products for said activity, which justifies the study that we will now proceed to develop.

1. THE ART MARKET

1.1 Introduction: Current characteristics and situation of the art market

In the art market, we have to differentiate between two fundamental sectors. The old artwork market (with pieces over 100 years old), which is actually the communion of different sectors which trade in products of diverse natures (antiques, coins, books, and contemporary paintings), and not homogeneous in either development or success, as far as the interests of the collectors are concerned. Legislation is what has principally marked the possibilities of the market in each country, creating a particular situation in which it is not possible to speak about a single art market. Instead, it has been diversified into several different ones represented by countries according to their legislation and cultural profiles. The contemporary art sector in Spain has less legislative and customs restrictions, so that it is traded freely among countries⁷⁹, although it is a product that presents a greater investment risk than old artwork, which has prices that are more fixed in the market and is therefore a more advantageous type of economic speculation. Though it is true that contemporary art is a product that presents greater risk of investment than old art, it is still very apt for speculation.

⁷⁹ VICO *et al.* “Los mercados de la pintura dos mercados paralelos dentro y fuera de nuestras fronteras”; *Administrando en entornos inciertos*. ESIC. Seville, 2009.

Works of art have always been sold, but never so manifestly as in the last quarter of the 20th century and the beginning of the 21st century. Culture is more accessible to society and the mass media increasingly reflect events, anecdotes and information from the art market, sparking greater and greater interest in the subject. The climate of stability and economic prosperity that prevailed at the beginning of the 21st century, as well as the favourable situation that the art market presented for investment, encouraged a settling within the European capital market and the introduction of new buyers from countries with emerging economies such as China and Russia. At that time, the art market was growing, with rising prices and value and a sector - that of the plastic arts - high above the rest in number of sales and prices attained. In fact, the figures verify this behaviour of movement toward the art market, making it, little by little, an important investment alternative. According to *Arts Economics* and *Kusin & Company* (2007), the growth in the art market between 1998 and 2006 was 296.3%, undoubtedly even more vertiginous in the last years of that period. Furthermore, the processes of economic globalisation describe an integration of local economies within the international economy through commerce, foreign investment, capital migration, etc.

Precedents to the crisis in the international art market

Between the years 2000-2008, the underdeveloped economies showed greater growth in their GDP, with an average of 7%, with the exception of China, which increased by nearly 10%. Meanwhile, the more developed economies did not surpass 2%, on average. The enormous economic benefits of the new art markets fed the growth of *per capita* income, as well as the number of millionaires. This had direct repercussions in consumption, especially in luxury goods, including artwork and collectibles. This new situation gave rise to an increase in prices, most notably in the contemporary art sector of these new emerging countries⁸⁰.

⁸⁰ VICO BELMONTE, A. *et al.* "Nuevas perspectivas del mercado del arte tras la crisis y con la presencia de los países de economías emergentes". Los mercados del mañana: Bases para su análisis hoy. ESIC. Universidad de Valencia, 2011.

Table 1. Investment preferences during 2007

	Middle East	South America	Asia-Pacific	Europe	North America	GLOBAL
Well-being	10%	21%	13%	22%	11%	16%
Luxury Goods	15%	12%	19%	12%	11%	14%
Luxury Trips	13%	12%	13%	12%	17%	14%
Jewellery and Watches	14%	9%	15%	9%	13%	12%
Art	13%	7%	14%	7%	11%	10%
Luxury Collectibles	6%	7%	6%	9%	10%	8%
Other Collectibles	16%	18%	14%	17%	17%	16%
Miscellaneous	5%	6%	4%	6%	3%	5%
Others	8%	8%	2%	6%	7%	5%

Source: *Artprice* (2008)

It is interesting to note that in 2007, the most prosperous 22% of the European population, economically speaking, and the most prosperous 21% in South America, bought artwork or collectibles, against 11% for North Americans, 10% for Arabs, and 13% for Asians, where jewels, precious stones, and high-end watches still predominate as favourites for investment in luxury goods. *Forbes* magazine presented a ranking in 2008 of the investments in luxury goods⁸¹, which showed that, during 2007, investment in artwork represented 25.9% and collectibles 8.2% of all the investments made by luxury goods consumers, against, for example, 13.8% made in the jewellery sector. In 2007, sales at auctions surpassed expectations by 28% with respect to the annual forecast. Additionally, throughout the whole year, the two then leading countries, the United States and Great Britain, dominated the market in number of sales and prices paid, capturing 71% of the total market. However, the former began to feel the financial crisis and its profits were reduced by 5% from the 46% that it had presented in 2006⁸².

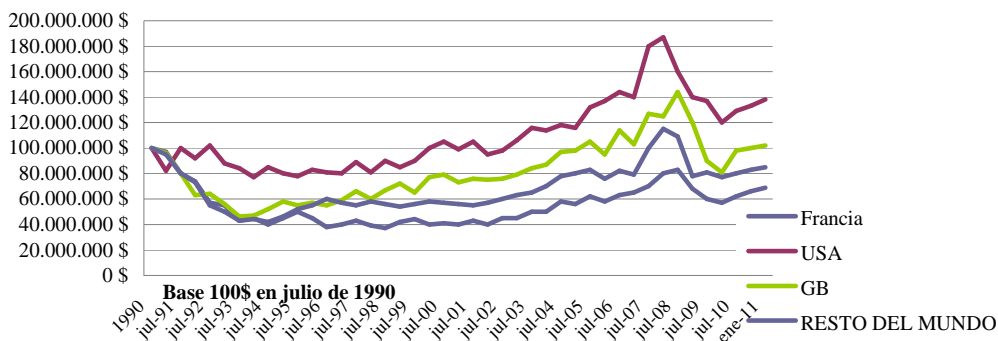
⁸¹ *Forbes's Cost of Living Extremely Well Index* (CLEWI). In: www.forbes.com/2007/09/18/cost-living-well-index_richlist_clewi.html

⁸² It must be noted that these losses are also due to the lower value of the dollar against the euro and the pound sterling, given that from January, 2006, until December, 2007, it lost 20% of its value with respect to the euro, and 14% against the pound, thus benefiting the British and Europeans.

The recovery of the dollar against the pound in the first half of 2008 and a little afterwards against the euro, allowed the United States to maintain its position of supremacy in the market, while China reached third position, passing France and Germany⁸³.

In 2006, the global sales in the art market reached the highest prices in history, with the result of € 43 billion produced by sales at auction houses (with 48% of the participation in sales) and sellers (52% of the sales made that year). The EU alone held 44% of the global sales volume with a participation of € 19.2 billion. Great Britain was the clear leader with € 11.6 billion, representing 60% of the transactions made within the European Union, and 27% at the world level, against the dominant 46% of the United States, with € 20 billion sold. Throughout 2007, the art market⁸⁴ obtained more than € 48.1 billion in sales, which represents its highest sales index, with a growth in value of 11% with respect to the data from 2006 and more than double with respect to that registered in 2002 when the figure was around € 22.2 billion.

GRAPH 1 Evolution of art prices between 1990-2010



⁸³ Regarding the contemporary art market, we must say that the development demonstrated in these years has been very different from the auction sector and the rest of artwork or collectibles. According to *Art Economics*, between 2003-2007, the first sector grew 311% against 851% in the contemporary art sector. Contemporary art showed exceptional growth from the beginning of the new millennium until 2009, with highly demanded products, like contemporary Chinese art, especially through the emergence of its market and those of India, Russia, and United Arab Emirates. From 2009 to today, the growth has been seen to slow down due to changes in the preferences of collectors and investors toward old art and the correction of prices that this has supposed.

⁸⁴ Data collected from *Art Price Trends 2007* and in which they include all the sales of art objects of all kinds and periods sold through trade fairs, auctions, and direct sales.

Repercussions of the crisis

Nonetheless, the perspective for 2009 was not as promising since the financial crisis that arose in 2008 in the United States complicated the forecast calculations. Initially, the data from the auction houses showed that the general guidelines had to change, offering a lesser number of lots at sales, though all of them of higher quality, which would not bring about a fall in prices, as was confirmed. In fact, the prices of the great works of art showed an upturn.⁸⁵ Whereas, from the beginning of the crisis, it was seen that the goods of medium quality were the ones most detrimentally affected, with as much as a 20% reduction in the prices of precious metals⁸⁶, which did not interest the public unless they were of optimum quality. The idea that works of supreme quality are a good alternative investment was consolidated, given that, independently of their rarity or technique, if in good, quality condition, they will always be in demand. The collectors prefer to bet on sure value, such as the great masters and established artists, as opposed to the medium-level creators. As can be appreciated in the following graph, the growth of the general prices of artworks and collectibles in the three most important international markets before the crisis - the United States, Great Britain, and France - far from continuing with their projections, was reduced, suffering a decline as soon as the economic situation began to worsen since it coincides with the fall of prices in the market of medium quality artistic goods on which a great part of the sales in the sector are based.

Changes in the art market began to happen that were very illustrative of the situation, a fall of nearly 20%, which the British market share suffered from 2006 to 2009⁸⁷, at a time when the European market share descended at even greater speed. Even so, almost 60% of the sales made within the

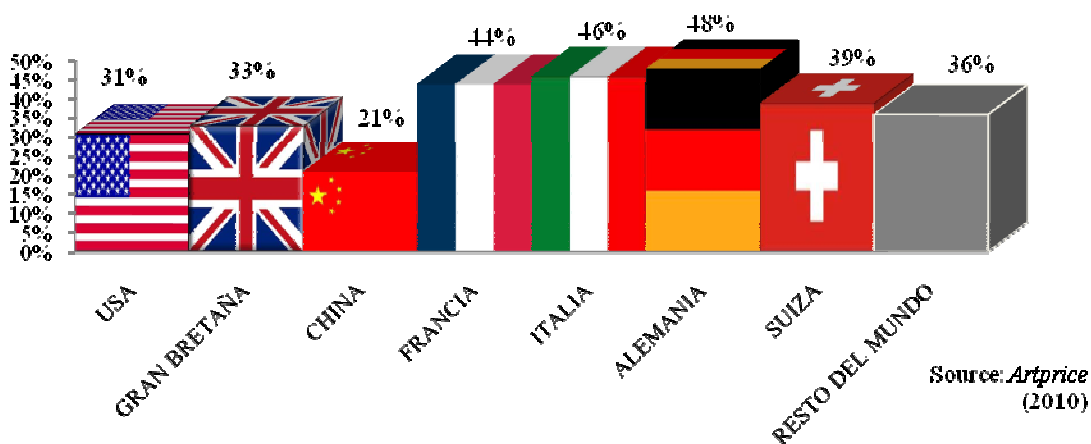
⁸⁵ Which seems to show that the sales of high quality luxury goods suffer less than other products in periods of economic recession, surely because, as occurs in the case of artwork and collectibles, the quality of the product reduces the risk of the investment and encourages the buyer, a buyer who is, for his profile, less vulnerable in bad economic situations.

⁸⁶In 2009 and the beginning of 2010, the Spanish coin collecting auctions noted a stagnation in the sale of Spanish gold pieces from the modern epoch as well as in foreign coins minted in that metal.

⁸⁷ Anthony Brown, spokesperson for the BAMF (British Art Market Federation), in information offered by *Bloomberg*, affirms that the results are due to the introduction of *Droit de Suite*.

European Union were transacted in Britain, still situated second in the ranking of the art market, followed by France, with a market share of 16%, which placed it temporarily in third place in that sales ranking. All of that led to a greater contraction of the market than expected, which caused, in the second half of 2009, the global market of arts and antiques to drop by 33% with respect to their value in 2008, reaching a total of € 28,300 million.

GRAPH 2. Percentage of unsold works in 2009

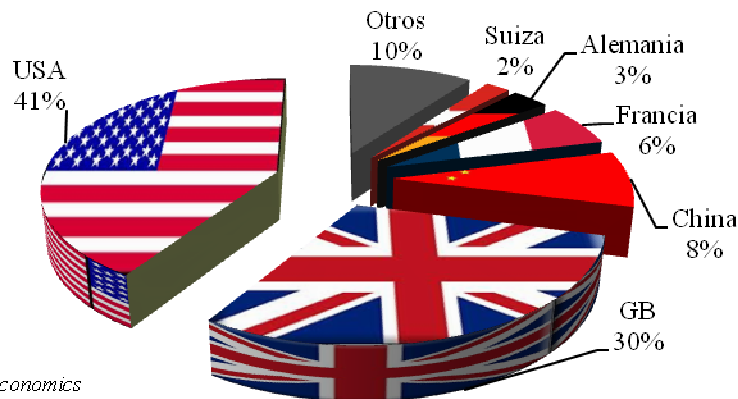


The art market at present – Is the crisis over?

After these events and more recently, the artwork and collectibles market has shown signs of economic recovery, growing by 52% in 2010 with respect to 2009. At the world level, the art market grew by € 43 million with respect to 2009, thanks in part to the fact that numerous collectors managed to sell works of art at elevated prices. After the recession, the market is giving signs of a change in power; the Chinese art market is the leader of the sector, followed by the United States, and Great Britain in third position, which continues in the lead in Europe with 59% of the transactions in artwork and antiques. As Dr. Clare McAndrew shows in the report, *The Global Art Market in 2010: Crisis and Recovery*, 2008-2009 was a period of crisis and recuperation for the artwork and collectibles market. The data reveals a growth in the market in 2010 of 52% with respect to 2009 and a revolutionary change in its geographic distribution.

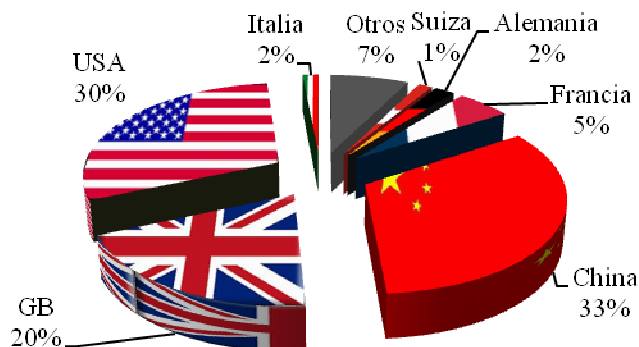
Since 2010, we have seen significant signs of recuperation in the artwork and collectibles market, especially in China and the United States, where the number of sales is growing considerably. In its entirety, the global market has grown by 52%, putting it at € 43,000 million. The volume of transactions, though growing at a more moderate rate during 2010 (13% inter-annually), presented favourable data as well, being a large part of the increase in the value of the market, which stems from an increase in the number of sales of highly priced works. As we see in the following graphs, the transformations that occurred within the art market during this crisis are evident, not only in the kind of products commercialised, but also in those participating in the market. There is no doubt that the countries with emerging economies are the big winners in terms of numbers of acquisitions and prices obtained.

GRAPH 3. Volume of public art auctions in 2007.



Fuente: *Arts Economics*
(2008)

The crisis and the necessity of investing in reliable products have brought on a deluge of records in the ancient art sectors (although the figure for unsold work is still high, at 40% in 2009). Nonetheless, it demonstrates a constant interest in quality. At the same time, as we can observe in the graphs, the economic strength of the BRIC countries (Brazil, Russia, India, and China) has situated them in front of the traditional powerhouses in the art market. Nonetheless, we have to bear in mind the exhaustion of high quality European artworks. The great volume of Chinese buyers has provoked a constant interest in quality artwork, most notably in its indigenous art work.

GRAPH 4. Volume public art auction in 2010

Source: *Arts Economics* (2010)

1.2 Basic concepts of the market

There are many agents that shape the complicated structure of the art market. From among them, we can cite, firstly, the two principle ones: collections and collectors, the fundamental axes of this market since we begin with the premise that without collecting, the market would not exist, and that means that everything turns around them. For that, we begin by clarifying that not all compilations of objects make up a collection.

COLLECTION: In order for a compilation to be considered a collection, there has to be a common denominator, a pattern that gives the set of pieces a personality, or its own character. Although, it is true that collections obey the criteria chosen by a collector and therefore any motive can justify a collection. For that do we find collectors of all kinds of objects, quality, and extension according to artistic, quantitative, and qualitative parameters, apart from the possibilities of acquisition.

COLLECTOR'S ITEM: An item is that which one can collect, or said in another way, all that can make up a collection. The Royal Academy of the Spanish Language defines the term as an *organised group of things that has a common class and brought together for its special interest and value*. That is, a collection is a set of objects selected according to a value and brought

together within a heterogeneous group, with common characteristics⁸⁸ that give the group its own criteria and personality.⁸⁹ However, the market distinguishes between two sectors—*artwork* and *collectibles*—according to the extent to which the works themselves conform to that heterogeneous group and how the collection is defined.

ART COLLECTOR: Within the art market, we can mention three very different kinds of buyers, distinguished by their motivation:

- *Traditional collector*: that person who collects for the satisfaction that the enjoyment of the work offers. This is the classic art lover who, without losing sight of the value of the work in the market, does not buy it as a future asset (although the price is an influential element in the purchase), rather for the satisfaction the possession of the piece holds.
- *Investor Collector*: that person who acquires works according to the calculation or bet on them or their authors. In many cases, they are not homogeneous compilations and they can involve several sectors in the market.
- *Collector for prestige*: Since the beginning of collecting, one of the aims of stockpiling distinguished pieces has been to represent supremacy and power over the rest of society. Nowadays, we continue to find this motivation in the new and wealthy global clients, who buy for reasons of nationalism, prestige, fashion, etc. Without a doubt, that is another motor behind collecting and is in fact seen in the conduct of many public and private foundations.

VALUATION OF ARTWORK: Putting a price on a piece; economically situating it within the market. The art appraiser requires knowledge in

⁸⁸ These characteristics are strictly intrinsic or descriptive as far as the work is concerned (date, author, style, etc.) and extrinsic as a collectible object that comes marked by the conditions of the market (rarity, shortage, etc.)

⁸⁹. The term was used for the first time in 1914, and as Maria Moliner later explains in her Dictionary of Spanish Usage, the *collector* is an enthusiast who collects and organises elements in order to conserve and enjoy them. As we see, this definition does not dismiss the possibility that one can consider the concept as a pictorial collection, for example.

different areas or else help from professionals who contribute greater knowledge of art and the market, as well as the necessary studies to calculate the value. This is the case of scientists who confirm the authenticity, good conservation, and durability of the artwork, as well as statisticians, who do statistical-mathematical appraisals on the basis of the elements contributing to its valuation.

VALUATION: This consists of quantifying the value of a work, though not economically, rather artistically, historically, etc. The valuation is understood as an activity above that of appraisal, one in which a more complex approximation process is developed, orientated toward studying the possibilities that a work has in the market by considering the diverse, interrelated characteristics such as artistic quality, authenticity, conservation, prestige of its author in the market, etc. It is, therefore, an inter-professional and inter-disciplinary activity, given that it requires professional and humanistic knowledge and both decision and statistical models.

AUTHENTICATION: This is defined as the process of allowing one to establish conclusively the authorship or origin of something⁹⁰.

EXPERTISATION: Comprehensive study of a work of art or collectible in which the piece is categorised with the aim of analysing its authenticity and market value.

We should not commit the error of confusing two professionals whose work does not necessarily coincide—appraiser and expert. The appraiser that values a work of art is affirming the value of a work according to an expertisation that comes as a given, or assuming an unquestioned authorship. That is, it is not the work of the appraiser to guarantee the authorship of the work, rather that of the expert. The appraiser exclusively puts a value on the work, although he might ask for a report from an expert in order to certify

⁹⁰ It is curious how in the big sales of artwork, by auction or direct sale, the expert's report and the authentication of the works are rigorously detailed, specified, and demonstrated, while when it comes to paying taxes with them, or making donations, this aspect seems to be less studied. In fact, in Spain, there have been cases registered, widely discussed in the media, of tax debt payments in which the works handed over presented numerous problems regarding authorship. This implies irresponsibility since the differences in value are enormous and, in any case, it would constitute deceiving the other party and therefore be a crime.

authenticity and may as well, due to the complexity of the task, solicit other professionals or specific studies that offer the necessary data for the drawing up of the corresponding authenticity report. At the same time, an expert can do an expertisation, but not a valuation or appraisal (at least not necessarily).

As we can see, these activities are different matters. This is due to the degree of expertise that is required to develop them. Even within each expertise, the innumerable areas and sectors that compose the extensive market such as that of artworks and collectibles leads to the inevitable specialisations in some areas while not in others.

CATALOGUING: This consists of classifying a work of art according to its author, attribution of author, school, etc., as well as to indicate some characteristics of the work: measurements, material, technique, etc. The cataloguing of a work of art is a specific discipline that requires great precision.

MARKET VALUE OF A WORK OF ART: This refers to the quantity of money handed over for a property in a hypothetical sale, classified by a specific date, place, and market level, supposing some objective conditions relative to the buyer and the seller; that is, that they are independent subjects, without their having special interest in the work (for example, that it is the last piece to complete a collection), nor urgency (need for money), nor obligation to buy or sell, and that both buyer and seller have a reasonable knowledge of the market and of the work in question. Law ECO/805, of March 27, 2003, helps us to qualify and outline this definition, which is a little doctrinaire. It states:

- a) There should not be any connection at all between buyer and seller, while neither party should have personal or professional interest in the realisation of the operation.
- b) Public offer implies as much the realisation of marketing adequate for the type of work in question as it does the absence of privileged information by either party.
- c) The price of the work is the direct consequence of the public offer, reflecting, by reasonable estimation, the most probable price that it

would obtain in the existent market conditions at the moment of the transaction.

- d) In the price given in the appraisal, neither taxes nor marketing costs are included.

From these explanations, one ascertains that the market value of artwork is not the confirmation of an objective fact, as might be the price paid for a specific sale, rather the hypothetical prices given to those works as an approximation indicative of the value in order to facilitate the sale. In order to establish these hypothetical quantities, the person who places such a value, whether the expert, public administration, or the courts, must base him or herself on real, objective facts and circumstances, technical knowledge, and, finally, subjective value judgements on said circumstances, facts, and knowledge. In this way, a reasoned valuation will be made, explaining and justifying every step taken to arrive at the final appraisal. Therefore, the market value is the consequence of the opinion or valuation of an expert, being always a relative piece of information which serves as an indication for what is finally obtained in the sale of the work.

MARKET PRICE: The final price paid for the sale of a work. The monetary compensation that the seller receives for transferring the possession of the work of art, and is therefore objective information which reflects a fact that has indeed taken place. The role that market prices play when it comes to determining the market value of said work is fundamental.

The market prices attained for a specific work cannot be extrapolated to others, regardless of how similar they are. One cannot even do so with the same work if it were sold two days later. It must be kept in mind that the different criteria for valuation vary, and, currently, though there is certain uniformity in the criteria, there are differences among the distinct artistic schools or styles. That is, assessing the value of an anonymous Gothic painting does not follow the same parameters as an Impressionist oil painting by a known artist. All the factors in the specific context must be taken into consideration, which will depend on the specific moment in which they are produced, if the place of sale is concurrent, the sales for which prices are available, and the circumstances in which those sales have taken place.

2. APPRAISAL OF ARTWORK

For centuries, Man has had the need to establish the value of artwork in order to proceed with its sale or exchange. Years ago, it was the artists, acting as businessmen, who managed their workshops both artistically and commercially. Nowadays, the prices of artwork come more from the market than from the artists, even in the contemporary art market.

Among the crimes related to cultural heritage, it is essential to be able to appraise or quantify works of art since, depending on their value, we find ourselves with different kinds of offences and punishments. In the cases where works of art have been confiscated for being related to crimes, the appraisals of the pieces are essential in order to know the rank and importance of the work. Nonetheless, this is not an easy task. There are many variables that affect the price, and they influence the price in different ways. There are recent examples that demonstrate how common it is to find artworks or collectibles related to police cases or investigations, and it is here where the necessity of cataloguing them emerges. It allows us to identify the importance, or lack thereof, of the work and be able to quantify it in terms of the market. In this way, one can understand the investment made by the person under investigation. For that, it is necessary to rely on specialists knowledgeable of the market as well as the works themselves. As we have seen, to establish valuation criteria requires profound knowledge in these areas.

The day-to-day reality in the economic, administrative, contributory, and judicial world of any country in which market values of works or objects of art are constantly being utilised, demonstrates that market values for a work of art can be established. The only problem is that there is often no other option to calculate but to compare it to what has been previously paid for similar works. Doing a comprehensive study of the value of a work of art requires the differentiation of sectors (painting, jewellery, stamps, etc.), given that in each case there is a need to attend to different factors and understand that it will be impossible to compare, for example, the prices produced by

works in watercolour with works done in oil on canvas⁹¹. We find many factors that affect the price of works of art, from the fashion⁹² created by a specific artistic school and that comes given by the taste and interest of the public, in general, to the degree of workmanship valued according to the parameters of an expert.

It is important to highlight another of the factors affecting the price of art work: conservation. If the work suffers a misfortune after its appraisal that physically affects its structure, it will obviously affect its price as well, so that the previous appraisal will be partially annulled. This is important to keep in mind in police confiscations and investigations, as only proper conservation of the pieces will guarantee the initial values given to these works. This is something to keep very much in mind if at some future date a legislative review is considered that would establish the proper management of confiscated works, allowing for their sale and creating revenue for the administration, which might in turn assist in at least part of the investigations.

2.1 Factors influencing the price of artwork

If the appraisal⁹³ requires one to impartially attribute a monetary value to a work of art, some reasonable and objective criteria have to be considered in the face of the difficulties presented by the appraisal of these kinds of objects. Firstly, we have to keep in mind the law of supply and demand, which is what controls the market. Yet, even that is determined by factors intrinsic and extrinsic to the works, which can be superficially outlined as follows:

External: place of sale, means of distribution, prevailing fashions, the treatment that this kind of work receives from public administrations, etc.

⁹¹ So that when it comes to calculating the weight of the factor at the base of paintings, we understand that they will always be works done in the same technique: oil, watercolor, charcoal, etc.

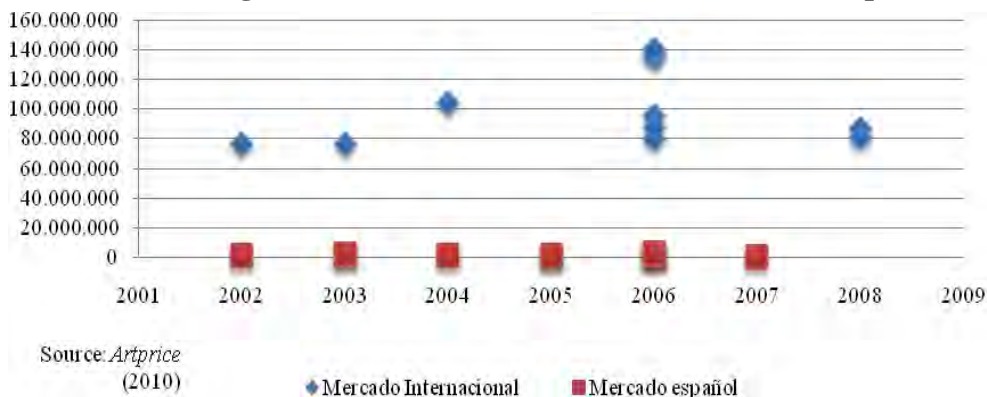
⁹² There are works and artists of great quality that are ostracised by collectors simply because at the time of the sale, that artistic school was not fashionable. So, the starting price of an item at an auction can increase until it attains a final price that can on occasion be five times the starting price, without being subject to any other factors save the interest of the buyers.

⁹³ We use the term "appraisal" in the sense of methodology applied to the price estimation (especially market prices).

Internal: quality, conservation, authorship, technique, measurements, base, rarity, etc.

As the art market stands, one can say that there are really as many markets as there are laws regarding historical heritage that have been passed and continue in force in the different countries participating in this market. The influence these laws exercise in the workings of the artwork and collectibles markets is fundamental in the process of its development, facilitating imports or closing borders to exportation, and having direct repercussions on the trade in these kinds of articles⁹⁴. For that reason, it is easy to see pieces coming from the same collection that are put on auction at different locations of the same company in view of the demand from that sector in the market. The demand for the work is what determines the market, therefore, depending on the city or market from which a piece comes, the variation in price can oscillate from between 35-70%. This is undoubtedly an external factor that affects all pieces equally, always when they are in exactly the same market and legal circumstances. In the following graph, we observe the overwhelming difference between the highest prices paid for pictorial works in the Spanish market against those in the international market. It is therefore inevitable to wonder if it is logical to have as many art markets as there are heritage legislation enactments.

GRAPH 5 Painting records in the international market and in Spain



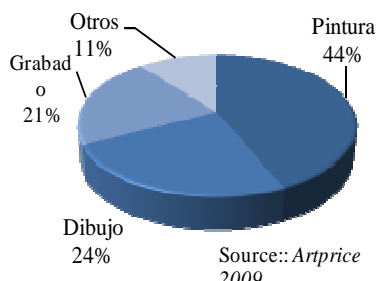
Furthermore, we know that the means of distribution create different markets according to the sales method utilised. It is especially interesting to know if there might be manipulation on the part of art professionals in the

⁹⁴ In the case of Spain, there is no doubt that the *Law of Historical Spanish Heritage* has provoked a bubble market as far as artwork and collectibles are concerned, hindering its expansion and development by making the exportation of ancient art difficult and expensive. This has considerably reduced the attendance of clients at Spanish trade fairs and auctions, lessening the purchases by foreign clients within our borders. The big art markets have trade agreements as well as legislation that favours the free movement and trading of works.

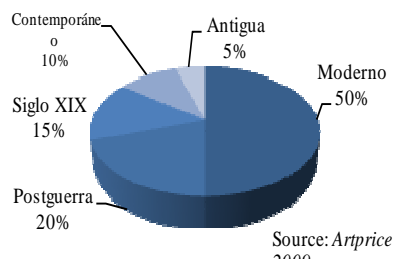
different markets in which the sales are made, depending on tastes and traditions of the collectors of each country, as well as the laws relating to heritage and commerce⁹⁵. This task, analysed from the economical point of view, creates a certain lack of confidence on the part of the public. And confidence, just as occurs in other markets, is a basic element for the proper functioning of the whole chain found within the sectors of the artwork and collectibles market. Depending on the communication regarding a sale, as well as the conditions of that sale, the influence on the price can be greater or lesser, which makes them subjective factors for each piece and its commercialisation. Such confidence must refer not only to professionals in the sector, but also to the products that make it up, as much in the works as in the artists who create them. This will objectively influence the price of all the pieces by the same author or school, whereas, the prestige and “good manners” of the sellers are subjective factors that influence the price. It is obvious that the big companies achieve greater diffusion of sales, which provokes greater demand for their pieces on sale and therefore higher prices.

If we look at the graphs below, both referring to the sales made in the auction sector in 2009, we find an important offer of works with prices under € 5,000, the most successful sectors in the market being the plastic arts, with the greatest number of sales within this parameter of prices. Likewise, those artistic styles most in demand in that price range are repeated in large-scale sales. As we can see, the base, material, and style of the artwork are also objective factors that affect their final price.

GRAPH 6 Sales under € 5,000



GRAPH 7 Most sold styles under € 5,000



Of course, the intrinsic characteristics of the works (quality, conservation, rarity, etc.), chronology, formal and technical characteristics, etc. influence the price of the pieces, but not always with a direct and constant correspondence. In artwork, we find different factors to keep in

⁹⁵ VICO, A., *et al.* “Los récords del Mercado del arte. Dos mercados dentro y fuera de nuestras fronteras”. *Administrando en entornos inciertos*. Seville 2009.

mind when it comes to valuation; for example, one of them would undoubtedly be the authorship of the piece, a factor that would, once weighted, have an impact of 45% on the price. Yet, that percentage can vary in virtue of the category in which we find ourselves, depending on whether the authorship is a relevant artist or school, his disciples, etc. Therefore, along with that, there may exist more categories in the cataloguing and authentication that make the work more or less valuable. Naturally, the recognition of the author of the piece and the fact that it is signed increases the value. Yet, at the same time, we find on the part of the auction houses a complete index of categories that situate the work hierarchically according to its creation: master, workshop, and school are scaled values that can raise or lower prices.

We know that with a specific definition of market value and while that definition is not modified, the works have only one market value. However, because there are so many markets as well as different formulas for the administration of historical heritage, there is the necessity of analysing the behaviour of the artworks and collectibles in each of them. For all these reasons, we need to establish the extrinsic and intrinsic factors that affect the value. We have to point out, too, that when it comes to considering these factors in order to obtain a valuation, we cannot put, for instance in painting, the same weight on all the epochs and artistic schools. We have to understand that each epoch has some of its own characteristics, just as each sector of the market has some different factors that affect, in one way or another, the prices and market values.

EXTRINSIC FACTORS

We speak about external factors when those elements that affect or influence the price of a work do not depend on the characteristics of the object in and of itself, rather on how it is perceived in the market. Therefore, if at a given time, the characteristics of the market change, these values will foreseeably change as well. For that reason, whenever the market value of a work is established, it will be necessary to clarify the market of the valuation and with it: the geographical framework, market tranche, the particular time,

how the sale is made, and the rarity or demand for that kind of work in the market.

- 1) Place or geographic market: There is no single market, at least for the great majority of works of art. The much-discussed globalisation has not yet completely erased the borders that impede the free movement of transferable assets and ensure that their exchange or purchase anywhere on the planet is done under the same market conditions. Therefore, a work of art has different sale prices depending on the geographic market, and also different market values within each of those markets. But, how does one explain that, nowadays, in the communication age, there can still exist different geographic art markets? The answer has to be sought in the possible difficulty for buyers and sellers to transport the works of art, that fashions appear by areas, and especially in the legal restrictions that impede the importation and exportation of certain kinds of artwork. There are countries where the legislation with regard to the circulation of works of art is very permissive, when not absolutely free; whereas in other countries (Spain being among them), legislation is very restrictive in this regard⁹⁶.
- 2) Market level or tranche. Within a market defined by territory and time, different kinds of markets are given:
 - *Levels*, as they are known in North-American jurisprudence;
 - *Tranches* for Spanish jurisprudence.

The kinds of tranches vary according to how the sale is produced, the commercial level that the people who buy and sell the works have, and the kind of artwork and quantities being traded. One can therefore speak about an “artist to collector” market, an “artist to gallery-owner”

⁹⁶ In the case of Spain, the art market is ruled by the Historic Heritage Act (Law 16/1985), charged with regulating and establishing the necessity of soliciting the State Administration’s permission to take out of the country any work considered Spanish Historic Heritage, works over 100 years of age or entered on the General Inventory pursuant to article 26 of the Act. So, a work located in Spain declared not exportable by the Administration, can only be sold in our country. More significantly, said works can only be bought by collectors whose collections are found in national territory. Therefore, when it comes to comparing its price with other works in order to give it a value, one must consider whether the same legal characteristics and situations are met.

market, and a “gallery-owner to collector” market; “wholesale” and “retail” market; “first-hand” and “second-hand” markets, etc. So, depending on which kind of market, the market value of a work will change⁹⁷. In order to save the mishmash of levels or tranches existing within the market, the *American Society of Appraisers*⁹⁸ recommends that, when it comes to valuing a work of art, if there is a possibility of choosing from among different levels, that in which it is normally sold should be taken into consideration. This annotation is made following the principle established in the law-suit *Lio versus Commissioners*, after which it was dictated that to value a work it would always be necessary to consider the most active market for said work⁹⁹.

- 3) Moment at which the appraisal or sale is made. As we have seen at the beginning of this study, prices vary according the chronological context in which they are situated. In the valuation of a work of art, the time must be taken into account in relation to four questions:
 - a) The issue date of the valuation report.
 - b) Date of value. Situate the market value of the work of art in time.

⁹⁷ In the valuations of works of art, the determination of the market tranche is not an essential question. In works of art, the tranche is much less important than in other kinds of goods for the simple reason that the differences between market tranches are less marked by the equalising role that the auctions have played, in which various kinds of market tranches are mixed.

⁹⁸ *American Society of Appraisers - ASA - The International Society of Professional Valuers*: www.appraisers.org

⁹⁹ We find two cases taken to the courts in the United States for an error in the choice of the band for valuation of some works, which provoked a notable alteration of value:

A contributor decided to donate 461 gems to the *Smithsonian Institution* valued according to the prices they would have if sold at retail jewellery stores. However, the tranche adopted by the court was not the one in which the highest value could be attained, rather that in which such a large batch of gems would normally be sold before cutting; that is, the wholesale market, since no individual would be interested in buying the entire batch of gems and therefore they could not be valued one by one, at jewellery store prices. As the judgement declares: “The market value of live cows will be established by the price that is paid for them at livestock auctions, not at supermarkets.”

With the aim of obtaining a tax break, one contributor donated different examples of a medical magazine. However, the North American Administration considered it inexact; in fact, the valuation was tripled by having assessed them at the normal price when sold to the public. The judge decided that the only market in which a person could sell a batch of old issues was that of old booksellers. For that, they should be valued at the price that these sellers would pay if they bought the magazines to resell, and not that of the final consumer price.

- c) Sales information for the works utilised for comparing values (sale prices of similar works, insurance value, customs, etc.). The ideal is to always look for the most recent market prices.
- d) Time validity of the valuation. There is no legal norm that establishes the time limit of validity of appraisals for works of art. Although, it is recommended to revise it after two years. Only for valuations made for taxation or for tax payments with works of art, is a maximum period of two years established. In the case of an individual who is in charge of the appraisal, he or she establishes the period of its validity.
- e) The method of sale (in a gallery, auction, trade fair, etc.) affects the final price obtained for a work, as we have seen. For that, when it comes to the valuation of a piece that has already been sold previously, we will also have to take into account how much it was previously sold for.
- f) The current shortage or demand for a product in the market. Shortage is not synonymous with rarity. A work can be very common but have a high demand for being an interesting work and therefore be in short supply within the market circuits.

INTRINSIC FACTORS

Intrinsic factors are more easily analysed and they refer to objective factors whose assessment comes directly from the demand by collectors. Additionally, there is another set of factors that we catalogue as subjective, which have repercussions in the value of the works to the extent that an expert considers them appropriate. We continue with a detailed study below:

OBJECTIVE INTRINSIC FACTORS:

Authorship: This is the fundamental element that must be attended to when it comes to putting a value on a work of art given that it is to a great extent what determines the price. For that, the authorship must be certified with the greatest possible certainty and that is an essential task in appraising. What converts a piece into a work of art is having been created by an artist, and

what is the fruit of his artistic genius, or a mere copy, will be sufficient justification for the work to be worth a scandalous amount of money or a trifle¹⁰⁰. In many works by known artists, we have collaborations, a practice that is accepted as normal and that does not affect the authorship of the work as long as the author participates directly in the entire process of the creation of the piece, though it is inevitable that the market value falls relative to a work produced entirely by the author. As authorship is such a fundamental element, the value will vary according to whether or not there are doubts in that regard. When it comes to establishing market value, such doubt would have to be considered negative.

Table 2. History of the highest bids paid for an oil painting by *Luca Giordano*¹⁰¹

Luca GIORDANO	SIGNED	ATTRIBUTED	CIRCLE	STUDIO
	238,925	109,480	18,050	16,000
Oil/canvas	London, 9/7/2008	Zurich, 21/9/2005	New York, 12/1/1996	Paris, 9/4/1990

Source: Artprice

Within authorship, we include other sub-factors, such as chronology (which is obviously given by the author), rarity, and the artistic quality of the work. It is undoubtedly true that artistic quality, as with rarity, is an element that can have a big influence on the price and change its weighting within the author's work depending on the piece we are appraising. They are certainly factors intimately connected to the author and for that reason we include them in the same group.

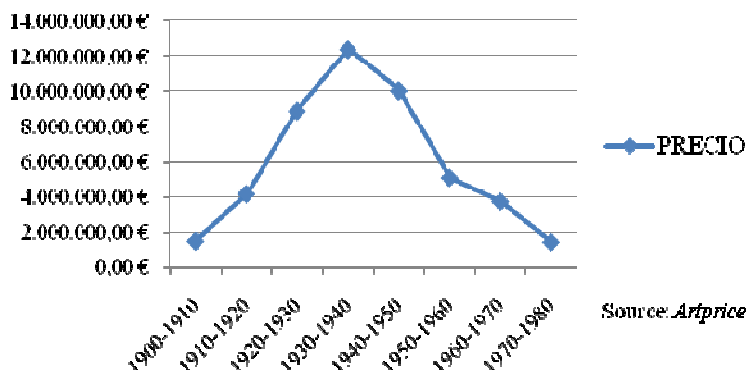
¹⁰⁰ Even within the group of works by the same artist, not all pieces are valued equally. The same artist has works of greater and lesser quality, works that are valued higher or lower according to their aesthetic impact, size, style, and the epoch in which it was created. Furthermore, one must not forget that the value may increase depending on the construction materials or the technique used to create it. For example, in chryselephantine sculpture made with valuable materials, they already have an economic value for the raw material in and of itself. Finally, there are "satellite" factors related to authorship such as whether the work is signed, whether it has a special relationship with the author, or whether there are notations or information that can be identified, whether there is a dedication, etc., which also have repercussions in the final price of the work.

¹⁰¹ Given the impossibility of finding contemporary bids of the artist in the same year, we think that the history of the highest prices ever paid for works by the artist shows categorically the differences in price depending on the certainty of the authorship of the work.

- **Rarity:** It can come directly from the small quantity of work that the author produced, or else by the loss of works. In either case, this will weigh on the price; the rarer the piece, the greater the value.
- **Technical quality of the artist:** This tends to elevate the price of a work, but for that to happen, the artist has to be known in the market. The technical quality is very important in artworks and is usually accompanied by high prices.
- **Chronology:** Whether we speak about specific periods, such as an ancient culture or civilisation, or whether we speak about the different stages of an artist, we find periods of artists' work with higher demand and attraction in the market, be it for greater quality, shortage, attraction, etc. During the career of an artist, not all works are equally valued. There are phases that are more recognised than others, or there might be a shortage in the market that has repercussions in the price. Obviously, every artist has moments in his career that are more recognised by the market and by critics. Though the former and the latter do not necessarily coincide, they both increase the value¹⁰². We show in this case, the trajectory of the painter from Malaga, Pablo Picasso (1881-1973), whose most esteemed works are those from the first period, even without being the most representative of his work. One could say that the line of demand for work done during that first period, characterised by the stylistic evolution of the artist, is clearly an upward trend, until the creation of the *Guernica* in 1937, and from then on, the line descends. From that moment, save for very some well-known exceptions in the art market, the value of his work clearly declines. This is due to there being very few works from the beginning of the painter's career, creating less supply and a sharp increase in price.

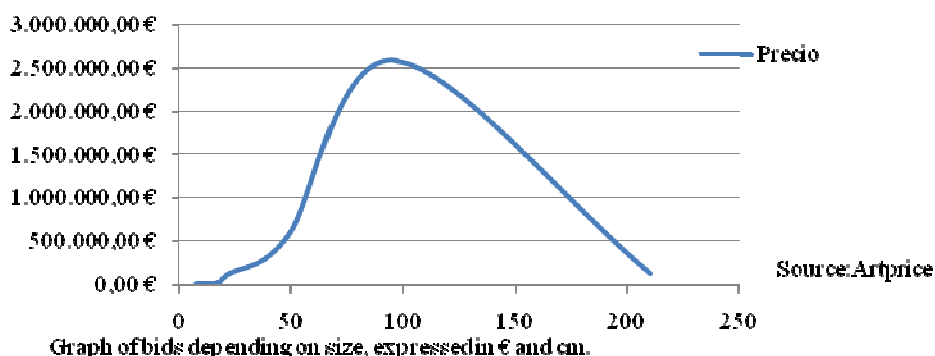
¹⁰². Regarding the importance of the period of creation and its reflection on market demand, please refer to the study by *David W. Galenson* (GALENSON, 2006) where he analyses in depth the most creative periods of artists and their repercussion on demand, comparing experimental innovations and conceptual innovations of different artists with responses by the public.

GRAPH 8. Relationship of quality to price in the work of Picasso



DIMENSIONS OF THE WORK: Works by the same artist also register different prices according to their measurements. The correspondence of greater size, greater price does not hold true¹⁰³. In fact, there may be a decreasing relationship. Works of small dimensions are more economical than medium-sized works; nonetheless, the latter have higher values than works of big dimensions given the physical difficulty in finding a place to exhibit them in normal homes, causing a decrease in demand. The turning point seems to be between 100-150 cm wide, just as we see in the following graph made from the bidding prices reached for paintings by Joaquin Sorolla y Bastida in national and international auctions in past years.

GRAPH 9. Prices according to size of work

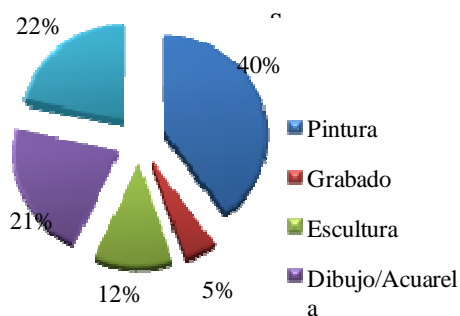


¹⁰³ Some authors have tried to establish the market value of paintings using the method of calculating the price by cm² of the artist. However, this practice is not advised, since all the studies have demonstrated the impossibility of establishing comparisons between value and size if other factors influencing the price are not taken into account.

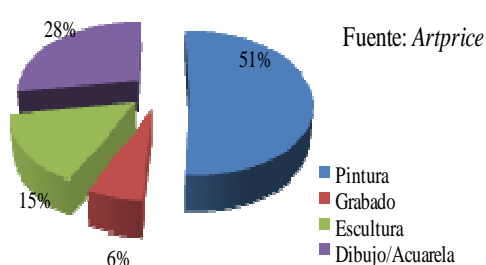
The format of the painting can also have an influence; vertical paintings are less interesting to the public because they are more difficult to place in homes, especially large ones.

TECHNIQUE AND MEDIUM USED FOR THE WORK: As we have seen, not all the works of an artist are valued equally. There are techniques of an artist that are more representative or charismatic and that interest the public more. Likewise, the artists' techniques by themselves cause some to be valued higher than others. An example is the multiplicity of graphic works, which are made in numbered series in order to mark the order of creation, given that it has repercussions on the quality of the works. For that reason, oil paintings, as unique works, attain much higher prices.

GRAPH 10.
Distribution of sales / discipline



GRAPH 11. Distribution of transactions / discipline



The medium for the work can affect the price for the rarity some of them present, especially if they are well conserved, and even for the costly raw material used, as with bronze, ivory, etc. Therefore, oil on canvas is higher priced than watercolours; cloth is always priced higher than paper given that it can be conserved better and it gives more body to the work.

When it comes to the valuation of a work of art, we will see the impossibility of comparing pieces made in one technique to those made in others since the markets and prices are completely different for each. In painting, oil on canvas technique is considered a greater technique, while charcoal drawing and watercolour are inferior techniques. In numismatics, however, we will see that the minting technique (hammer, roller, foundry, etc.) does not influence the price, even when they create a very different final

appearance of the coin. For that, it is necessary to clarify the weight of the factors in each of the market sectors. Regarding the base, in painting one refers to the material on which the work is created (canvas, wood, copper plate, paper, etc.). In the majority of cases, it is not relevant for the final price. In the case of numismatics, on the other hand, it is very relevant. Instead of denominating it *base*, we refer to the material, and its importance stems from the fact that, being made of precious metals, it is precisely its composition which gives us the intrinsic value of the work, as well as its nominal value. For that reason, it has a much greater relevance than in the case of painting.

THEME: This is a greatly influential element in the price, especially in the ancient art market. The most commercial themes are still life and landscapes. As for portraits, the preference is for young females, although nudes are getting lower and lower prices. We can find a good example of how the theme can influence price in the famous portraits by Andy Warhol: an orange *Marilyn* is valued at 15 million dollars, while a *Richard Nixon* “only” 700,000 dollars.

SUBJECTIVE INTRINSIC FACTORS:

TECHNICAL ARTISTRY OR QUALITY: This component, together with authorship, is among the most determinant factors in establishing the value of a work of art or collectible. In fact, both of them are closely related concepts since the better an artist the author is, the greater the implied quality. Nonetheless, in this case, we have not included artistic quality within authorship for one differentiating point, that of a masterpiece compared with the rest of an author’s work. In other words, within the whole repertoire of an artist, there are works of greater and lesser artistic quality.

The aesthetic value should respond directly to the appreciation that the public has for it. But, after the appearance of new disciples and the avant-garde, which is more difficult for the public not versed in the subject to understand, the valuation ultimately depends on the consensus of the specialists (appraisers, museum directors, gallery-owners, auction houses, art historians, etc.), and, from there, its hypothetical market value is determined.

The main consequence of this is that in current times, the mastery of the technique on the part of the artist is no longer a requirement since the idea is subjective and there will be viewers who observe great mastery and there will be others who do not notice it. Yet, we must not think that everything is valid as a work of art, it is just that, because there is a wider range of patrons, they are continually placing new artists and works in the contemporary art market. There are minimum standards given that if everything were valid, it would not be possible to create objective parameters that distinguish and measure the aesthetic quality of the works.

The difficulty of quantifying the *artistic quality* of a piece created by man and to recognise it as a work of art lies in the following: by putting a value on art, certain non-artistic or non-aesthetic criteria are considered that allow one to compare the prices of different artists since one does not value its functional nature within the context in which it was created, rather its value in the collectors' market. A very illustrative example can be found in the most expensive piece sold for a work by Luca Giordano, *The Judgement of Solomon*¹⁰⁴, a piece catalogued as being "attributed" to the artist but neither signed nor with assured authorship. Nonetheless, its artistic quality is such that, above signatures and certificates of authenticity, its beauty was predominant, selling for € 748,439 at the *Bukowski* auction house in Stockholm on December 5th, 2000.

CONSERVATION STATUS: For a work of art, this is the last of the factors influencing the price to which we are going to refer, although not for that the least important. In fact, there are sectors, such as the American numismatic market, in which this is the first aspect to keep in mind when it comes to valuing a coin¹⁰⁵. We find proof in the following graph, made from the prices

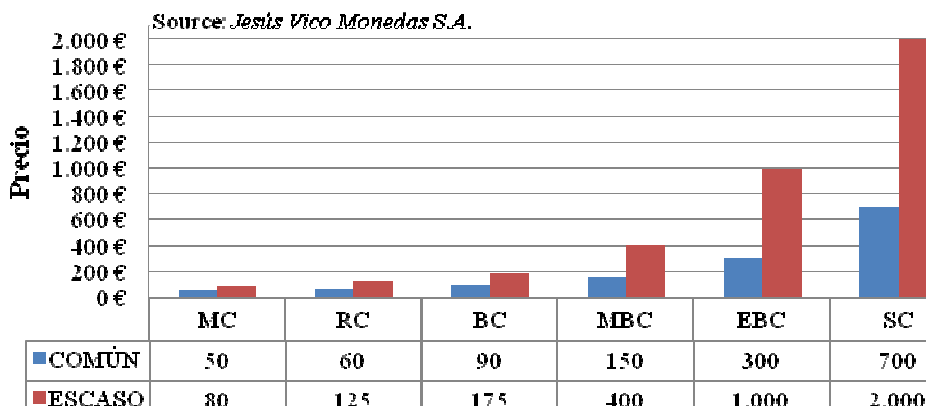
¹⁰⁴ Attributed to Luca Giordano (1634-1705). Oil on canvas. Dimensions: 94 x 112 cm. Lot 398.

¹⁰⁵ A maxim in this market would be: the greatest rarity of a piece is in its state of conservation. A rare coin is not rare if it is not pretty. In the commercial arena, the state of conservation is fundamental since a piece, regardless of how rare it is, will be difficult to sell if it is neither well conserved nor has a good appearance.

obtained at Spanish auctions for two *denarius* coins from the times of Emperor Augustus, one common¹⁰⁶ and the other rare¹⁰⁷.

The big differences in price that we find are because there is no market for pieces with poor conservation, so prices fall dramatically.

GRAPH 12. Prices according to conservation status



Establishing the percentage of value that a work loses because it is badly conserved is complicated. It depends on whether the damage is general, whether it affects the most important parts of the work, the costs of restoration, etc. In any case, any intervention made on a piece causes its price to fall given that in some way its original aspect has been altered or if some important part of the work has been damaged, for example, the signature or the face of a portrait. In such cases, the price may be detrimentally affected as much as 80%. The repercussion in the price from the degree of conservation usually follows a geometric progression, that is, the better a work is conserved, the more it is reflected in the price. One cannot compare states of

¹⁰⁶ Example taken from a denarius minted under the mandate of Augustus in *Lugdunum* (Lyon) between 7-6 B.C. Catalogue number AVGVSTO, 21 (FERNÁNDEZ MOLINA *et al.* *Catálogo monográfico de los denarios de la República Romana*. Madrid, 2002).

¹⁰⁷ Example given with the prices attained for a denarius minted under the mandate of Augustus in *Colonia Patricia* (Córdoba) between the years 18/17-16 B.C. Catalogue number AVGVSTO, 14 (FERNÁNDEZ MOLINA *et al.* *Catálogo monográfico de los denarios de la República Romana*. Madrid, 2002) at the *Jesús Vico S.A.* auction house between 2007 and 2009.

conversation when the bases are different; for example, one cannot compare an oil painting with a sketch or a lithograph.

2.2 Valuation methods

As we see, when it comes to appraising artworks and collectibles, there are many factors to consider. However, not for that must the evaluation methodology exclude the use of those people who do not know the market for these works. It requires information that is in fact quite accessible: a complete cataloguing of the works to appraise, which can be done by museum specialists; and access to the prices that auction houses in that sector are using, which are in the public domain. For that reason, throughout this section, we will describe the workings of the most practical methods for the valuation of these kinds of works.

Valuing a work implies the translation, in market terms, of the assessment of the work and the way is to demonstrate how it has been valued by the market on other occasions. To do that, one must be informed about previous prices and whether those prices are higher or lower than the rest of the artwork or collectibles. Consequently, we can only appraise a piece when the market has accepted its artistic value, which tends to happen when that acceptance is reflected in the prices. For that, we choose similar works, *comparables*, which give us a reference for the prices obtained recently within the same market. It is critical for the comparables to be similar to the element to be appraised so that the results of the study are not distorted.

There are various formulas to evaluate this kind of work. In fact, each sector (painting, graphic work, jewellery, numismatics, furniture) has particular elements that affect the price of their works and those in turn have different weights in the assessment. The normal thing is to make the valuations from the bidding prices at auctions given that they are the real prices paid by collectors.

The most common way is to appraise works using a linear regression in which consideration is given to the weighting, or influence, in the price of

each of the factors (intrinsic and extrinsic) affecting the work¹⁰⁸. For this, it is necessary to compare the work with other similar ones that have been sold, identifying the notable elements that can be compared to the other comparable works bought or sold on the market¹⁰⁹. These characteristics will be identified as authorship, aesthetic components, size, state of conservation, origin, etc. And finally, the specific way that each influences the value will be analysed since there are characteristics that have greater weight than others in the final value of the work.

All valuing, and even more in the case of art, is done by methods of comparison. This requires the identification, description, and cataloguing of those physical characteristics to which we have referred, given that they are the ones that directly influence market value. To do so, we will begin with the identification of the author of the work, as this is what most influences the price, but without ignoring the rest of the factors that maintain their relevance and weight, as we will see. This is a complex job that requires one to keep in mind the intrinsic elements, which are what situates the work within certain artistic and qualitative parameters, so that they can later be compared with those elements it had when it was previously sold. Studying the prices for which it was previously sold and relating them with the qualitative parameters, we can fix the market value of the work. Nonetheless, we do not always have the data on previous sales. Many times the prices paid for works of art in private transactions are not known. When they are known, be they private transactions or in public auction, they cannot always be used as reference prices either because they cannot be made public or because the sale took place in a unique context that determined the final price, etc.¹¹⁰

¹⁰⁸ These factors (intrinsic and extrinsic to the pieces) are denominated external signs in valuation methods.

¹⁰⁹ Within the art market, we find numerous second-class works of art and other anonymous ones which are more complicated to appraise and value. In these cases, it is necessary at least to situate them in the same period, artistic school, and artistic form as others for which we have market prices, to compare with those which are most similar in quality, conservation, and aesthetics, and in that way establish their value.

¹¹⁰ All this complexity together with the impossibility of utilising the criteria of production cost or price comparison with other identical works that are sold (because they do not exist), creates, in many cases, a certain scepticism and incredulity regarding the real possibilities of establishing the market value of a work from the prices previously paid for it, or in the absence of that, from other similar and comparable

Once comparables have been collected, we have to keep in mind a series of factors bringing to light the similarities and differences among those pieces in order to be able to determine their economic similarities or differences: authorship, dimension, material, chronology, conservation, technique, etc. Some of these characteristics are easy to compare; for example, whether the face value of a coin is shown, whether the painting is signed or catalogued, etc. Nevertheless, in other cases, such as artistic quality or minting technique, this is not so easy. That is why it is essential to create an artistic and economic line of argument in which one quantifies those aspects within the same parameters. That is, one must mark and qualify these characteristics (artistic quality, theme, technical qualities, etc.) in such a way that everything is calculable and we can therefore monetarily compare our work with the comparables. In that way, the most exceptional characteristics will be the ones that have most relevance and have more influence on the price, translating these rarities or exceptions into market terms by comparing the results of price. For example, it is not enough to affirm that bronze Roman coins are more highly valued than those made of silver, rather it must be demonstrated based on the prices attained for that kind of piece.

In the specialised bibliography we find a great many appraisal methods apt for valuing artwork and collectibles. However, not all of them present the same exactitude in their results. We can differentiate between analytical and non-analytical methods.

NON-ANALYTICAL METHODS

Updating the prices: At times, it is necessary to update the prices of purchases that have been made, even of other works, so as to be able to compare the price with another piece that has never been sold. This occurs when there is a difference greater than two years since the sale was made. In these cases, it is essential to update the price with information from the CPI; otherwise we will be introducing distorted data into our valuation and obtain

work. However, this abundance of obstacles and difficulties must not lead one to underestimate the possibility of making a transaction. It only demonstrates the difficulty and the necessity of knowing the nature of the values and interests of the market before beginning the task.

altered results. For artwork and collectibles, it is advisable to update the prices annually or at most bi-annually.

Appraisal *ad impressionem*: This is the valuing judgement most often made by commercial experts. It consists of valuing a piece from their opinion and knowledge of the market (demand, similar works sold previously, market situation at the moment, etc.). It is without a doubt the most utilised method within the art market. Nevertheless, this method should not be used in the drawing up of reports given that it is not grounded in a mathematical formulation and therefore its foundation and criteria cannot be demonstrated, meaning that it lacks a scientific basis.

Description of the method: To carry this out, a broad knowledge of the market, clients or potential demand, prices, and, of course, the items that come out on sale is essential. For many, it might seem strange to include this valuing system within the comparative method, but, though it is not through a mathematical formulation, the price of a work to be appraised will always be formulated through a cognitive comparison of previous sales. The result, therefore, will be as valid as it is professional and the knower of the market is the one who appraises. Very much utilised in the commercial world of art, it is undoubtedly an exact method since, if works of art are worth what the clients are willing to pay, there is no one who knows clients better than the professionals in the art market.

Consideration of integral factors in valuation: In the artwork and collectibles market, different sectors co-exist, as we have seen. The valuation of the works which make up said market cannot be exact from the very moment in which each sector has different characteristics. For that, the considerations of the weight of the factors that affect prices not only depend on the kind of work we are appraising, but also on the period and style of the piece in question. Now, in general terms, a professional knowledgeable of the market can give some weight percentages for factors influencing the price. The percentages that we present below have been given by professionals in the artwork and collectibles market and, according to their criteria, these are the percentages of the elements contributing to the price of each of the works. This justification of price is therefore a study that analyses the final price, but

it does not serve to calculate that price, which renders it unsuitable as an appraisal method.

Weighing integral factors when appraising paintings and numismatics

ANCIENT NUMISMATICS¹¹¹

CULTURE/LEADER/KING: 15%

METAL/WEIGHT: 10%

DATE/MINT/ISSUE: 10%

QUALITY: 15%

CONSERVATION: 30%

RARITY: 20%

MODERN AND CONTEMPORARY NUMISMATICS¹¹²

CULTURE/LEADER/KING: 10%

METAL/WEIGHT: 0%

DATE/MINT/ISSUE: 20%

QUALITY: 50%

CONSERVATION: 10%

RARITY: 10%

ANCIENT PAINTING¹¹³

AUTHORSHIP: 15%

DIMENSIONS: 5%

THEME: 10%

STYLE/PHASE OF ARTIST: 10%

BASE: 0%

ARTISTIC QUALITY: 15%

CONSERVATION: 25%

AUTHOR FEE 20%

¹¹¹ Weightings given by several numismatic professionals and revised by Jesús Vico, President of the Association of Numismatic Professionals until 2010 and numismatic professional and director of the *Jesús Vico S.A.* auction house in Madrid for over 40 years.

¹¹² *Idem* previous note.

¹¹³ Weightings given by Ms. Ana Chiclana, a graduate in Art History from the Sorbonne University in Paris, director of the *Ana Chiclana* art gallery in Madrid.

PAINTING FROM THE 19th AND EARLY 20th CENTURIES¹¹⁴

AUTHORSHIP: 10%

DIMENSIONS: 5%

THEME: 10%

STYLE/PHASE OF ARTIST: 10%

BASE: 5%

ARTISTIC QUALITY: 15%

CONSERVATION: 25%

DISTINCTION OF AUTHOR: 20%

ANALYTICAL METHODS**Synthetic appraisal models on the basis of proportionality¹¹⁵.****Comparative Methods**

Jesus Lozano (LOZANO, 1997) calls it a synthetic method based on proportionality and explains it as obtaining a value from the relationships among one or more characteristics of the work and the transaction prices of similar pieces, called comparables¹¹⁶. For that, these concurrent characteristics must be localised in order to quantify them within some parameters¹¹⁷ and in that way be able to compare the different artwork and collectibles and calculate the value of one with respect to the others. This would be the basic concept from which the complexity of the techniques can

¹¹⁴ *Idem* previous note.

¹¹⁵ The synthetic models are the simplest, given that they basically use relationships of proportionality between prices and external signs. As Pilar Roig (ROIG, 1997) explains, not all the signs have the same importance and weight on the percentage variables, so that their weightings must be modulated.

¹¹⁶ LOZANO, J. "Appraisal and art work price theory." Ch. 5 *Economy and aesthetics of works of art*, (co-ordinator: *Salvatore Corrado Misseri*). *Technical University of Valencia*. Valencia, 1997. pp: 147-181. In this chapter, the author explains that by comparables one understands those works for which recent sales prices are known and that are suitable to relate to the value of our work. Depending on the quantity of effective comparables that we locate in the market, we will use one appraisal method or another, with the resulting levels of reliability that each one has. The choice of comparable is, therefore, a fundamental task in appraisals, and a poor choice or interpretation would lead to incorrect or unreliable results. A "perfect comparable" will be that which, apart from similarities in style, size, quality, etc., has been recently sold in the same market for which the appraiser is doing the valuation.

¹¹⁷ Quantifying the common attributes among all the comparables and ours requires the use of the same parameter in order to note their common characteristics (between 0 and 10 points, 0-5 points, or even 0-3 points), which could be modified by the appraiser depending on his style of valuation, providing this is maintained throughout the entire valuation.

vary depending on the variables as well as the prices chosen in order to develop it.

This is the method most widely employed by private appraisers. It is not a complicated method, though it does require the analysis of numerous data, and especially the correct choice of works with which the piece to be studied will be compared. The comparables, then, are about analysing pieces from the same market, and in which we find analogies between the assets and their prices. The process consists of estimating the value of a work of art (A) from the prices obtained by similar ones: B, C, D, ..., according to certain variables that can explain the differences or similarities among them all (including the work to be appraised): quality, conservation, aesthetic impact, etc. It is therefore fundamental to choose similar works within the same market.

According to this author, the variables of synthetic appraisal are based on the fact that in order to verify the relationship: value of a work of art or collectible (V) with its explicit characteristics ($X = \{X_1, X_2...X_n\}$); or, put another way: $V = f(x)^{118}$, for which one goes back to choose the method of calculation in which the characteristics or external signs of the work are related, along with the price.

In order to work this out, one must keep in mind the factors explained earlier that make the similarities and differences of the pieces clear and allow one to determine the economic similarities and differences: authorship, dimensions, format, chronology, theme, conservation, technique, etc. It is a simple method of calculation that offers a very reliable estimation of price. Nonetheless, it requires a series of assumptions, the application of which creates reliable results¹¹⁹. Thus, one starts with a fundamental assumption: that the art market always tends to create a balance between supply and demand. Keeping the most influential characteristics determining the final estimated price of the work in mind, and accepting that there is an objective

¹¹⁸ This expression becomes operative if one previously specifies that V is the market price and X the vector for external signs. And, there are comparative scales that allow one to obtain comparable and homogenous information of prices and external characteristics.

¹¹⁹ LOZANO, J., *Op. cit.*, p. 151.

relationship between the price of each work of art and the external signs of which it is composed, the comparables chosen must be similar¹²⁰.

At the same time, we must heed the characteristics of this market and its sectors in order to understand that factors like conservation are only quantifiable by appraisers and experts. For this reason, it is a difficult factor to study, especially if the comparables utilised are studied by photographs. Nonetheless, the repercussion of these factors on the final price of the piece make their presence in the total group of factors necessary to evaluate. Therefore, the best solution is to gather the greatest amount of information possible relative to these characteristics and try to gain access to information dossiers on the state of conservation of the work and the restorations it has undergone. The most recommendable course is to have an analysis of the state of the works made by an expert.

In a similar way, we find the synthetic method based on its distribution, which works with the supposition that, as much the price (V) as the external sign (X) is distributed in functions $f(v)$ and $g(x)$. The method consists of creating equality in the areas in order to carry the same proportionality to the end.

Appraisal with several comparables and characteristics: We have already commented on the convenience of using more than one comparable and external sign since they give our study more reliability, although that will always be proportional to the complexity of the calculation. This system allows one to introduce more than one characteristic or external sign of the works to be compared. To carry it out, it is essential to compare pieces whose sales are made in the same market and with approximately the same dates.

Once we have a work to be appraised and have found several works that are similar in attributes like author, material, quality, etc., the calculation

¹²⁰ Choosing the comparables (as always, the more there are, the better it is) is undoubtedly one of the most complicated tasks for the major repercussion it will have on the final result. A religious theme is not comparable to a portrait, nor are pieces with different bases, nor even pieces with an excessive difference in chronology, between the creation of one and another. In cases of extreme difficulty in locating analogous pieces, the range of the search will be widened without losing sight of similitude and keeping in mind that, generally speaking, the more difficult it is to find comparable works, the greater the rarity and shortage of our piece.

begins with the quantification of these characteristics in order to be able to find a unit of value, adding up all the market prices of the comparables, divided by the value we give to each one of the characteristics of each comparable used¹²¹. Finally, one introduces into the new equation the values found (a_j) multiplied by the value of each of the external signs of our piece, which is then divided by the sum total of the works compared. The result of the operation will be the approximate price of the piece.

Appraisal method with correction indexes

The introduction of what they call “correcting indexes” in the appraisal formula allows one to establish the estimated price of the work under study in a more realistic way. This greater precision is achieved by introducing a “specific weight” to each of the factors used as a comparative element for the works (quality, conservation, mint, date, authorship, etc.)¹²². The difference lies in that, where before the result of the value calculation was divided by the number of variables introduced (which gave the same importance to each of the elements), now one weighs the importance of each factor that directly influences the price of the artwork or collectible.

Multiple regression models. Valuation method with regression techniques.

Of all the valuation methods, multiple regression techniques are the ones requiring the most data. They use a large number of comparables (around 160 of them), so that, at least initially, it is not a method that is much used given the added difficulty of locating so many appropriate comparables. Nonetheless, the creation of auction price indices and the ever-growing presence in the market of analysts and art appraisers, have augmented the use of this practice.

¹²¹ With regard to dimensions, there are authors who, instead of qualifying the size according to the public’s acceptance, do it by square centimetres of the work, which, as we have already seen previously, can turn out to be mistaken since the relationship of bigger size-higher price is not met.

¹²² In these cases, we can introduce the percentages given by the art professionals as weighting data for each of the fixed factors.

This comes from the premise that the overall value of a work of art is an added and linear function of the values, assuming the variables are always independent; for example, authorship and artistic quality. Thus, market value would be given by the equation:

$$V = \lambda_1 X_1 + \lambda_2 X_2 + \lambda_3 X_3 + \dots + \varepsilon$$

Where:

Market value of the work = V

Authorship index = X_1

Format index = X_2

Theme index = X_3

Quality index = X_4

Price coefficients = $\lambda_1, \lambda_2, \lambda_3, \dots$

In essence, with regression methods, the person making the valuation must compile information tables on comparables (both prices and attributes) in order for the statistical model to weigh the parameters $\lambda_1, \lambda_2, \lambda_3, (\dots)$ and therefore V_0 .

3. FORGERIES AND THE BLACK MARKET

Forgeries are undoubtedly a blemish on the art market in any and all of the sectors we care to look at. The sale of forged pieces, as if they were works of art, has been and continues being one of the most lucrative illegal businesses. The incursion of forgeries into the market has been a crime throughout history, incurring fraud and deceit on buyers who, in good faith, acquire pieces confident that they are genuine.

The difficulty involved in fighting it is one of the biggest problems facing both public administrations and the private sectors nowadays. To detect this crime, and in that way avoid it, we rely more and more on scientific methods such as thermoluminescence tests, metallographic analysis, patina analysis, etc. to help in the certification of works. Nevertheless, technological advances help both sides in their labours, and unfortunately, the forgers in turn rely on more advances to perfect their work and make the job of appraisers more difficult. For now, the best method continues to be the eye

of a good specialist, someone who has seen and knows so many pieces that he or she can distinguish when an item corresponds to a certain period or not.

Forgery, imitation, and copying

The forgery of artwork can be broken down into many subdivisions. Among these are deliberate imitation that passes for an original or for an authentic ancient object; altered work that has been partially repainted or modified to give it a higher value; first copies whose initial intention was not to deceive but that later pass for originals; imitations composed of original parts that do not correspond to the same piece; objects that come out of a studio or school and attributed to a sought-after master, etc.

The difference among these terms lies in the intention. Not all copies of genuine works are forgeries; it depends on the intention. Forgery is the attempt to trade a work that does not have the authorship, period, or material consistency that is attributed to it. It is an attempt at deception in order to obtain economic profit. A copy or imitation of another work is the construction of an object simulating characteristics remote from the conditions of its creation but without the desire to obtain any advantage or financial benefit from it. For that, in the majority of cases, these copies or imitations, especially when the quality is high, leave markings that make it clear they are copies, perhaps with the letter *C* to alert viewers, or with dimensions, colours, or characteristics that make it evident it is a copy, etc.¹²³ Therefore, imitations and copies can be perfectly legitimate, always when the work is catalogued or marked as such. A false attribution is not a forgery, either; private collections and museums are plagued with works for which no definite origin can be established¹²⁴.

The big difference, then, between copied works and forgeries is that in the latter case, an imitation is made without advising anyone about its false

¹²³In the case of painting and sculpture, it is required that the copies of paintings have different measurements than the originals. In numismatics, they have a *C*, indicating copy, so they can be detected.

¹²⁴ Many of the paintings that were attributed in their day to *Constable* turned out to be by his son, Lionel. That is not to say that Lionel was a forger nor that he intended to imitate or deceive anyone, rather that he painted with the same patterns and parameters as his father.

authorship in order to obtain profits through its sale. This activity began long ago; for example, it is known that in ancient times, silver bowls were sold as Egyptian when they were in fact made by Phoenicians. So, just as in collecting, the history of the forgery of artwork is as old as art itself. In fact, one can say that forgery comes directly from the emergence and success of collecting. The imitation of older, more exotic or unknown works in ancient times was a constant that has led us to designate as “period copies” those works that the ancient collectors ordered with the intention of emulating works of other artists. For example, we know about many sculptures from cultures prior to the Romans, especially Greek, thanks to the copies that Roman noblemen asked their artists to make. But this attitude is neither damaging nor deprecatory for the current market since they are pieces that, if not valued as equal to original works, still have, for their antiquity and role, “another history” that is also attractive for current collectors. The fact is that back then, just like today, the reproduction of pieces demonstrates the great demand for them¹²⁵.

Copies and imitations of ancient works were so constant throughout the history of art that they created a problem for the merchants and artists of the 18th century. For that reason, in Great Britain, in 1735, they passed a pioneering law, the first law that prohibited the imitation of works of art. That was when the expression “forger” replaced that of “imitator” or “copier.”

Since then and until today, there have been many attempts to eliminate this problem, with measures that were more or less effective, depending on the means and intention of the different administrations to put an end to it. An interesting example can be found in 1903 in the *Criminal Anthropology Archives of Paris*, which proposed putting “dactyloscopic signatures” (fingerprints) on oil paintings, watercolours, and similar works, in order to prevent forgeries. However, that suggestion was forgotten for the difficulties

¹²⁵ In many cases, copies have reached such high levels of artistic quality that they are valued more highly than their originals, as in the case of the aforementioned numismatic pieces made by *Giovanni Cavino, il Padoano*. Nevertheless, these works were not born of criminal intent, i.e. it was the collector himself that ordered a “false creation” in view of the impossibility of attaining original pieces.

it supposed at the time of archiving all the fingerprints and comparing them to the originals.

Throughout history, many artistic forgeries were created whenever a work was considered valuable for a collection. Forgeries have flouted the most expert eyes due to their high quality and have come to form part of the most prestigious private and public collections¹²⁶. Even the great *Michelangelo Buonarroti* sculpted a sleeping *Cupid* in marble and buried it so that it would look like an ancient work in order to sell it to his patron, *Lorenzo de Medici*, for a large sum of money.

Perhaps the most prolific production of forgeries of artwork was produced in the 19th and 20th centuries during periods of avid collecting, times when the profits attained by the acceptance of false works was considerable. Nowadays, the majority of auction houses, antique shops, and galleries guarantee the works they sell, creating confidence in the clients that go there to acquire works.

Nevertheless, the very concept of forgery leads us to a crossroads that favours the creation of that kind of piece. By forgery, we understand the attempt to deceive with the aim of obtaining economic benefit and presenting an artistic object as something different from what it truly is. The criminal activity lies not so much in who makes it as it does in who sells it knowing it is a forgery. It is like someone who makes a copy, which does not have to be a forgery, just as with a painting or objects executed in another style. The important thing is the intention one has. Therefore, the condemnation in this case would not be for the making of a copy, rather what one ends up doing with it. It is not a crime to copy or imitate an old work, but it is a crime to sell

¹²⁶Important art museums have been victims of forgeries; the *Louvre* Museum in Paris acquired the *Tiara de Tisafernes*, made in gold, for 200,000 gold francs, declaring it an original work from the 3rd century BC, when in reality it had been made in 1880 by the goldsmith *Israel Ruchomovsky* in Odessa (Ukraine), who had received the order from some dealers to execute a series of works in ancient style, works that those dealers would sell as ancient pieces. The Italian artist *Luca Giordano* made, in good faith, a number of beautiful sculptures in the style of *Donatello*, *Verrocchio*, *Mino de Fiésole*, and other old Italian masters that would later be sold as original works to the *Louvre* and to the *Victoria and Albert Museum* in London, among others. In the 18th century, a forger sculpted a head of *Julius Caesar* in marble that was acquired by the *British Museum* in 1818, in the conviction it was an authentic piece.

it as such. This is the situation in which we find Spanish legislation, which leaves art professionals unprotected because these copying activities are done by people who are more and more capable and who have access to more and more advanced technological resources.

We would like to denounce this practice from these pages. For this fraudulent activity to exist requires the specialised production of such works. Though it is true that certain copies could be considered as works of art, they are not so praiseworthy when the only use for which they were made is that of deception. Yet, that deception is not possible to carry out without some good technical characteristics, a good imitation of patina, or being an exact copy of the original artistic parameters. That is why we see the urgent obligation to mark copies as distinctive elements and therefore legalise them by marking them so buyers see it at first glance, even in the case of invasive restorations affecting a large percentage of the piece.

In our view, this does not ruin the work; rather it is a question of having requirements to prevent confusion and which become widely practised. If not, we cannot find any other intention than that of deceit in the attempt to make pieces appear old, for example, by applying chemical patinas on contemporary objects that are almost undetectable to experts. It is almost inconceivable that this practice is not even minimally punished. For restorations and designs, patinas are coloured; they are not produced through chemical reactions. This practice is only found in activities that try to conceal criminal acts.

For the moment, the Spanish legislation has not been very effective in the eradication of this kind of activity. In fact, we find a flagrant case in the numismatic sector, where we have a great proliferation of forgeries within our market since, in current legislation, forging old coins is not punished. This is to say that the forgery of coins currently in use is a crime, but not those that were in use in the past and no longer circulate. That is why we find within our borders important cases of forgeries that place a large amount of false numismatic work on the market. More specifically, article 283 of our Criminal Code punishes with jail sentences the manufacturing of false currency and the cutting or alteration of legitimate currency. By currency, we

understand in the Criminal Code (art. 284), paper money, state and bank bills, metallic money, and the rest of the emblems of *legal validity* issued by the state, both in Spain and foreign countries. The law excludes penalties for the forgery of money that is not in legal currency, i.e. old coins. For this reason, and as the manufacturing or alteration of currencies that were legal in the past is not specified in the Criminal Code, this practice cannot, in principle, be considered criminal unless paired with deceit or fraud in the sense of wanting to make it appear authentic, which would automatically make such conduct a criminal offence.

The forging or counterfeiting of currency done nowadays is carried out with the intention of making it appear authentic and with the aim of obtaining higher commercial value in the market. This activity is covered in the dominion of fraud, since, as stated in art. 528 of the Criminal Code, “*fraud is committed by those who, with the aim of profit, utilise an act of disposal in detriment to themselves or to a third party.*” In the crime of fraud, it is necessary to have deceit; the active subject has to be aware of the falsity of the currency and hide it, since good faith or advising people that it lacks authenticity is not considered fraud.

In the numismatic field, we want to clarify the concepts of forgery since this has been happening since the first moment in which paper currencies appeared at the end of the VII century AD. Philip Mateu i Llopis distinguished from among false currencies, in reference to those old coins that were forged at the same time they were in legal circulation—that is, the forgeries of the epoch—and the forged currencies that are made in current times with the sole aim of gaining profit. The forgeries are made, therefore, by imitation of the old coins in order to sell them to collectors and specialists as genuine for the price that the originals attain. This terminology dictated by this grand master of Spanish numismatics can be extrapolated to many other market sectors. Currently in the market, we can distinguish four kinds of different currency forgeries:

- 1) Coins called *contemporary forgery* are forged while the currency was in legal circulation for use as a means of payment. These pieces, which in many cases were minted by governments themselves

- (i.e. the issuer of genuine pieces) have some value and some of them come to be worth even more than the authentic pieces.
- 2) Copies made by artists who create them to complete collections of a patron or major collectors, as occurs with the forgeries during the Italian Renaissance by the artist and forger from Padua, *Giovanni Cavino*, “*Il Paduano*”.
 - 3) The currency that is forged in order to fraudulently introduce it into the numismatic market as authentic.
 - 4) Authentic currency that is manipulated, changing some aspect, such as the mint, the mint date, etc., in order to convert a piece of little value into one that is rare and valuable. Such is the case with the famous silver 5-peseta coin from 1869, whose market value, if authentic, lies between € 10,000 and € 50,000, depending on its state of conservation. Said forgery is obtained by altering the final numbers of an identical coin from 1870, whose market value is between € 800-1000, depending on its state of conservation.

The problem of the introduction of forgeries into the black market is still one of the biggest problems to tackle within this market. Surely the antiquated thinking characterising this country does not help in the eradication of such practices, nor does the deontological differences that we find for the treatment of pieces in each of the sectors. While for a painting it might be obvious, urgent, even compassionate and good to proceed with a complete restoration in order to safeguard its survival, in the case of numismatics, an intervention that demands the same level of restoration is considered to be a maximum alteration of the piece, which lowers the value unless it is imperceptible. In many cases, this leads to the hiding of the intervention so as to achieve a considerable increase in profits at its sale.

It is therefore imperative to proceed to the unification of all deontological codes in commercial, restoration, and conservation fields in such a way that it is equally applied in all sectors. The difficulties exhibited in this task with regard to the valuation of artwork and collectibles means that the investigators should favour a closer relationship between the public and

private sectors in these activities, where, by acting together in the field of appraisal, there will be mutual benefits and greater detection of false, stolen, or pillaged work.

CONCLUSIONS

In terms of supply and demand, the current art trade takes place in a global market. The most traditional domains in markets like those in London and New York are being substituted by global competition that leads to a more international and consolidated market, even in the special economic circumstances that we are currently living. This leads one to think that the market seems to be more dependent on legislative elements than on the international economic situation.

One can appreciate the complexity of valuation criteria with numerous factors that affect the price of the pieces and that in many cases forces one to seek a specialist in the matter in order to carry it out. For that, we have presented some valuation methods that, utilised with precise information, can be very useful in an investigation. Furthermore, we want to highlight from these pages the increasing importance of establishing collaboration between the public and private sectors in order to limit, and in the best of cases, neutralise the majority of the crimes occurring in this market. Merely with the exchange of information, the advances would be significant.

The special aptitude of artwork and collectibles to make investigations of economic crimes difficult is worth noting; this comes from the characteristics given at the beginning of this paper, the difficulties that appraisals and the detection of forgeries present because of the way in which the market has become so specialised.

The high value that these kinds of works have, as well as the expenditure that their conservation supposes, demands that the authorities assist with the important costs in the seizure and stoppage of these kinds of works, which is highly damaging for the state treasury and indignant for the honest taxpayer. That is why we propose legislative reforms similar to the registered legal procedures in the legislations of other European countries,

which permit the management of the assets confiscated with the aim of compensating the State and society for the effects of these criminal activities.

Finally, we hope that this work offers helpful and relevant information to tackle and minimise the problems derived from the traffic of artwork and the associated criminal activity, always understanding that collaboration between the different institutions and sectors, public and private, is to the great benefit of everyone.

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GRAPH 1

Source: Artprice
France, USA, GB, Rest of the world
Base 100 in July 1990
July 91 – July 10
January 11

GRAPH 2

USA, Great Britain, China, France, Italy, Germany, Switzerland, Rest of the world.

Source: Artprice.

GRAPH 3

USA, Other, Switzerland, Germany, France, China, Great Britain.

Source: Art Economics.

GRAPH 4

GB, USA, Italy, Other, Switzerland, Germany, France, China

Source: Art Economics

GRAPH 5

International Market, Spanish Market

Source: Artprice

GRAPH 6

Drawing, engraving, paintings, others

Source: Artprice

GRAPH 7

Post war, 19th century, Contemporary, Ancient, Modern

Source: Artprice

GRAPH 8

Price

Source: Artprice

GRAPH 9

Price

Source: Artprice

Graph of bids according to dimensions expressed in Euros and cm.

GRAPH 10

Painting, Engraving, Sculpture, Drawing / Watercolour, Others

Source: Artprice

GRAPH 11

Painting, Engraving, Sculpture, Drawing / Watercolour

Source: Artprice

GRAPH 12

Price, Common, Scarce

Source: Jesús Vico Monedas, S.A.

SOCIAL MARKETING

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1. BRIEF ORIGINS OF SOCIAL MARKETING

Following Andreasen (2003), many historians date back the first marketing approach to social phenomena with the publication of an article by Wiebe in 1952, in which this author wondered “why can’t you sell brotherhood as you sell soap”. According to Kotler and Zaltman (1971), this approach meant that the marketing of commodities was generally effective, while the “commercialisation” of social causes was generally ineffective. Wiebe (1952) reviewed four social campaigns to determine which were the characteristics or conditions that facilitated the success of the campaign, concluding that the more the characteristics of a social campaign assimilated to a commercial one, the higher were their chances of success. However, this first approach did not have great impact until the 1960s and the early 1970s, primarily when Vietnam War and general social unrest instigated many sectors of the American society to rethink their social obligations (Andreasen, 2003). However, the rise of social marketing was relatively small until the mid-1990s, when the main objective of social marketing focused on changing citizens’ behaviour or attitude.

In 1969, Philip Kotler and Sidney Levy already pointed out the need to broaden the perspectives of marketing by including actions which were not exclusively limited to the marketing and distribution of for-profit-products by private industries. Despite this fact, many theorists (e.g. Luck, 1969; Carman, 1973) opposed the use of marketing for social purposes, with such arguments as, in the words of Bartels (1976): “If marketing is to be regarded as so broad as to include both economic and non-economic fields of application, perhaps marketing as originally conceived will ultimately appear under another name”.

Since the coining of the term Social Marketing by Kotler and Zaltman (1971), there have been numerous studies that have addressed this discipline

in recent years. However, according to many theorists of the subject, there is to date a lack of a consensual definition of the term (Andreasen, 1994; Andreasen, 2002).

In accordance with one of the first conceptualisations of this discipline, social marketing could be regarded as “the design, implementation and control of programmes calculated to influence the acceptability of social ideas in target audiences” (Kotler, 1975). The following lines offer some alternative definitions.

“Marketing done by a non-profit or government organisation to further a cause” (Kotler et al., 2009)

“The systematic application of Marketing alongside other concepts and techniques, to achieve specific goals, for a social good” (French and Blair-Stevens, 2005).

More recently, Kotler proposes a new social marketing conceptualisation as “The use of Marketing Principles and techniques to influence a target audience to voluntarily accept, reject, modify, or abandon a behaviour for the benefit of individuals, groups or society as a whole” (Kotler et al., 2002).

This definition clearly highlights four key features. The first is that it focuses on a *voluntary* change of behaviour, therefore social marketing is not based on legal, economic or coercive forms of influence, nor on authority. The second is that it focuses on the idea of *Exchange*, i.e. in the recognition that there should be a clear benefit for the “customer” if the desired change is carried out (Houston and Gassenheimer, 1987). Thirdly, in the use of *marketing techniques*, such as market research, segmentation, positioning, or the use of the tools of the marketing mix. Finally, the *ultimate goal* of social marketing lies in improving individual and collective well-being, rather than that of organisation that carries out the social marketing campaign. These are the main features that differentiate social marketing from any other form of marketing (Stead et al., 2005; MacFadyen et al., 2002). According to Stead et al. (2005), another key feature is that social marketing emphasises society as

a whole, so its application is not only limited to the individuals' behaviour, but also to those of institutions or regulators.

In this sense, social marketing can be used both by private companies that seek a responsible consumption of their products, (as might be the case of the alcohol industry), as well as by non-profit organisations who mainly wish to achieve a more responsible behaviour by citizens (such as the Government or the police). Therefore, the ultimate goal of social marketing would be the search for a common welfare that not only affects the specific person carrying out a change of behaviour, but also society as a whole (Lovelock, 1979).

However, the campaigns focusing on a voluntary change of behaviour do not form a new phenomenon, such were the case of the campaigns launched to free slaves, abolishing child labour, those in favour of women's right to vote, or those enforcing the inclusion of women in the labour market, for instance.



Several American studies have concluded that premature death is directly attributed to causes that have their origin in factors based on citizens' lifestyles (McGinnes and Foege, 1993). Other examples such as AIDS, lung cancer or obesity also have their origin in our behaviour. Socially, crime, racism, or traffic accidents can be seen as problems caused by human

behaviour (Hastings and Saren, 2003). According to Hastings and Saren (2003), in the same way that the use of marketing techniques or principles can be applied by companies such as Philip Morris for the marketing and sale of cigarettes to smokers, these techniques can also be used for the prevention of their sale or the reinforcement of acts such as empowerment-building exercises. Therefore, one of the major contributions of social marketing would be to put the corporate private sector in accordance with public welfare policies.

Theoretical foundations in line with Social Marketing

Hastings and Saren (2003) proposed two general theoretical bases that contribute to the potential benefits that can be achieved through the application of social marketing. On the one hand, the exchange theory and on the other hand the Relationship Marketing theory.

The Exchange theory assumes that we are beings with a natural inclination towards the improvement of our species. To increase the chances of a change of consumer behaviour, marketing theorists must give consumers something beneficial in exchange. Therefore, the exchange involves the transfer of tangible or intangible goods between two or more social actors (Bagozzi, 1979). Following Kotler (2000), the central idea of the exchange is based on the fact that this exchange should be beneficial for all parties involved. Therefore, in agreement with the discipline of social marketing, if it can be proved that the benefits that are going to be obtained are higher than the costs incurred, the voluntary adoption of the new consumer behaviour has many chances of being successful.

However, according to Hastings and Saren (2003), the Exchange theory has certain levels of resistance. Firstly, the nature of the Exchange is problematic because the benefits that consumers can obtain are generally more ambiguous than the benefits derived from the actions of commercial marketing. Remember that commercial marketing goods are usually exchanged for money, i.e. the exchange is utilitarian, while in the case of social marketing, mutual transfer is usually based on intangible aspects such as psychological or social ones, therefore the exchange itself is primarily

symbolic. According to Hastings and Saren (2003), this aspect may hinder the task of carrying out the principles of social marketing.

Another level of resistance to the Exchange theory, according to Hastings and Saren (2003), is based on the balance of power that all exchanges entail. The application of the principles of social marketing is hampered when it comes to ensuring consumers are able to communicate properly in order to accept or reject an offer. Following the example proposed by these authors, people with fewer economic resources may lack sufficient funds to access, for example certain healthier meals, or to enrol in gyms, or they may simply have a lack of personal or educational skills to respond in a constructive manner to certain marketing offers. There is great theoretical evidence, for example, that tobacco companies position their offering disproportionately towards the younger target audiences, and the lowest social class (Anderson et al., 2002). This does not imply that the marketing mix is not effective in these circumstances, but that it presents particular challenges. In this sense, social marketing can also serve as a ground for commercial marketing to make its practices more ethical.

On the other hand, the theory of Relationship Marketing can also constitute a strong theoretical basis for the practice of social marketing. In very general terms, Relationship Marketing theory, among other practices, does not focus on specific transactions with customers but on long-term relationships with them. Roughly, the main innovations of Relationship Marketing are basically the following:

- The main objective has shifted from a specific transaction or sale towards customer retention and loyalty.
- The focus lies on customers' needs, instead of mass markets.
- Technological resources are used not only to stimulate wants and needs, but also to develop brand identity and loyalty.

Following Hastings (2003), the implications of Relationship Marketing, from a behavioural perspective, are potentially important for several reasons. Firstly, social marketing is usually based on changes of behaviours that require a long-term effort. Giving up smoking, for example, is usually

achieved after five or six attempts, and measures of success vary between three and ten months after being a non-smoker. Likewise, a change of eating habits does not imply a specific change in the diet, but the adoption of a new behaviour of eating habits. Therefore, such behavioural changes are more susceptible to relationship marketing strategies than to commercial marketing strategies.

In addition, building relationships in social marketing can benefit from their non-commercial nature. Indeed, following Morgan and Hunt's postulates (1994), if trust and commitment are key elements in the success of relational marketing, these variables can be achieved in a more effective way when none of the parties tries to achieve economic gain.

On the other hand, consumer loyalty can affect a change of behaviour in the long term. This fact constitutes one of the main axes of social marketing.

Basic reference elements of social marketing

Andreasen (2002) identified what he considered to be the six basic elements of reference in any "genuine" action or intervention of social marketing, as can be seen in the following table.

Table 1. Andreasen's Benchmark criteria

REFERENCE	EXPLANATION
1. Behaviour change	Intervention seeks to change behaviour and has specific measurable behavioural objectives.
2. Consumer research	Intervention is based on an understanding of consumer experiences, values and needs.
3. Segmentation and targeting	Different segmentation variables are considered when selecting the intervention target group. Intervention strategy is tailored for the selected segment/s.
4. Marketing mix	Intervention considers the best strategic application of the marketing mix. This consists of the four Ps of 'product', 'price', 'place', and 'promotion'. Other Ps might include 'policy change' or 'people' (e.g. training is provided to intervention delivery agents). Interventions which only use the promotion P are social advertising, not social marketing.

5. Exchange	Intervention considers what will motivate people to engage voluntarily with the intervention and offers them something beneficial in return. The benefit offered may be intangible (e.g. personal satisfaction) or tangible (e.g. rewards for participating in the programme and making behavioural changes).
6. Competition	Competing forces to the behaviour change are analysed. Intervention considers the appeal of competing behaviours (including current behaviour) and uses strategies that seek to remove or minimise this competition.

Source: McDermott et al. (2005)

Therefore, if a performance meets all six of these criteria, it would be based on a social marketing campaign.

2. MAIN DIFFERENCES BETWEEN SOCIAL AND COMMERCIAL MARKETING

There are certain fundamental differences between social marketing and commercial sector marketing (Kotler et al., 2009). In general terms, the following can be highlighted:

- a. Social Marketing focuses mainly on *selling behaviours or attitudes*, while business sector marketing focuses on the sale of products and services.
- b. Commercial sector companies position their products against those of competing companies. The social market *competes with the current behaviour of the target population* and attempts to present benefits associated with a change of attitude or behaviour.
- c. The main benefit of a “sale” in social marketing is the *well-being* of an individual, group of individuals, or society as a whole, while commercial marketing focuses on the profitability of the company.

Therefore, social marketing is a mix of economic, educational and communicative strategies. When such tools are not effective, social marketing tries to find technological solutions, if any are possible. As a last resort, social marketing can even foster a particular behaviour change by law. People engaged in social marketing activities include primarily public sector

professionals from agencies or institutions, not-for-profit organisations, foundations or corporate marketing organisations.

3. BASIC ELEMENTS OF AN EFFECTIVE SOCIAL MARKETING CAMPAIGN

As pointed out, social marketing seeks primarily the “marketing” of a change of behaviour or conduct. According to Cheng, Kotler and Lee (2009), the agents that must establish a behavioural change intend the objective population to do one of the following modifications:

- Acceptance of a new behaviour
- Rejection of a potential behaviour
- Modification of the current behaviour
- Abandonment of an old behaviour

Frames of reference can also include an educational or persuasive approach. The educational approach aims to inform people by appealing to their conscience in order to bring about the desired behavioural change. The persuasive approach intends to know the causes that can motivate people to adopt the change. These approaches do not constitute an end in themselves, but form the basis of a prior preparation for the adoption of the change.

Development of a Social Marketing campaign

According to Kotler et al. (2009), the development of a social marketing campaign can be divided into ten basic steps.

1. Definition of the problem and objectives

A social marketing campaign rests on a social problem it is intended to solve or reduce. That is the case, for instance of the controlled use of certain products, such as alcohol, or the reduction in the number of traffic accidents, for instance, or the eradication or prevention of certain diseases. These problems may have been caused by natural disasters or simply by inappropriate lifestyles. Therefore, the first step is to provide individuals with sufficient information that enables them to know the specific problem.

When defining the problem, it is fundamental to identify the agent that carries out the campaign, as well as a summary or abstract of the main factors determining the decision to conduct the campaign. That decision should be based on proper market research, so that the agent can substantiate and quantify the problem defined.

Once the problem is laid out, a purpose statement should be made, so as to state the possible impact that the campaign could have, as well as the benefits that this would entail, in the event that it is successful. According to Kotler et al. (2009), it is necessary to limit the scope of the social marketing campaign in order to improve the use of available resources, as well as in order to maximise the impact of the campaign and to ensure its feasibility.

The central axis of the campaign must be selected from among all the possible options that can contribute to the achievement of the target objective. The causes of the current behaviour must be examined, so as to determine a plan of action to change to a more desirable demand situation.

- Full demand
- Overfull demand
- Irregular demand
- Declining demand
- Negative demand
- Non-existent demand
- Latent demand
- Unwholesome demand

2. Situation analysis

Generally a SWOT analysis is carried out in order to provide a basic report on the organisational weaknesses and strengths, as well as the opportunities and threats in the environment. The strengths to be increased and the weaknesses to be decreased would include internal factors, such as the level of funds or resources, management support, potential partners, broadcast capabilities, or the reputation of the sponsor. Trends associated with demographic, psychographic, geographic, economic, cultural, political and technological factors can be considered as opportunities and threats. In

this step, an analysis of the existing literature should also be performed, as well as the gathering of information from previous campaigns, especially those with similar goals. In this respect, the main actions carried out previously together with the effect(s) caused by previous campaigns or the results that they could have obtained can be summarised.

Table 2. Example of possible behavioural changes

Health
Each day, more than 4,000 youths aged 11 to 17 smoke their first cigarette
More than 40,000 women died from breast cancer
More than 30,000 men died from prostate cancer
Close to 40% of adults aged 18 and over had no leisure-time physical activity
More than 5,000 infants were born with foetal alcohol syndrome
An estimated 1 million teenage girls became pregnant
More than 50,000 cases of malignant melanoma were diagnosed
5 to 10 million adolescent girls and women struggled with an eating disorder and borderline conditions
Safety
More than 3,000 children and teenagers died from gunshot wounds
More than 16,000 people were killed in alcohol-related crashes
An estimated 3,000 people died in home fires
More than 8% of high school youth attempted suicide
Environment
4 million tons of paper were thrown away (in garbage) by American office workers
4.5 trillion non-biodegradable cigarette butts were littered worldwide
Community
More than 5,000 people on waiting lists for organ transplants died
Only 51.2% of eligible voters voted in the U.S. presidential election

Source: Kotler et al. (2002)

3. Selection of the target audience

The target audience must be selected through a process of segmentation. It is essential that the marketing campaign focuses on a particular central target audience, despite the fact that secondary public audiences may have been identified. At this stage, a description of the target audience should be made.

4. Objectives

A social marketing campaign requires the establishment of clear behavioural objectives, i.e. those changes intended for the target audience to perform as a result of the implementation of the campaign.

The objectives normally include *knowledge* objectives, i.e. the public must be informed of all matters related to the change of habit or intended behaviour (e.g. if we want a shift towards a healthier lifestyle, we should report what we understand by healthy lifestyle and its main advantages). *Belief* objectives should also be included, which would include those purposes which the public must believe in order to “*change its mind*” (e.g. believing that a healthier life can be achieved with modifications regarding everyday actions).

Within the possible objectives, a distinction must be drawn between those contributing to a cognitive campaign, (such as the explanation of the nutritional value of different foods or the importance of caring for the environment), an action campaign (such as motivating people to donate blood, or encouraging women to have routine gynaecological check-ups), purely social campaigns (discouraging consumption of drugs or cigarettes, excessive alcohol consumption) or value campaigns (changing opinions about abortion or fraud).



The choice of appropriate objectives is essential for the implementation of the campaign. For example, to launch a campaign with the aim of reducing environmental pollution, should one consider a goal of the campaign to share vehicles or to foster the use of public transport services? Likewise, if a family planning campaign is intended, should one focus on sexual abstinence or on controlling the number of births?

The British Government spent 6.6 million pounds in 2008/09 in a campaign against the so-called "FRANK campaign" against drug. Radio, television and online advertising were used as main communication channels to reach the target audience (youths). A telephone information helpline was created to help citizens, named FRANK helpline. There were 348,355 calls, with an average of 954 calls a day. Around 53% of the people who called rated the information received in the *helpline* as excellent. During the same year, the FRANK website received more than 5 million visits. After its release, market research revealed that 89% of young people recognized knowing the campaign, and there was a 12% increase in the number of young people between 11 and 21 years who claimed that the use of cannabis was harmful for the consumer's mind. The same study showed that 53% of respondents preferred the information about drugs provided by the FRANK campaign, against 36% who preferred their parents as a source of information, or 23 per cent who preferred going to medical centers.

In 2008 the FRANK helpline received 348,355 calls – an average of 954 every day. Some 53% of callers rated their experience of the helpline as excellent. In the same year, there were more than 5 million visits to the FRANK website.



On the other hand, a social marketing campaign must also establish quantifiable measures within the marketing objectives. These should be specific, measurable, attainable, relevant, and linked to a specific time-frame. Determinations established during this stage will have a direct impact on the budget, they will serve as a guide for the design of marketing strategies, and they will have an impact on measures of control or evaluation carried out in later stages of the marketing campaign.



What is the Public Prosecution Service Criminal Assets Deprivation Bureau (BOOM)? The Public Prosecution Service intends to deprive illegal proceeds from convicted felons. Said proceeds are often invested abroad in various ways: redundant bank accounts, real estate, cars, antiques, jewellery or luxurious yachts. Therefore, the Public Prosecution Service shares its information and expertise regarding forfeiture legislation with chain partners like national and international police. website: www.om.nl

Contra el consumo de alcohol en embarazadas

El Ministerio de Sanidad elige a Monday Advertising para crear una campaña que prevenga a las embarazadas sobre los riesgos del alcohol



Tras un concurso en el que participaron nueve agencias, Monday Advertising ha sido la elegida provisionalmente por el Ministerio de Sanidad y Consumo, a través de la Delegación del Gobierno para el Plan Nacional sobre Drogas, para desarrollar una campaña que ponga de relieve los grandes peligros derivados del consumo de alcohol en mujeres embarazadas.



Too Much Bling? Give us a ring

Welcome to the Ring Website
To report your suspicions or concerns, either call Sussex Police on 0848 507999 and when connected quote 'Too Much Bling'.

Gloucestershire Constabulary

CRIMINAL JUSTICE BOARD

Give us a ring

Is someone you know living a lavish lifestyle from the proceeds of crime?

0848 50 79 999 for all non-emergency calls
999 for all emergencies

0800 555 111

Internet (Modo protegido) activado

t, medio en el

TOO MUCH **bling?**

GIVE US A RING

Do you know someone living it up on the proceeds of crime? Don't let them get away with it. Call us safely night or day.

0800 555 111

CRIMINAL JUSTICE BOARD

0800 555 111

The following possible strategies can be highlighted for achieving the main objectives:

- The study of the existing literature and of similar previous campaigns
- Selecting target markets who are likely to respond to the campaign
- Promoting a simple behaviour, with an easy implementation, in clear and simple terms
- Explaining the benefits of the behavioural change in a motivating way
- Facilitating the adoption of the new behaviour
- Developing attention-grabbing messages and media
- Consider an educational-entertainment approach

5. Identification of factors influencing adoption of behavioural change

As a prelude to the positioning of any social marketing campaign and the establishment of marketing mix strategies, the current behaviour of the target audience and the causes affecting such behaviour should be carefully considered. More specifically the benefits, obstacles, competitors, and people with influence on the target audience must be identified.

Obstacles or barriers mean the reasons (real or perceived) why the target audience may not want to establish a new behaviour, or the reasons why they may simply think its adoption is not feasible. The benefits include the gains that the target audience would achieve after the adoption of a new behaviour. Competitors include any form of behaviour (or institutions that encourage them) that the target audience is currently performing (or would prefer to perform) against the new behaviour the campaign is intended to promote. People with influence include all those who exert any kind of pressure or influence on the target audience, which could include family members, networks, social clubs, or members of a particular religious group.

6. Design of a purpose statement

A purpose statement describes what the target audience is assumed to believe or think about the behaviour the campaign is intended to promote, as

well the benefits that would be obtained with such behaviour. A purpose statement, along with a brand identity, must be inspired in the description of the target audience, as well as in the aforementioned obstacles, competitors and influencers. It must clearly differentiate the behaviour the campaign seeks to promote from alternative ones. Proper positioning will directly impact on the development of the marketing mix strategies in subsequent stages.

7. Development of the marketing mix strategies: the 4Ps

There are four major tools in the marketing mix: product, price, place, and promotion. As in the case of business sectors, social marketing uses these tools in order to create, communicate and deliver the appropriate values of the target behaviour. As pointed out by Kotler et al. (2009), these four marketing tools can be understood as independent, although not isolated variables, that could be used as factors influencing the dependent variables, in this case the target audience's behaviours.

The order in which the 4Ps should occur is described below. The campaign must begin with the product strategy and end with the promotion strategy. This would be the final tool, since it requires the target market to be knowledgeable about the product in question, its price and its accessibility, which obviously must be developed prior to its promotion or communication. However, the design of all marketing mix strategies must be developed simultaneously, in order for the campaign to achieve the best results.

- Product: benefits
- Price: the "cost" (for the target audience) of adopting the desired behaviour. In social marketing, the price is composed mainly of intangible elements, such as time and effort.
- Place: offering the target audience the necessary elements to facilitate the adoption of the new behaviour.
- Promotion: set of actions to motivate the behavioural change.

Product strategy:

In a social marketing campaign, it is essential to make a clear description of the product at all levels, i.e. core, actual and augmented. The core product shows the benefits that the target audience will get in exchange for carrying out the desired behaviour (for example, a healthy lifestyle and a decrease in the risk of obesity). The actual product is the desired behaviour in itself, i.e. the general features of the product, which must be described accurately (for example, certain food or healthy drink features). The augmented product refers to any other tangible object or service that can be included in the offer and promoted with the core or actual product. The augmented product helps reinforce the desired behaviour and increase its attractiveness (e.g. information about the healthy products available on the market).

Price strategy (or adoption costs):

A price strategy summarises the costs that the target audience must “pay” for the adoption of the new behaviour that will ultimately lead to achieve the benefits offered. These costs may or may not be economic, such as those paid for obtaining goods or tangible services. Mostly, however, marketing campaigns rely on the sale of behaviours or attitudes in which an economic exchange has no place. The “payment” for example, can be stated in terms of time (dedication), effort, energy and psychological costs, or even physical discomfort. A good price strategy will seek to minimise these costs by maximising (both economically and/or non-economically) incentives, in order to reward the desired behaviour or discourage unwanted competing behaviours. The rest of the marketing tools (the remaining Ps) will help in the reduction of these costs.

Place strategy:

As in the case of commercial marketing, place strategies can be understood as the different distribution channels associated with a marketing campaign. The distribution systems used make the desired behaviour accessible to the target audience.

Promotion strategy:

In order to reach the target audience, it is necessary to develop information strategies about the benefits of the product and its main features, its price or cost of adoption, and accessibility. Promotion strategies, therefore, constitute a basic tool for the success of the campaign. The development of communication strategies begins by determining the main message, continues with the selection of certain formats and channels of information and communication, and ends up with the implementation of such communications.

The establishment of key messages must be aligned with the marketing objectives, since they determine what the social marketing campaign intends the target audience to know, think, or perform. Information concerning the obstacles or barriers, the benefits, the competitors and the influencers will facilitate the formulation and selection of the message. Messages are distributed through different communication channels such as advertising, public relations, events, sponsorships, direct sales, or word of mouth references. With regards to media channels, these can be online or offline. Online media include emails, web pages, and smart phones, blogs, podcasts, and tweets, but are not limited to these options (Kotler et al. 2009). Offline media include the press, radio, and television, as well as mailings or advertising posters. However, this distinction between online and offline tools is increasingly tenuous, since it is now possible, for example, to find the press, radio or television online. This recent technological change has a direct impact on marketing campaigns in general, and therefore also on social marketing. As an advantage, it could be argued that they expand the range of communication tools to be used and they make it easier to reach the consumer with greater accuracy and effectiveness. However, they also entail a greater effort when it comes to managing the communication campaign. Additionally, it is necessary in the planning and selection of the media to ensure that all selected media are complementary, since the messages that are transmitted must be consistent over time. Since each communication channel is characterised by its own particularities, it is more efficient to plan and allocate the budget of the communications campaign in general as a prelude

to the selection of the specific channel to be used and the elaboration of the communication messages. The specific elements of communication may include graphics, interactive features or links, audio or video and online channels.

8. Design of a control plan

It is necessary to develop the plan to be used in order to monitor and control the marketing campaign before the final allocation of the budget and the implementation of the campaign. For obvious reasons, it should be aligned with the objectives that had been established in previous stages of the campaign. Monitoring is performed once the campaign has been launched, but before it ends. One of the main reasons for the implementation of a follow-up plan is the assessment and detection of possible errors, which would make it necessary take adjustment measures (possibly in the medium term) in order for the objectives to be achieved. The evaluation refers to the measurement and final report of what happened during the campaign. According to Kotler et al. (2009), the final report must respond to issues such as “Were the objectives achieved? Which elements of the campaign can be linked with the results? Was the programme on time and within budget? or What should be done differently in upcoming campaigns?”

The measures fall into three categories, namely outcome measures for the activities of the programme, outcome measures for the responses of the target audience and the knowledge, beliefs and behavioural changes, and finally impact measures for the contribution to the plan (e.g. a reduction in obesity as a result of a higher percentage of sales of healthy food due to the start-up of a marketing campaign for this purpose).

For the development of a monitoring and control plan, it is fundamental to account for five basic issues, according to Kotler et al. (2009):

- Why are these measures carried out? For whom?
- What inputs, processes, and results/impacts are to be measured?
- Which methods (such as interviews, questionnaires, or online tracking) will be used for these measures?
- When are these measures to be carried out?
- How much will these measuring activities cost?

9. Establishment of budgets and sources of funding

The budget of a marketing campaign reflects the cost of its development and implementation, including those costs arising from the marketing mix strategies (the 4Ps) and the costs anticipated for the evaluation and follow-up of the campaign. As a general principle, in the objectives and tasks method for establishing the allocation of the budget, the anticipated costs are part of the preliminary budget and are based on the resources needed to achieve the marketing objectives. However, if the preliminary budget exceeds the financial resources available, alternative funding options should be considered, or additional adjustments in the phases of the campaign (such as the allocation of resources over a longer time frame), the review of the strategies, or the reduction of the objectives associated with the behavioural change. Additional resources include subsidies or Government grants, partnerships or associations with the media, or corporate donations (Kotler et al. 2009).

10. Completing the plan for implementing and managing the campaign

During this final stage, all the elements of the campaign are specified, such as who will carry it out, how much it will cost, and when it will take place. In short, the implementation and management of the plan has as its main objective the transformation of the marketing mix strategies into specific actions for those involved in the campaign. That is why this last step is essential, since it constitutes the true marketing campaign. Typically, a marketing plan includes activities that can last a minimum of one year, although ideally it can be designed for a two or three year time span.

Following Kotler et al. (2009), the schedule of a marketing plan can be summarised as follows:

Brief summary of the social marketing plan

- Executive summary

Brief summary highlighting the main campaign stakeholders, the background, purpose, target audience, marketing objectives and goals,

desired positioning, marketing mix strategies (4Ps), and evaluation plans, budgets, and implementation plans.

1. Background, purpose and focus
 - Who are the sponsors? Why are they doing this? What social issues and population will the plan focus on and why?
2. Situation analysis
 - SWOT analysis
 - Literature review and search for programmes focusing on similar efforts: activities carried out and lessons learned
3. Target audience profile
 - Demographics, psychographics, geographic, relevant behaviours, social networks, community assets, and stage of change
 - Target audience size
4. Marketing objectives and goals
 - Campaign objectives: targeted behaviours and attitudes (knowledge and beliefs)
 - SMART goals: Specific, Measurable, Achievable, Relevant, Time-bound changes in behaviour and attitudes
5. Factors influencing adoption of the behaviour
 - Perceived barriers to the targeted behaviour
 - Potential benefits from the targeted behaviour
 - Competing behaviours/forces
 - Influencers
6. Positioning statement
 - How do we want the target audience to see the targeted behaviour and its benefits relative to alternative or preferred ones?

7. Marketing mix strategies (using the 4Ps to create, communicate, and deliver value for the behaviour)
 - a. Product: benefits from performing behaviours and any objects or services offered to assist adoption
 - Core product: desired audience benefits promised in exchange for performing the targeted behaviour.
 - Actual product: features of basic product (e.g. AIDS test, physical exercise, daily intake of fruits)
 - Augmented product: additional objects and services to help perform the behaviour or increase appeal
 - b. Price: Costs that will be associated with adopting the behaviour
 - Costs: money, time, physical effort, and/or psychological discomfort
 - Price-related tactics to reduce costs: monetary and or non-monetary; incentives and or disincentives
 - c. Place: making access convenient
 - Creating convenient opportunities to engage in the targeted behaviours and or access products and services
 - d. Promotion: persuasive communications highlighting product benefits and features, fair price, and ease of access
 - Messages
 - Messengers
 - Creative/executional strategy
 - Media channels and promotional items
8. Monitoring and evaluation plan
 - Purpose and audience for monitoring and evaluation
 - What will be measured: inputs, outputs, outcomes and impact

- How and when measures will be taken
9. Budget
- Costs for implementing marketing plan, including additional research and monitoring evaluation plan
 - Any anticipated incremental revenues, cost savings, and or partner contributions
10. Plan for campaign implementation and management
- Who will do what, when-including partners and their roles.

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THE CONTRIBUTION OF STATISTICS TO POLICE ACTIVITIES

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1. INTRODUCTION

Statistics and police activities are too often regarded as two distant domains: on the one side, police urgently need to solve *individual cases*; on the other, statistics by definition deal with the collection, analysis and interpretation of data related to *aggregates*.

So, to what extent might statistics be useful to police officers in their daily activities? This is the key question addressed by this article. In offering an answer, it reviews traditional and innovative approaches where statistics – both simple (including basic numbers such as averages or distances between places) and more advanced – may support police in

- understanding the spatial and temporal distribution of crime (section 2, on crime mapping), thus improving their knowledge as to the best places and times to intervene in order to reduce the amount of crime occurring in a given area;
- identifying offenders (section 3, on geographical offender profiling);
- predicting crimes (section 4, on prospective hot-spotting).

The article ends with some concluding remarks (section 5).

2. UNDERSTANDING THE SPATIAL AND TEMPORAL DISTRIBUTION OF CRIME: CRIME MAPPING

2.1 What is crime mapping and why are maps useful to police officers?

The approach probably most familiar to police officers is crime mapping. Crime mapping has a long history dating back to at least 1900. Much has changed since that time, however. In particular, pin maps have gradually been replaced since the mid-1980s by computer maps (Harries,

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1999: 1-3). As a consequence, a great variety of thematic maps on crime can now be produced in order to represent graphically the most diverse aspects of criminal phenomena (e.g. the location of incidents, offenders, victims in a given area), as well as the responses to them (e.g. numbers of police officers deployed, number of criminal courts). These maps may include various types of information, as they may be either quantitative (e.g. furnishing numerical information, such as crime rates) or qualitative (i.e. furnishing non-numerical information, such as the gender of offenders) (Ibid.: 23).

This information may be portrayed using different types of maps. Point maps, for example, are the most common means to display geographic patterns of crime and disorder. Points are used to represent the phenomenon under observation: typically one point on the map equates to a single event under analysis.¹²⁸ Because point maps are difficult to read when there is a large volume of data, other types of maps may be employed, including geographic boundary thematic maps. The geographic boundaries are, typically, clearly defined administrative and/or political areas. Events mapped as points are aggregated to these areas.¹²⁹

Why are maps useful? Much crime mapping is devoted to detecting high-crime-density areas – the so-called ‘hot spots’. A hot spot is “an area that has a greater than average number of criminal or disorder events, or an area where people have a higher than average risk of victimisation” (Eck et al., 2005: 2). Maps may therefore enable police forces to identify areas attracting a disproportionately high volume of criminal events, to understand why this is happening,¹³⁰ and to prioritise available resources in these areas.

¹²⁸ An example may be found here: <http://projects.nytimes.com/crime/homicides/map>. This is an interactive point map on homicides in New York City developed and continuously updated by the New York Times. It is compiled from police reports, court records, news accounts and additional reporting.

¹²⁹ Other types of maps exist, including, for example, themed grid maps, continuous surface maps, etc. For more details see Home Office (n.d.-a).

¹³⁰ Many criminological theories have been developed to explain why crime happens. These theories identify diverse causes of crime/disorder, ranging from more remote (e.g. poverty) to closer causes of crime. Those focusing on the latter are particularly suitable for explaining why crime occurs in some places/at certain times. They can therefore orient police officers in making hypotheses as to why criminality is more concentrated in certain areas of the city. These theories include the following:

- routine activity theory (Cohen and Felson, 1979), which considers crime to be the result of the convergence in time and space of three elements: a motivated offender, a suitable target, and the absence of a capable guardian;

2.2 The role played by statistics in crime mapping

Firstly, statistics remind us that if we are to fully understand hot spots, we must consider population distribution. This entails that we should not use absolute numbers (e.g. number of robberies) in portraying events on a map; rather, we should calculate rates per population (for example, number of robberies per 1,000 inhabitants). In this way we take into account the uneven distributions of underlying populations in different areas and make them comparable. How is a rate calculated? The formula is quite simple: (absolute number of crimes within an area/population of that area) * 1000 (if a 1000 rate is being calculated, as in the example above; very often also a 100,000 rate is used).

Second, statistics help us to understand when a crime concentration is truly a hot spot. There are, in fact, statistical tests for clustering and dispersion¹³¹ that yield understanding as to whether an area with a high number of crimes is indeed a hot spot or whether the clustering of those crimes is instead a random occurrence. Nowadays, these tests can be easily run using software programmes (e.g. CrimeStat III and GeoDa).

3. IDENTIFYING OFFENDERS: GEOGRAPHICAL OFFENDER PROFILING

3.1 What is geographical offender profiling and why is it useful to police officers?

Geographical offender profiling has been developed in the context of investigative psychology, this being “the scientific discipline concerned with the psychological principles, theories and empirical findings that may be applied to investigations and the legal process” (Canter, 2008).

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- crime pattern theory (Brantingham and Brantingham, 1993), which describes how offenders find their targets while they go about their normal business (e.g. going to and from work, school, etc.). People who do not operate along the routes or near the locations used by offenders will have a lower risk of being victimised, while those who do/are close to them will be at higher risk;
 - social disorganisation theory (Park and Burgess, 1925), which suggests that, owing to a constant residential turnover and net migration, certain areas of the city cannot develop the local social networks responsible for most social control in local communities. As a consequence of the absence/weakening of these networks, and therefore of the social disorganisation affecting the area, higher levels of crime/disorder concentrate in it.

¹³¹ For a more detailed analysis of these statistical tests see Home Office (n.d.-a).

It estimates the most probable area of an offender's residence, as well as his or her characteristics, based on a statistical analysis of the geographical locations of the crimes that he or she has committed. It therefore aims to be a bridge linking science and investigations so as to support the identification of suspects.

The origin of the discipline dates back to the mid-1980s, when the study of the spatial distribution of individual offenders' crimes became a key research topic, especially in the United Kingdom. Nevertheless, some principles had been established well before (in the nineteenth century), in particular by Guerry (1883), who discovered that offenders tended to live in distinct areas of a city and did not travel far to commit crimes (Canter, Youngs, 2008a: 2).

The challenge addressed by geographical offender profiling can be summed up in the so-called "A => C equation", where A are the actions related to the crime (when, where and how it was committed) and C are the characteristics of typical offenders for such crimes, including where they live (Canter, Youngs, 2009: 83).

In order to infer the characteristics of the offender (including his or her criminal history, background, base location and relationships to others) from the actions occurring during the offence, geographical offender profiling is based on models of human spatial activities useful for explaining both criminal and non-criminal actions. In particular, two key qualities of criminal spatial behaviour make it possible to solve the "A => C equation" (Canter, Youngs, 2008a: 4-6):

- the shortness of the journey to the crime, as highlighted by many studies and investigations. This concerns the so-called "distance decay" principle (i.e. the geographic representation of the principle of least effort) according to which people typically exert the minimum effort possible to accomplish tasks, including crime commission (Harries, 1999: 27);

- the fact that many offenders have a base within the area circumscribed by their crimes, and therefore the significance of the home.

Such models of human spatial activities stem from two different theories. The first is the habit learning theory developed by Hull in 1943 which regards learning as the result of habits directly based on experience. The theory of mental mapping, developed by Tolman in 1948, instead envisages the development of internal representations (mental maps) which individuals use to make choices extending beyond their immediate experience. Notwithstanding their differences, both theories share the view that offenders make a choice as to where to commit a crime (Canter, Youngs, 2008a: 13-15).

Based on these theoretical approaches, geographical offender profiling relies on certain assumptions:

- *Location*, i.e. whether crimes occur in separate locations understood as either a physical location or a virtual space;
- *Systematic crime location choice*: crime locations are not randomly chosen; their selection depends, amongst other things, on the mental representations that people have of their surroundings;
- *Domocentricity*: places with which we are familiar exert a great deal of influence over where we go, and this holds true for criminals as well, with the consequence that attention should be paid to the key places (home, workplace, recreation venues) frequented by a person and the paths connecting them (Ibid.: 6-10).

3.2 The role played by statistics in geographical offender profiling

The above-described theoretical approaches and assumptions have been empirically tested by a variety of studies.¹³²

The first practical application was made in the case of the Railway Rapist in London, who murdered 13 women in the period 1975-1980. In this

¹³² Many of these studies are available in Canter, Youngs (2008b).

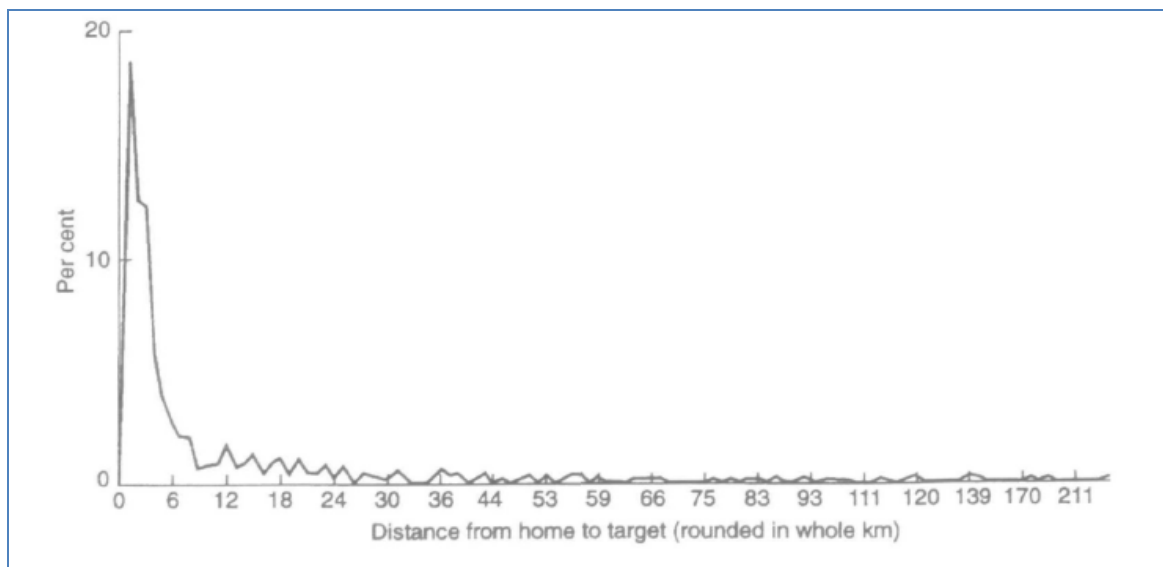
case, the location of the offender's residence was inferred from the geographical distribution of his offences.¹³³

A more recent example is now discussed in detail in order to illustrate the key role played by statistics in the context of this approach. The study taken as an example was conducted in the Netherlands during the 1990s (Van Koppen, Jansen, 1998). It examined the relation between distance travelled and characteristics of robbers and robberies. For this purpose, it used data from 434 robberies on commercial targets for which 585 perpetrators were convicted in the Netherlands in 1992. Data from case files were provided to the courts by the Dutch police.

The key findings of the study are as follows:

First, by using a very simple measure (distance travelled by the offender from home to the target of the robbery), the study corroborated the distance-decay function. It found, in fact, that half of the crimes included in the analysis were committed within 3.5 km of the robber's home (see Figure 1).

Figure 1. Distribution of distances travelled from home to target robberies, rounded to whole kilometres (876 units of analysis)

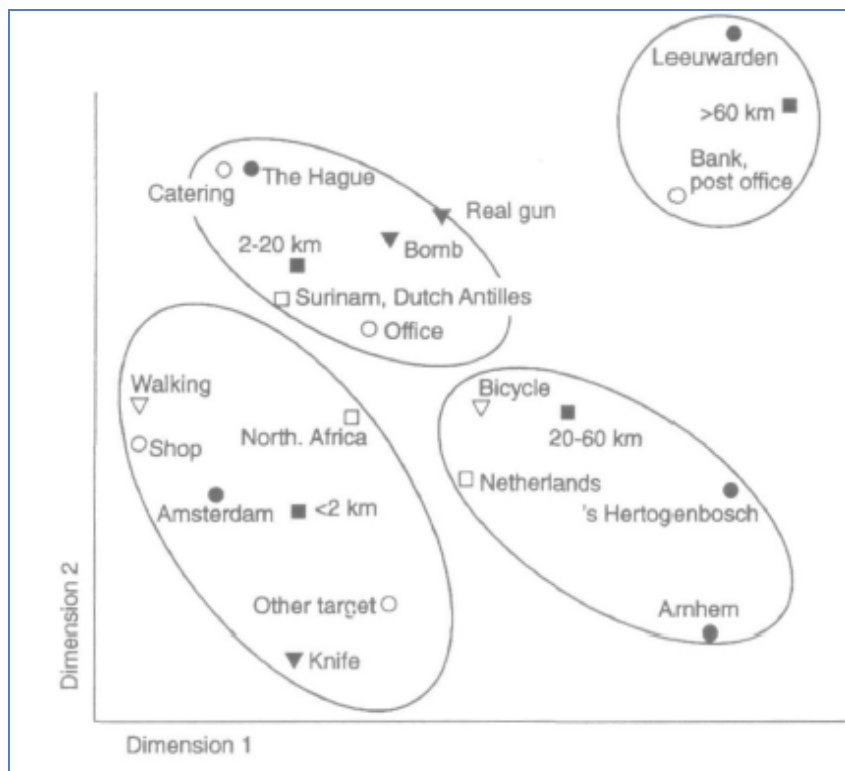


Source: Van Koppen, Jansen (1998).

¹³³ For more on this case, see Kind (2008).

The study also discovered that the distance travelled was related to characteristics of the robberies/thieves and of the targets (see Figure 2). These findings were reached using a statistical technique called HOMALS, i.e. homogeneity analysis by means of alternating least squares. To put it simply and without going into details, suffice it to say that this technique makes it possible to group variables likely to occur together.

Figure 2. Final HOMALS solution in two dimensions



Source: Van Koppen, Jansen (1998).

Hence, for example, Figure 2 shows that:

- shorter trips (less than 2 kilometres) related to robberies in Amsterdam committed on shops and other targets, using a knife, by north Africans arriving on foot;
- by contrast, the longer trips (more than 60 kilometres) were related to robberies in Leeuwarden on banks and post offices.

More general findings derived from the analysis highlighted why some robbers travelled more than others; in particular the authors noted that:

- the more professional the robbery, the further the robber travelled;
- the more difficult a target was to rob, the further the robber travelled;
- foreigners travelled less than native Dutch people, probably because they were less familiar with the areas;
- in more rural areas, targets were less uniformly distributed, so that robbers (had to) travel more.

It is evident that this approach has great potential in operational terms because it could significantly support police officers in profiling offenders.

This study, like others conducted in the context of geographical offender profiling, shows that statistics form the core of such an approach, both with simple graphical representations (like that in Figure 1 above) and with more sophisticated analysis grouping variables (characteristics of the offender/target) likely to occur together.

4. PREDICTING CRIMES: PROSPECTIVE HOT-SPOTTING

4.1 What is prospective hot-spotting and why is it useful to police officers?

A new way to consider hot spots has recently been developed in the United Kingdom. This approach tries to go beyond traditional hot spotting, which has been criticised both because it is merely retrospective and because it is rather inefficient. In fact, it identifies too many targets for criminal activities, all at the same level of risk, and thus has limited operational impact (Bowers, Johnson, Pease, 2004).

In order to overcome these limitations, a new mapping procedure has been developed. It seeks to produce prospective hot spot maps based on prior victimisation. The assumption of this approach is that prior victimisation is an excellent predictor of future risk. A large body of current research

highlights that repeat victimisation is rapid (it follows rapidly after the first crime) and, above all, is predictable. As has been noted, “once victimised, a person or place is more likely to be victimised again than one that has not. Furthermore, the risk of re-victimisation increases the more a person or place has been victimised” (Home Office, n.d.-b). In addition, such predictive power is strong, and greater than that of other variables (Budd, 1999).

The theories behind this approach have been developed within other scientific domains, especially epidemiology, and can be summed up as follows: “a disease is inferred to be communicable if people catch it soon after exposure to a disease agent. Communicability is thus inferred from closeness in space and time of manifestations of the disease in different people” (Johnson, Bowers, 2004: 242).

The questions addressed are the following: is crime communicable exactly like a bacillus? Are those who are closer to a first victimisation event more likely to catch – within a short time from its occurrence – the disease (i.e. be victimised) than those who are distant from it?

This approach may have particular importance from the operational viewpoint. Knowing who/which place was victimised in the past can in fact enable police to improve their predictions of who/what will be the next victim, thus preventing the second (and subsequent) victimisation events. In addition, this could be done rather straightforwardly, considering that police normally collect the data on victims needed by this mapping procedure.

4.2 The role played by statistics in prospective hot-spotting

In order to understand the key role played by statistics in prospective hot-spotting, we now discuss a study on domestic burglary conducted in the UK to examine patterns of burglary victimisation in the county of Merseyside (Johnson, Bowers, 2004). The key questions addressed by the study were the following: do burglaries cluster in time and space? Are houses close to a burglarised house victimised within a short period of time more often than could be expected?

The methodology used involved the gathering of residential burglary data. Data from April 1999 to April 2000 were used (for a total of 1,692 events). Incidents were identified as repeats if they occurred within one year of a previous incident.

Statistical tests were performed to check whether or not space-time clustering was a random occurrence. In particular, two statistical methods were used, and they yielded detailed information concerning clustering at particular times and distances.¹³⁴

The findings confirmed that burglaries do cluster in space and time. In fact, the authors discovered that burglary is communicable: properties within 400 metres of a burgled home are at high risk for up to 1 month.

Such findings provide police officers with useful and detailed information about where and when to focus their preventive efforts immediately after a first victimisation event. This is because, as the authors of the study stress, the burglary event may “trigger preventive action that is not restricted to the *burgled home*” (Ibid.: 237).

This study seems to confirm that optimal foraging theory (a behavioural ecology perspective stating that animals use foraging strategies oriented to maximising rewards and minimising time and effort) holds for criminals as well. After having burglarised a first house, a criminal may decide to burglarise neighbouring houses in order to maximise criminal profits while minimising the related costs (law enforcement risks and time). This is possible because the first burglary has enabled the offender to gather key information both about the single house (security measures, access/exit points, levels of natural surveillance) and about surrounding properties, and more in general about the area (Ibid.: 242).

5. CONCLUSIONS

The intent of this article has not been to deal in detail with the vast array of available statistical techniques that could support the police.

¹³⁴ For more details on such methods (the Mantel z -statistic and the Knox standardised residuals) please refer to Johnson, Bowers (2004: 245-248).

Rather, it has sought to raise awareness among police officers that:

- such techniques are available, and are more important for their activity than they might think;
- that there are tools/software that, in many cases, make these techniques easily accessible;
- and, last but not least, co-operation between the police, on the one hand, and academia on the other (statisticians, criminologists, IT experts), can be extremely helpful in preventing/combating crime.

It is now up to police departments to exploit the full potential of these techniques, tools and partnerships in their daily activities.

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APPENDIX I: SYLLABUS OF THE 1st INTERNATIONAL EXPERT PRACTITIONERS COURSE ON ASSET RECOVERY AND FINANCIAL INVESTIGATION

Module 1: Introduction on Economic and Financial Crime

- Description of the course: methodology and content of the course
- Economic and financial crime
- Concept and characteristics
- Typology of the economic crime: swindles, stock market crime, business crimes, tax fraud, Internet,...
- Generic methodology of investigation
- Context and importance of the money laundering and asset recovery in the economic and financial crime
- Preventive system
Different models of Financial Intelligence Units.
- Repressive system
Penal and procedure legislation. Peculiarities of the different EU countries.
- Police organisation. Judicial Police Units and Prosecutors.
- Judicial organisation. Prosecutors and judges.
- UNCAC / Star Initiative

Module 2: Specific aspects of the national investigation systems on Economic and Financial Crime

- Methodology of investigation
 - Stages of the investigation: gathering and analysis of the information, operational action and analysis of the new data.
 - Starting the investigation: judges and public prosecutors, FIU, international collaboration, own initiative.
 - Definition of the people to be investigated, real and official economic profile, link to the illicit origin,...
- Obtaining and analysis of information:

- Economic and personal assets information (means of getting information according to the source, with/without a judicial order; analysis of each one)
- Police information: police database, tapings, surveillance, informants, registries (documentation and computer evidence), controlled delivery, undercover agent, joint investigation teams,...
- Internet: Google, Facebook,...
- Analysis tools for information: criminal (strategic and operational) analysis
- Economic training to analyse the information.

Module 3: Money laundering

- General aspects of money laundering
 - Concept, stages of laundering, international scope... (in general)
 - Risks for the financial system and economic consequences: destabilising factor of the financial system (speculative movements and uncertainty), loss of credibility, corruption (PEPs), black market,...
- Systems supporting the fight against money laundering in the European and international arena:
 - 1) European scope: legislation
 - 2) International scope:
 - Financial Action Task Force: background, members, management, 40 recommendations...
 - Europol's involvement in the fight against money laundering, Europol's background, members, management of Europol, Introduction to AWF Sustrans and case examples
 - Others: Council of Europe, Interpol, United Nations, EGMONT Group

- European Council: Moneyval, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990), Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005)
- Interpol: background, members, main actions related to the money laundering
- UN: background, members, main actions related to the money laundering (conventions and resolutions of the Security Council)
- EGMONT Group: background, members, main actions related to the money laundering.
- System to fight money laundering in Spain:
 - 1) Differences between prevention and repression
 - Prevention: Notary OCP, SEPBLAC (FIU), Monetary Offences Squad (BDM)
 - Repression: Evolution of the repressive aspect in the Spanish Legislation
 - 2) Investigation of money laundering
- Concept, characteristics, goals,
 - A police, journalistic, sociological, (...) definition
 - Characteristics, multi-offence, autonomous and fraudulent, extraterritoriality...
 - Goals: identification of the personal assets,...
- Typology
 - Using cash, the bank system, exchange offices, companies (personal assets, front companies), fictitious exportations of services and/or assets,...

- Obstacles to obtaining evidence:
 - Front men: different levels (family, organisation members, national and international law firms,...)
 - Information from other jurisdictions. Problems with the International Co-operation: slow LOR, opaque tax havens, offshore centres, ...
 - Evidence problems related to the money laundering crime. Circumstantial evidence.
No definition of previous crime, financial engineering, circumstantial evidence (concomitancy, multiple signs, ...)
- The Judiciary system
 - Lack of training for judges and prosecutors, structure of Investigating Court (different crimes), investigations generating a heavy workload, ...

Module 4: Recovery of criminal assets

- 1) Introduction to Asset Recovery
 - What is it
 - History and necessity
- 2) International and National Standards
 - UN / Council of Europe / Council of the European Union
- 3) Freezing, seizure, confiscation
 - Definition and characteristics
 - Calculation of criminal benefit
 - Net / Gross Principle
 - Extended Confiscation – Lifestyle criminals
 - Non conviction based confiscation
 - National Approaches to asset recovery – experience in some countries (at least Spain, Belgium, UK and Holland)
- 4) Asset Management
 - Definition of assets

- Asset valuation method
 - i. based on experience in several countries
 - Case management tools
 - Disposal of criminal proceeds (prevent re-acquisition by criminals)
- Social re-use of criminal proceeds (UK, Spain)
- Incentive Schemes (UK)
- 5) Europol Criminal Asset Bureau
- o Introduction to operational asset tracing support using Europol including case examples
 - o Europol Financial Crime Information Centre (FCIC) Web site
- 6) Introduction to Camden Asset Recovery Inter-Agency Network (CARIN)
- o Background, members, management and functioning
 - o Other CARIN style networks worldwide
- 7) Introduction to Asset Recovery Offices (AROs)
- Definition and scope AROs
 - Current legislation in the EU
 - Current situation at national level in the EU
 - Model of AROs in the different countries
 - o Structure (multidisciplinary group, etc.)
 - o Legal system
 - Other relevant legislation and jurisprudence at an international level.
 - Means of communication: forms or not. First mention to SIENA
 - o Current situation and future perspectives.
- 8) Exchange of information between the AROs

The exchange of information between AROs allows authorities to be more effective in the fight against organised crime.

In this chapter, we will focus on:

- Processing and analysis of information: type of information exchanged, data processing and analysis.
- SIENA
- Databases: Several (public and private) sources of information are available for consultation. A sample of public sources will be presented.

9) Statistics

- Data availability
- Possibility of comparing data. Creation of categories and indicators.

The level of information exchanged will be measured by gathering the following data:

- Requests received: country of origin, kind of crime, people involved and kind of identified asset.
- Request processed: time to reply, capability of the AROs to facilitate information on specific assets, quality of the received information.

The goal of these data is not the assessment of the AROs' efficiency, but assessing the exchange. A web form/spreadsheet will be developed in order to complete these data.

10) Practical aspects and review of case studies

- Several practical aspects of the operations of an ARO will be highlighted.
- The real-life cases to be shown to the students will be reviewed and discussed before their defence in Module 5.

Module 5: Research Project

Each student will choose a case study and present the results in public at the closing meeting of the CEART Project to be held in Avila (Spain).

The course was led by 25 experts and lecturers from seven EU Member States, and was addressed to 24 students from fifteen countries in Europe. The following subjects were discussed during the face-to-face sessions:

- Stages of the investigation
- Sources of the investigation
- Criminal intelligence analysis
- Operational support devices
- Obstacles when gathering evidence
- Open sources. Practical issues on asset tracing
- Spanish Financial Intelligence Unit
- Civil recovery in Scotland
- Proceeds of crime in Scotland
- Polish asset identification and recovery system
- Asset recovery networks in Europe, Southern Africa and Latin America
- Financial training
 - Introduction to financial accounting
 - Investigation on social networks
 - Decision support techniques;
 - Social Marketing
 - Importance of strategy for the organisation
 - Art appraisals and fakes
 - Statistics to improve efficiency

APPENDIX 2. ARO TEMPLATES

BELGIUM

<i>ARO BACKGROUND</i>	
Creation	COSC was established in 2003 following the example of The Netherlands (BOOM) by means of a law dated 26 March 2003 for the establishment of a Central Office for Seizure and Confiscation and containing provisions for the value-safeguarded administration of seized goods and the enforcement of certain financial sanctions (published in Belgian State Gazette on 02-05-2003).
<i>ARO STRUCTURE</i>	
Nature	The Belgian Central Office for Seizure and Confiscation is a federal institution with a judicial character, since it is established within the Office of Public Prosecutions and is chaired by a judge. It also has liaison officers from the Justice and Finance departments and the police.
Structure and staff	There are currently 37 people working in the COSC: the president and vice-president, 6 liaison officers (from Police, the Judiciary and Finance), and the rest of the people are divided between the Support, Legal, and Financial departments and the Secretariat.
Relationship with the AMO, FIU and CARIN contact point	The COSC has the obligation of managing assets in the case of cash seizures and after disposal of seized assets (the price obtained from the sale minus costs). In addition, the COSC can manage other valuable assets through experts. The management is carried out in consultation with the public prosecutor or the investigating judge.

	<p>Relationship with the FIU: because our FIU is an administrative one, legally we can not co-operate directly with our FIU.</p> <p>COSC is also the contact point for CARIN.</p>	
<i>OPERATION OF THE ARO</i>		
Case management and communication	The COSC uses SIENA for the exchange of information.	
	Notary	No
	Central Land Registry	Yes
	Central Company Registry	Yes
	Central bank account register	No
	Other databases to be highlighted	Police database National register of natural persons Prison register Car register
Statistics	Not available	
Benefits from having an ARO	<ul style="list-style-type: none"> - Centre of expertise - Overview of problems - Single point of contact (both national and international) 	
Best practices	Introduction into our legislation of the possibility, if money is to be returned, to check with State bodies if there are any sums outstanding. Automatic deduction of this amount will follow from the sum to be refunded.	
Things to be improved		

APPENDIX

ARO CONTACT DETAILS	
NAME OF ORGANISATION AND UNIT	<p>Organe central pour la saisie et la confiscation (OCSC) Centraal Orgaan voor de inbeslagneming en de Verbeurdverklaring (COIV) Belgian Central Office for Seizure and Confiscation (COSC) Office of Public Prosecutions Ministry of Justice</p>
HEAD AND CONTACT POINT	<p>President: Francis Desterbeck CARIN and ARO contact point: Mr. Nico Geysen nico.geysen@just.fgov.be</p>
CONTACT DETAILS	<p>Rue aux Laines 66 bte 2 1000 Brussels Tel.: +32 (0) 2 557 78 81 Fax: +32 (0) 2 557 78 80 +32 (0) 2 557 78 79 http://www.om-mp.be/page/165/165/ocsc.html OCSC@just.fgov.be</p>

BULGARIA

ARO BACKGROUND	
Creation or designation	<p>Pursuant to FD 2007/845/JHA of the Council issued on 6 December 2007, the Commission for Establishing Property Acquired from Criminal Activity (CEPACA) and Supreme Cassation Prosecutor's Office have been designated by the Bulgarian government as National Recovery Offices (AROs).</p> <p>A) The Commission for Establishing Property Acquired from Criminal Activity (CEPACA) was established with the adoption of Bulgarian Law on Confiscation in the Favour of the State of Property Acquired through Criminal Activity in 2005.</p> <p>B) Supreme Cassation Prosecutor's Office, "International Legal Assistance" Department</p> <p>According to Art. 8 of the Constitution of the Republic of Bulgaria, the state power is divided into legislative, executive and judiciary. The Prosecution is a part of the judiciary and consists of:</p> <ul style="list-style-type: none"> • General Prosecutor • Supreme Administrative Prosecution Office • Supreme Cassation Prosecutor's Office, including "International Legal Assistance" Department • Six appeal prosecution offices • Twenty-eight district prosecution offices • Five military district prosecution offices • One hundred and twelve regional prosecution offices <p>The Prosecutor General is assisted by three deputies at the Supreme Cassation Prosecutor's Office and a deputy in the Supreme Administrative Prosecution Office.</p>

<i>ARO STRUCTURE</i>	
Nature	<p>A) CEPACA is a specialised, independent government body in charge of identifying proceeds of crimes that fall under certain provisions of the Law, namely: acquisition of property of significant value, for which it could be reasonably presumed that it has been acquired from criminal activity by persons against whom prosecutions have been started, for an exhaustive list of crimes in the Criminal Code, such as terrorism, human and drug trafficking, money laundering or preparations for it, and associations with such aims, fraud, bribery, extortion, embezzlement, smuggling etc., and in some specific cases, even if the prosecution has been terminated or suspended.</p> <p>B) The Supreme Cassation Prosecutor’s Office, including the “International Legal Assistance” Department is a judicial institution.</p> <p>Jurisdiction of the “International Legal Assistance” Department:</p> <ul style="list-style-type: none"> • Letters rogatory / MLA requests • European Arrest Warrants • Transfer of criminal proceedings • Transfer of Sentenced Persons • Extradition to countries outside the European Union • Co-ordination of relationships, interaction and co-operation with Eurojust and the EJM (European Judicial Network) • Operational collaboration and information exchange • Preparation of opinions and proposals on the drafts of international treaties and agreements.
Structure and staff	<p>A) CEPACA is a collegial body consisting of five members. They are each elected and appointed for terms of five years. The Chairperson is appointed by the</p>

	<p>Prime Minister of the Republic of Bulgaria, while the Deputy Chairman and two of the members are elected by the National Assembly and one of the members is appointed by the President of the Republic.</p> <p>The activity of the Commission is carried out with the help of general and specialised administration. The specialised administration is organised in functional and territorial directorates which are directly subordinated to the Commission. The territorial directorates carry out the activity on identifying property acquired, directly or indirectly, from criminal activity.</p> <p>The staff is composed of 168 people.</p> <p>The Supreme Cassation Prosecutor's Office is composed of 10 departments, as follows:</p> <ul style="list-style-type: none"> • "Fighting corruption, money laundering and other crimes of substantial public interest" • "Instance control" • "Judicial and Execution of Sentences" • "International Legal Assistance" • "Administrative" • "Inspection" • "Information analysis and methodological guidance" • "Combating crime against the financial system of the European Union" • "Combating Organised Crime" • "Inter-agency co-operation, monitoring and international projects"
<p>Relationship with the AMO, FIU and CARIN contact point</p>	<p>CEPACA, Republic of Bulgaria is represented in CARIN network by three representatives. Commission for Establishing Property Acquired from Criminal Activity (CEPACA) became a member of CARIN in 2007 and joined the Steering Group in 2008. As a specialised body in charge of proceedings such as</p>

	<p>tracing, identifying, freezing, seizing and forfeiture of criminal assets, CEPACA co-operates closely with CARIN and has actively participated in its work.</p> <p>Relationship with the AMO</p> <p>CEPACA has no powers regarding the utilisation, management and disposal of assets. The current law does not regulate this issue which remains under the general powers of the Ministry of Finance. The new draft law includes provisions regulating their management and the re-use and re-distribution of forfeited assets for social, cultural or any other public needs. The creation of the Asset Management Council with the Ministry of Finance is envisaged and the President of the Council will be the Deputy Minister of Finance. The Council submits forfeited assets to the Council of Ministers to manage these assets in order to donate them for humanitarian purposes or to assign their sale. This provision is very general and there is no exact definition for what type of human/social purposes the forfeited assets will be used.</p> <p>Relationship with the FIU</p> <p>National State Security Agency</p> <p>The Financial Intelligence Directorate (FID) collects, stores, investigates, analyses and discloses financial intelligence under the terms and procedures of the Measures against Money Laundering and Measures against the Financing of Terrorism Act. This institution supplies information with priority in view of the proceedings initiated by CEPACA.</p>
<i>OPERATION OF THE ARO</i>	
Case management and communications	The CEPACA uses SIENA, while the Supreme Cassation Prosecutor's Office uses EJM for information exchange.

Databases	Central land register	Yes (in the case of both AROs)
	Central company register	Yes (in the case of both AROs)
	Central vehicle register	Yes (in the case of both AROs)
	Central bank account register	No (in the case of both AROs)
	Others to be highlighted	Central Population Register and Prosecutor's Register – Yes (CEPACA ARO)
Statistics	As part of the Balkan region, Bulgaria is one of the most requested countries concerning the identification, tracing, seizure and forfeiture of criminal assets. The average of requests is about 300 annually, and the most frequent requesting countries are United Kingdom, Belgium, Denmark, Germany, Poland, Czech Republic, France, Slovakia, Romania, Cyprus, Lithuania, etc.	
Benefits from having an ARO	<p>Bulgaria has benefited from having AROs in several ways:</p> <p>Bulgaria is one of the favourite countries for international organised crime when trying to flee from justice and enjoy the proceeds of their crimes. The work carried out by the AROs helps to recover those assets and avoid new criminal activities carried out by offenders in our country and abroad.</p> <p>Bulgarian AROs have assisted in transmission of seizure and confiscation orders issued by such countries as Denmark, Belgium, Lithuania, etc., implemented in Bulgaria pursuant to FD 2003/577/JHA of the Council and FD 2006/ 783/ JHA of the Council.</p>	
Best practices	A main area of concern for CEPACA is the current	

	<p>legislation on asset recovery and its deficiencies, as we did not have the chance so far to improve on the first and only law of its kind in Bulgaria. The current legislation permits a claim of criminal assets forfeiture by the CEPACA only after a final conviction has entered into force. The Ministry of Justice, Republic of Bulgaria, initiated the adoption of a new law based on the forfeiture of criminal assets. The new law includes provisions regulating the civil confiscation procedure. The CEPACA will be entitled to begin such a procedure immediately after a person has been indicted for a crime that he/she may be presumed to have benefited from. Thus it will be no longer necessary for the Commission to await the end of the three-tier proceedings conducted before the Criminal Courts. Indeed, this new law has to establish an entirely new legal framework for the CEPACA's work. This new law was passed at its first reading in the Bulgarian Parliament, but it has not yet entered into force. Amendments or modifications could occur until it is definitively adopted and put into force, but the provision stipulating civil confiscation is almost certain to be accepted.</p>
<p>Things to be improved</p>	<p>Establishment of central bank account register and easier way for identifying banks accounts and lift bank secrecy, because it is possible for CEPACA to initiate this checking when the persons under investigation are prosecuted or already convicted for one of the crimes listed in art. 3 of the current 2005 Bulgarian Law of Confiscation in Favour of the State of Property Acquired from Criminal Activity.</p> <p>Establishment of an AMO contains clear provisions for the management and the storage of seized and forfeited assets. Rules stipulate the re-use and re-distribution of</p>

	forfeited assets for social, cultural or any other public needs.
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APPENDIX

<i>ARO CONTACT DETAILS</i>	
NAME OF ORGANISATION AND UNIT	Commission for Establishing Property Acquired from Criminal Activity (CEPACA) B) Supreme cassation prosecutor's office, "International legal assistance" Department
HEAD AND CONTACT POINT	A) Head: Ms. Antoinette Tsonkova, Deputy Chair of CEPACA ARO Contact point: Ms. Vladislava Petrova – Legal Expert v.petrova@cepaca.bg B) Head of Asset Recovery Department: Ms. Ivanka Kotorova - Prosecutor, Head of the International Legal Assistance Department
CONTACT DETAILS	A) 112 G.S. Rakovski Str. Sofia, postal code 1000 Tel.: +359 2 9234333, +359 2 9234273 Fax: +35929806886 www.cepaca.bg 2 Vitosha Boulevard Sofia, postal code 1061 Tel.: +359 2 9219 330, +359 2 9370 343 Fax: +359 2 988 58 95 www.mps.prb.bg Contact point: Mrs. Ivanka Kotorova e-mail: mpp_vkp@prb.bg

GERMANY

<i>ARO BACKGROUND</i>	
Creation or designation	<p>Currently there are two AROs in Germany, one for the police and one for the judiciary.</p> <p>The Police ARO was designated in July 2009 by an official nomination of the Federal Ministry of Interior. The Judicial ARO was designated in July 2009 by an official nomination of the Federal Ministry of Justice. The formal notification of both AROs to the secretariat of the Council of the European Union was done through document 12080/09 CRIMEORG 116, dated 15 July 2009.</p> <p>Both AROs complement their work collaborating closely and providing mutual support.</p>
<i>ARO STRUCTURE</i>	
Nature	<p>The Police ARO, as it is established within the Organised Crime Division of the Criminal Federal Police ("<i>Bundeskriminalamt</i>"), has a police nature. The Judicial ARO is within the Federal Office of Justice ("<i>Bundesamt für Justiz</i>") and works as an advisory organ to the police ARO.</p>
Structure and staff	<p>Currently there are twelve people working in the Police ARO: All police officers except for one civilian. The Judicial ARO is represented by one person, who serves as a contact point.</p>
Relationship with the AMO, FIU and CARIN contact point	<p>The FIU, which has a police character, is also within the Organised Crime Division of the Criminal Federal Police (<i>Bundeskriminalamt</i>).</p> <p>There is no centralised AMO in Germany, and asset management is a prosecutor's task. Nevertheless, there are prosecutors and judges specialising in financial investigation.</p>

	<p>The judicial authorities in the states ensure that all large prosecution offices have a specialist in Mutual Legal Assistance.</p> <p>Both AROs are also CARIN contact points.</p> <p>Mr. Jürgen Holderied and Mr. Volker Müller are the contacts for the Police ARO / CARIN, while Till Gut is the representative for the Judicial ARO / CARIN.</p>	
<i>OPERATION OF THE ARO</i>		
Case management and communications	<p>The Police ARO uses SIENA, while the Judicial ARO does not have access to it. However, this is not a problem because only the Police ARO is working operationally.</p>	
Access to databases	Notaries	On-line request of summaries of Notary acts, but only concerning real estate.
	Central company register	The Police ARO has access to this register, but not the Judicial ARO.
	Central land register	Not directly but Police ARO has access to the central land registers of all of 16 federal states (“Länder”).
	Centralised bank account register	a) The Police ARO is able to receive information directly from the centralised bank register about account holders, representatives, opening and closing dates, but not regarding bank account movements or account balances. The latter is possible on request from

		<p>the relevant prosecutor.</p> <p>b) The Judicial ARO has no access to the central bank account register, because it is not operational.</p>
	Others to be highlighted	<p>a. Police ARO has direct access to police information systems in Germany</p> <p>b. Police ARO has direct access to vehicle car and ship registers</p>
Statistics	Police ARO is collating statistics about the information exchanged on the ARO network since 2010.	
Benefits from having an ARO	<p>Because of the geographic and economic situation, cross-border crime and the resulting money laundering plays a major role in Germany. Therefore a lot of incriminated assets from other countries are either invested in Germany or vice versa are transferred to other European countries.</p> <p>The ARO Network significantly improves the exchange of information concerning asset tracing and recovery between the member states of the European Union.</p>	
Best practices	<p>The BKA has a specialist service on financial analysis (“<i>Wirtschaftsprüfdienst</i>”), comprising specialists in company structures and bank account analysis. At the moment 23 persons are working in this service and more than half of them are accountants with a university degree.</p> <p>For financial / money laundering investigations there is also a specialised investigation unit (“<i>Gemeinsame Finanzaermittlungs-gruppe Polizei/Zoll - GFG</i>”), which is composed of police and Customs officials. The idea is to combine the different possibilities of police and</p>	

	<p>Customs for more effective investigations.</p> <p>Due to the fact that ARO, FIU, Wirtschaftsprüfdienst and money laundering investigation units are in the same department (even located in the same building), close co-operation between these units is ensured.</p> <p>No judicial request of mutual assistance is needed to obtain information from the centralised bank account register, only a reference to criminal investigation proceedings.</p> <p>As the Police ARO has direct access to most of the relevant databases, a rather complete answer to a request can delivered quite soon.</p>
Things to be improved	At the moment nothing.

APPENDIX

<i>ARO CONTACT DETAILS</i>	
NAME OF ORGANISATION AND UNIT	<p>a) Police ARO Bundeskriminalamt Wiesbaden SO 35 Thaerstr. 11 65173 Wiesbaden</p> <p>b) Judicial ARO Bundesamt für Justiz - BfJ - Division III1 Adenauerallee 99-103 53113 Bonn</p>
HEAD AND CONTACT POINT	<p>Head of Asset Recovery Department: Mr. Jürgen Schmitt</p> <p>Head of Asset Recovery Department: Dr. Holger Karitzky</p>

CONTACT DETAILS	Thaerstr. 11 65173 Wiesbaden Tel.: +49 (0) 611 / 55 - 16155 +49 (0) 611 / 55 – 14260 Fax: +49 (0) 611 / 55 - 45322 so35@bka.bund.de Adenauerallee 99-103 53113 Bonn Tel.: +49 (0)228 410 – 5310 Fax: +49 (0) 228 410 – 5591 www.bundesjustizamt.de Till.Gut@bfj.bund.de Holger.Karitzky@bfj.bund.de
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HUNGARY

<i>ARO BACKGROUND</i>	
Creation or designation	<p>In order to implement the EU requirements, the Department against Financial Abuse of the Economic Crime Division (National Bureau of Investigation at the National Police Headquarters) carries out the tasks of an ARO, according to Subsection (2) of Section 8 of Hungarian Government Resolution 329/2007 (XII.13) on Police organs and the tasks and competences of the same.</p> <p>The Asset Recovery Office is one of the three sub departments within the Department against Financial Abuse and was set up on 1st July 2009.</p>
<i>ARO STRUCTURE</i>	
Nature	It is a police office made up of different professionals: lawyers, police inspectors, translators, and economists.
Structure and staff	8 persons
Relationship with the AMO, FIU and CARIN contact point	<p>The Hungarian ARO can send requests to the FIU for additional information only in the case of the following criminal offences: acts of terrorism, money laundering, failure to report in connection with money laundering, tax fraud, embezzlement, fraud, fraudulent breach of trust and unauthorised financial service activity. FIU can also send information-type requests in the case of a suspected crime.</p> <p>There is currently no AMO in Hungary.</p> <p>The CARIN contact point is not within the ARO, but it is situated within the same Division (Economic Crime) as the ARO. Co-operation with the contact point is unhindered and fast.</p>

<i>OPERATION OF THE ARO</i>		
Case management and communications	The Hungarian ARO does not use SIENA, because the SIENA system is not installed within the Office, although Hungary has a connection with SIENA at the Hungarian International Law Enforcement Co-operation Centre at the Hungarian Police Headquarters. Hungary uses e-mail for correspondence and, for case management, its own domestic computer programme (called “ROBOCOP”)	
Access to databases (only available for asset tracing offices)	Notaries	Yes, indirectly
	Central Land Registry	Yes, directly
	Central Company Registry	Direct access
	Central bank account register	No, but bank data can be obtained indirectly within the framework of Hungarian legal framework.
	Other databases to be highlighted	National Traffic Authority registers (2 fields are included: luxury boats and aircraft register) Cultural Heritage Register (register of cultural goods, antiquities and valuable work of arts which have to be registered)
Statistics	<p>Statistical data from 2011:</p> <p>We had 28 incoming requests from 12 countries, we recovered 26 vehicles, 17 properties and 8 companies, We had 213 requests from domestic LEAs, we recovered 661 properties, 115 companies, 112 bank accounts and 34 vehicles.</p> <p>These data show an increase compared to 2010.</p>	

<p>Benefits from having an ARO</p>	<p>Continuous, close and quick national and international co-operation with all domestic law enforcement authorities (not only police units, but prosecutions and courts as well).</p> <p>International experiences and best practices can be built into the domestic ARO system through the conclusions of study visits, international conferences and meetings. Recommendations and proposals are drawn up to improve efficiency. The Hungarian ARO has a significant role in preparing legislative modifications. Hungary is a transit country concerning international crimes, and so there are some traces of assets here. An ARO is the best channel to identify them.</p> <p>In connection with the tasks determined in the EU Council Decision and the activity of the Hungarian Asset Recovery Office our Department created a police Intranet website. The main aim of the creation of this internal website is to update Hungarian law enforcement authorities. The website http://intra.police.hu/nnivvh. contains: general information, the Hungarian and international acts concerned, the current issues and the availabilities. The Hungarian ARO plays a great part in national training in asset tracing methodology.</p>
<p>Best practices</p>	<p>As there is direct access to the central Land Register (so-called TAKARNET) within the ARO Office, it is easy and quick to get detailed data of real estate.</p> <p>Although Hungary has no central bank account register, there is a direct link with a department (within the police) designated to send requests electronically to Hungarian banks to obtain bank data.</p> <p>Major advances are seen in asset tracing among domestic police units, meaning ever greater focus.</p>

	The Hungarian ARO has an active, fluent, daily connection with the Central and Eastern European countries (Austria, Germany, Slovakia, Czech Republic, and Poland). The ARO co-operation and official relationships are excellent with these member states.
Things to be improved	<ul style="list-style-type: none"> - Establish an AMO (the first steps have been done towards this) - Establish a central bank register (proposals and recommendations have been sent for this) - Modifying the Act of Hungarian Credit Institutions and Financial Enterprises to extend the crimes in which it is possible to request bank data and provide them to foreign requesters (thus facilitating international co-operation). There are presently only 8 types of crimes for which this is possible.

APPENDIX

<i>ARO CONTACT DETAILS</i>	
NAME OF ORGANISATION AND UNIT	Asset Recovery Office National Bureau of Investigation Economic Crimes Division Department against Financial Abuse
HEAD AND CONTACT POINT	Police Lieutenant Colonel Dr. Attila RIGÓ is the head of the ARO aro@nni.ehc.hu
CONTACT DETAILS	Aradi Street 21-23, PO BOX 314/15 1062 Budapest Tel.: +36-1-462-7413 Fax: +36-1-462-7436 E-mail: aro@nni.ehc.hu

IRELAND

<i>ARO BACKGROUND</i>	
Creation or designation	The Criminal Assets Bureau (CAB) was established in August 1996 (Criminal Assets Bureau Act 1996) as an independent statutory body. It was prompted by the murders of crime reporter Veronica Guerin and Garda Detective Jerry McCabe, which caused a public outcry. New legislation (including the Criminal Assets Bureau Act 1996 and the Proceeds of Crime Act 1996) provides statutory powers aimed at dealing with the increasing levels of serious organised crime in Ireland. These powers were extended in 2005 to include the proceeds of corruption and organised crime committed outside the Republic.
<i>ARO STRUCTURE</i>	
Nature	The CAB has a multi-agency collaborative approach to tackling serious organised crime and corruption.
Structure and staff	The CAB is composed of officers from the Garda Síochána, commissioners from the Revenue Service, Customs and civil servants from the Department of Social Protection. There are 6 investigation teams, which are supported by a legal officer and the Bureau Analysis Unit, which incorporates Forensic Accountants, Financial Analysts and also Forensic Computer Analysts. The CAB also has trained divisional asset profilers to identify suitable targets from their local criminal fraternity and they can nominate these individuals to the central unit.
Relationship with the AMO, FIU and CARIN	The CAB is also a CARIN contact point. The Garda function within the CAB maintains liaison with all other Garda sections including the FIU and

contact point	exchanges information and intelligence between these units There is no designated AMO. The CAB manages all assets it seizes through the court appointed receiver, who is always the Bureau Legal Officer	
<i>OPERATION OF THE ARO</i>		
Case management and communications	The tool used for managing the cases is “CABis”. This tool is not connected to any computer system or Internet in order to achieve the maximum level of security. Requests for information are exchanged directly with the CAB. The CAB has proposed and plans to establish an exchange through SIENA.	
Access to databases	Notaries	No
	Central bank account register	No
	Central land register	Yes
	Central company register	Yes
Statistics	The CAB keeps a record of all ARO requests received and sent under the following headings: Requesting Country, Officer requesting, date received and date reply sent.	
Benefits from having an ARO	Its sets a statutory obligation on EU member states to share intelligence with other AROs in relation to the tracing of criminal assets	
Best practices	The Criminal Assets Bureau can be described as an example of best practice for asset recovery and shows how good collaboration and legislation can be effective. In order to achieve the best results the different agencies must work together without barriers preventing disclosure of information. In addition to this, the legislation must be exploited to its full potential.	

Things to be improved	<p>To ensure that all member states establish an ARO in their country. Where necessary a second ARO should be established</p> <p>A simplified form for requests and exchange of information should be agreed to make it easier to identify the person(s) under investigation and the information required</p>
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APPENDIX

<i>ARO CONTACT DETAILS</i>	
NAME OF ORGANISATION AND UNIT	Criminal Assets Bureau (CAB)
HEAD AND CONTACT POINT	<p>Head: Eugene Corcoran, Detective Chief Superintendent</p> <p>Contact point: Detective Inspector Tom Matthews</p>
CONTACT DETAILS	<p>Harcourt Square 2 Dublin Tel.: 01-6663205 Fax: 01-6666296 cbo@cab.ie</p>

ITALY

<i>ARO BACKGROUND</i>	
Creation or designation	<p>In order to implement the Council Decision 2007/845/JHA, the Italian government designated the International Police Co-operation Service, established in 2000, as the Italian ARO.</p> <p>This appointment was made through a Designation Act in May, 2011.</p> <p>This service comprises 5 divisions, and the ARO tasks are carried out by the Operations Room, which is in Division 2.</p>
<i>ARO STRUCTURE</i>	
Nature	<p>The ARO has a police nature, since it is established within a police service.</p> <p>The International Police Co-operation Service is a joint forces service: Carabinieri, Polizia di Stato, Guardia di Finanza, Polizia Penitenziaria and Corpo Forestale dello Stato.</p>
Structure and staff	<p>15 people work for the ARO, although depending on the type of request people from other groups of the International Police Co-operation Service could work on the ARO request.</p>
Relationship with the AMO, FIU and CARIN contact point	<p>The Italian ARO has no links with the FIU, since the Financial Intelligence Unit depends on the Bank of Italy. There is no direct link between the ARO and the AMO. The AMO has only a close link with the judicial and prosecuting authorities.</p> <p>There are two CARIN contact points in Italy, one from the Police, who is an officer of the Guardia di Finanza working in the International Police Co-operation Service, and one prosecutor from the Anti-Mafia Prosecution Office.</p>

<i>OPERATION OF THE ARO</i>		
Case management and communications	The Police ARO mainly uses e-mail, although SIENA is also used when the ARO receives the request through this system.	
Access to databases	Notaries	A centralised database does not exist. But we can query our database of land register data and discover which province to investigate on “Conservatoria dei Registri Immobiliari” where we can find overt acts, mortgage deeds, inheritance, donations, foreclosures, seizures, transfers, transcriptions and the amounts.
	Central company register	Yes. (Companies, Partners, Administrators, Addresses, shares, amounts, ...)
	Central land register	Yes. The DB of the Agenzia del Territorio (Land Agency), in charge of cadastre services.
	Centralised bank account register	NO. Guardia di Finanza and Direzione Investigativa Anti-Mafia (Counter Mafia Directorate) have direct access to this DB. Other Police/LE Agencies must have a warrant by a prosecutor to query the “Anagrafe dei Rapporti”. ARO can query the Anagrafe Tributaria (tax and fiscal information)
	Others to be highlighted	Vehicle Register, Police records, mobile phones, ... INPS DB: (social security,

		welfare, national insurance for public and private workers) ANIA: vehicle insurance register NO DIRECT ACCESS to Aviation / Maritime register (aircraft / boats).
Statistics	The ARO does not prepare accurate statistics.	
Benefits from having an ARO	ARO will improve and facilitate information sharing, trust building and networking among the Agencies in charge of the investigation on financial and economic matters among Member States.	
Best practices	Reuse of confiscated assets Molecula project	
Things to be improved		

APPENDIX

ARO CONTACT DETAILS	
NAME OF ORGANISATION AND UNIT	Central Directorate of Criminal Police International Police Co-operation Service
HEAD AND CONTACT POINT	Roberto Romano Head of the Italian ARO aroitalia@dcpc.interno.it
CONTACT DETAILS	NCB Roma Via Torre di Mezzavia, 9/ 121 00173 Rome (Italy) Phone: +39 06 46542781 Fax: +39 06 46542526

THE NETHERLANDS

ARO BACKGROUND	
Creation or designation	(ARO). (Bureau Ontnemingswetgeving Openbaar Ministerie) BOOM (Criminal Assets Deprivation Bureau). Established in 1994, and re-structured in 2006.
ARO STRUCTURE	
Nature	The core structure of the ARO, designated as contact point for Asset Recovery Offices is part of the BOOM which is the Recovery Bureau of the <u>Prosecution Service</u> . The ARO is an administrative office within the BOOM.
Structure and staff	<p>The staff are mainly international legal advisors (3), and all the personal of BOOM (90 people) have the support of and work jointly with:</p> <p>Police Offices (The ARO contact point is in The Hague Police Station).</p> <p>The Centraal Justitieel Incassobureau (CJIB) translates as the Central Fine Collection Agency, an implementing organisation of the Dutch Ministry of Security and Justice. Its tasks include the collection of fines for traffic offences, <u>financial penalties imposed by the Court and proposals for out-of-court settlements of fixed penalties from the police and the Prosecution Service as a means to avoid further criminal proceedings</u>.</p> <p>Asset tracers from the Prosecutor Office and Police Agencies. IRCs (International Assistance Centres) There is one at national and six at regional level. The ARO also participates in this structure.</p> <p>A multidisciplinary structure flexible enough to combine the knowledge and support form different experts.</p>

Relationship with the AMO, FIU and CARIN contact point	The ARO works on a daily basis with the AMO, the above mentioned CJIB. The AMO follows the instructions of the Prosecution Service regarding the assets they manage. They cannot sell the assets without the authorisation of the Prosecutor or the Judge. The rule is that no asset can be sold before judgement; nevertheless, assets can be sold in the case of perishable assets or articles than can suffer a depreciation (food and cars). They also need the authorisation of the prosecutor and the adoption of appropriate measures to prevent assets from being returned to offenders.
<i>OPERATION OF THE ARO</i>	
Case management and communications	SIENA is not used by this ARO. They use e-mail for communications with other AROs.
Access to databases	The ARO in the Netherlands is located within a Police Facility in The Hague and it works together with the IRC in The Hague. On the basis of the information from the police, ARO can provide information about: Real property, Vehicles, Boats, Companies, Police Registries. There is no Central Bank Registry
Statistics	BOOM confiscated assets for a value of € 663 million in 2010. Half of the assets were real property.
Benefits from having an ARO	During the investigation phase, foreign authorities are often requested to conduct investigative acts by way of international Requests for Mutual Legal Assistance. Police requests for Mutual Legal Assistance and other international requests can be submitted to the ARO and advice can be given on the international aspect of cases.
Best practices	“Parallel financial investigation” that eventually implies a report to recover assets including the calculation of

	what a suspect “earned” as a result of his or her criminal activities. CJIB as AMO
Things to be improved	

APPENDIX

<i>ARO CONTACT DETAILS</i>	
NAME OF ORGANISATION AND UNIT	(Bureau Ontnemingswetgeving Openbaar Ministerie) BOOM (Criminal Assets Deprivation Bureau)
HEAD AND CONTACT POINT	Paul Notenboom Deputy Director Criminal Assets Deprivation Bureau Public Prosecution Service Head of ARO
CONTACT DETAILS	IRC/ARO BOOM P.O. Box 264 2501 CG The Hague Tel.: 0031 70-424 1680 (1682 or 1670) Fax: 0031 70- 424 1671 e-mail: irc.aro.boom@om.nl

POLAND

<i>ARO BACKGROUND</i>	
Creation or designation	<p>Asset recovery Department was established within the National Police Headquarters to serve as Polish Asset Recovery Office on 5 December 2008, prior to being given legal status as the Polish ARO on the basis of the Act of 16 September 2011, on exchanging information with EU law enforcement authorities. This act entered into force on 1 January 2012. The Department is situated within the structures of Criminal Investigation Bureau.</p>
<i>ARO STRUCTURE</i>	
Nature	As it is established within the National Police Headquarters the ARO has a police nature.
Structure and staff	<ul style="list-style-type: none"> • Currently there are twelve people working in the ARO: the head of the ARO, seven police officers, three civilian staff members and one secretary. • With regard to activities performed within the ARO, civilian staff have the same powers as police officers.
Relationship with the AMO, FIU and CARIN contact point	<ul style="list-style-type: none"> • There is currently no AMO in Poland, so the prosecutors and then the court are in charge of this issue until judgement, and then the Ministry of Finance assumes this task. • The General Inspectorate for Financial Information (Ministry of Finance) serves as the Polish FIU. The exchange of information with the police forces is good. The head of the Polish ARO has authorisation to address the Polish FIU when SARs/STRs are involved. • The CARIN contact point is the head of the Asset Recovery Office.

<i>OPERATION OF THE ARO</i>		
Case management and communications	<p>ARO is supposed to use SIENA since February 2012 (technical connections are still in progress). For now, fax and email are used for information exchange. In specific situations the support of Liaison Officers is required.</p> <p>On a daily basis, the ARO co-operates with contact points in the Ministry of Finance, General Prosecutor's Office, Internal Security Agency and Central Anticorruption Bureau.</p>	
Access to databases	Central land register	Yes
	Central company register	Yes
	Central bank account register	No
	SARs/STRs	Limited (via Ministry of Finance)
	Central mortgage register	Yes
	Central population register	Yes
	National Court Register	Yes
	Central vehicle register	Yes
	Aeroplane register	Yes
	Boat registers (several)	Yes
Police databases	Yes	
Statistics	<p>ARO receives tens to hundreds of requests per year. The number of requests is constantly increasing.</p> <p>Polish ARO is most often requested by: <i>Great Britain, Czech Republic, Germany and Belgium</i> whereas the requests from Polish ARO are mostly directed to: <i>Germany, Great Britain, Cyprus and Spain</i>.</p>	

Benefits from having an ARO	<ol style="list-style-type: none"> 1) ARO serves as the contact point for outgoing and incoming requests. 2) It co-operates with the national authorities and institutions. 3) The information is exchanged promptly.
Best practices	<ol style="list-style-type: none"> A) Training and workshops on asset recovery: <ol style="list-style-type: none"> a) elaborating the common asset recovery programme of police training carried out by Police Schools b) participation as instructors in regional police unit training – over 1800 people trained c) training within projects co-financed by the European Commission B) Guidebook on asset recovery containing: <ol style="list-style-type: none"> 1) List of available databases: Databases containing information about assets, data scopes, legal basis for demanding and acquiring information, contact points list 2) Practical guidelines: Preliminary investigation, criminal investigation, embargo of property, seizure of money, vehicles, etc., examples of requests and forms. 3) Co-operation between institutions at national level in the creation of the asset recovery system.
Things to be improved	<p>Central bank accounts register establishment</p> <p>Access to fiscal secrecy for the needs of international co-operation</p>

APPENDIX

<i>ARO CONTACT DETAILS</i>	
NAME OF ORGANISATION AND UNIT	Asset Recovery Office Criminal Investigation Bureau National Police Headquarters
HEAD AND CONTACT POINT	Rafal Wozniak
CONTACT DETAILS	Pulawska St. 148/150 02-624 Warsaw Tel.: +48 22 60 153 37 +48 22 60 153 06 Fax: +48 22 60 153 86 wom-aro@policja.gov.pl

SCOTLAND

<i>ARO BACKGROUND</i>	
Creation	<p>The Scottish Crime and Drug Enforcement Agency (SCDEA), specifically the Scottish Money Laundering Unit (SMLU) is the ARO for Scotland.</p> <p>Established in April 2001 as Scottish Drug Enforcement Agency (SDEA), it adopted the name Scottish Crime and Drug Enforcement Agency in May 2006, pursuant to the Police, Public Order and Criminal Justice (Scotland) Act 2006.</p> <p>The SCDEA was designated as ARO in October 2008.</p> <p>There is no UK law.</p>
<i>ARO STRUCTURE</i>	
Nature	The SCDEA is part of the Scottish Police Services Authority (SPSA), therefore it has a police nature.
Structure and staff	<p>The SCDEA delivers a number of specialist services, including the Scottish Witness Liaison Unit (SWLU), the Scottish Money Laundering Unit (SMLU), SCDEA e-Crime and the Technical Surveillance Group (TSG).</p> <p>The main function of the SCDEA is the investigation of Serious Organised Crime affecting Scotland both nationally and internationally.</p> <p>There are 3 people belonging to the SMLU working on the functions of the ARO.</p>
Relationship with the AMO, FIU and CARIN contact point	<ul style="list-style-type: none"> • The Scottish Money Laundering Unit acts as an FIU. • There is no need for an AMO in Scotland since the value of the confiscation is placed on the criminal and he is provided with time to meet the value of this confiscation. Crown does not dispose of assets seized and there are no facilities for asset management. • There are two are CARIN contact points within SCDEA.

<i>OPERATION OF THE ARO</i>		
Case management and communications	The SMLU uses SIENA to receive/send the information requests.	
Access to databases	Notaries	No
	Central Land Registry	Yes
	Central Company Registry	Yes
	Central bank account register	No
	Other databases to be highlighted	Vehicle register
Statistics	Scotland receives an average of 30 requests a year for information and the majority of these requests come from Spain. The requests have increased year on year.	
Benefits from having an ARO	<p>Scotland has benefited from having an ARO in several ways:</p> <ol style="list-style-type: none"> 1) Direct streamlined contact between respective member states. This has assisted in an improvement in relationships with these member states. 2) Identification of assets which can be recovered following conviction. 	
Best practices	<p>Civil confiscation or non-conviction-based forfeiture is a very good practice to disrupt criminal organisations, since it helps law enforcement agencies go further where prosecution is not possible or has failed.</p> <p>The civil recovery regime in the UK is set out in Part 5 of POCA. For the purposes of Part 5 of the POCA, the enforcement authority in Scotland is the Scottish Ministers, although in fact the Civil Recovery Unit is in sole charge of implementing their functions.</p>	

Things to be improved	<ul style="list-style-type: none"> • Greater awareness of the ARO throughout Scotland and the benefits that it can provide • Better awareness and use of legislation available to confiscate criminal proceeds
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APPENDIX

ARO CONTACT DETAILS	
NAME OF ORGANISATION AND UNIT	<p>Scottish Crime and Drug Enforcement Agency (SCDEA)</p> <p>Scottish Money Laundering Unit (SMLU)</p>
HEAD AND CONTACT POINT	<p>Head of Asset Recovery Department: Detective Inspector Garry Deans aro.scotland@scdea.pnn.police.uk garry.deans@scdea.pnn.police.uk</p>
CONTACT DETAILS	<p>Osprey House, Inchinnan Road Paisley (Scotland) PA3 2RE Tel.: 0044 141 302 1080 Fax: 0044 141 302 1090 http://www.sdea.police.uk/</p>

SPAIN

<i>ARO BACKGROUND</i>	
Creation	In order to implement Council Decision 2007/845/JHA, of 6 December 2007, the Organised Crime Intelligence Centre (Centro de Inteligencia contra el Crimen Organizado, CICO) and the Special Anti-Drug Prosecution Office (Fiscalía Especial Antidroga) were designated as the Spanish contact points. This appointment was established in document 7811/09 CRIMORG 42 of 19 March 2009.
<i>ARO STRUCTURE</i>	
Nature	<p>The CICO, which answers to the Ministry of Home Affairs) has an administrative character, while the Special Anti-Drug Prosecution Office is judicial in nature, as it reports to the Ministry of Justice.</p> <p>It is important to clarify that although the CICO is one of the two Spanish contact points in compliance with Council Decision 2007/845/JHA, there are two asset tracing offices to support the CICO in this field:</p> <ol style="list-style-type: none"> a) Asset Tracing Office of the National Police Force (“Oficina de Localización de Activos” – OLA) b) Technical Unit of the Civil Guard Judicial Police (“Unidad Técnica de Policía Judicial” – UTPJ) <p>The CICO acts as an intermediary and redistributes information requests between these two offices in charge of identifying and tracing assets. After obtaining this information the reply is sent to the CICO, which finally sends it on to the requesting country.</p>
Structure and staff	<ul style="list-style-type: none"> • CICO: at the moment there are 3 persons dedicated to the exchange of information. • In the Special Anti-Drug Prosecution Office there is only one person dedicated to this issue.

	<ul style="list-style-type: none"> • Asset Tracing Office: 8 police officers (3 Inspectors and 5 police officers), although just two are dedicated to identifying and tracing assets. This is an operational group belonging to section one of the Money Laundering Squad, within the Central Economic Crime Unit of the National Police Force. • Technical Unit of the Judicial Police: The group of Economic Crimes, within the Civil Guard Criminal Analysis Department, comprises 8 people, although they are not dedicated exclusively to asset recovery. 	
Relationship with the AMO, FIU and CARIN contact point	<ul style="list-style-type: none"> • Currently there is no AMO in Spain so the prosecutors are in charge of this issue. In future, the new ARO will have the powers of an AMO as well. • The FIU (called SEPBLAC, the Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences) is another administrative institution of the Ministry of Finance. • There are two CARIN contact points: one is within the National Police Force, in the Central Economic Crime Unit, and the other in the Special Anti-Drug Prosecution Office. 	
<i>OPERATION OF THE ARO</i>		
Case management and communications	The CICO uses SIENA in order to receive/send information requests, whereas the Special Anti-Drug Prosecution Office uses e-mail.	
Access to databases (only available for asset tracing offices)	As explained before, the CICO has the support of the OLA and the UTPJ, since the CICO has no direct access to any of the following databases. The Special Anti-Drug Prosecution Office is also unable to access the following databases.	
	Notaries	On-line requests for summaries of Notary acts and protocols.

	Central Land Registry	The requests are made on-line, and the answer is received in a very short period of time
	Central Company Registry	It is the same situation as for the Central Land Registry
	Central bank account register	The new Anti- Money Laundering Law (Law 10/2010, of 28 April) established this register, although it hasn't been implemented for the moment. An authorisation from the judge or the prosecutor will be required to obtain information from this register.
	Other databases to be highlighted	Vehicle register Ship register
Statistics	Spain is one of the most requested countries concerning the identification and tracing of assets. The annual number of requests averages about 400 and the most frequent requesting countries are United Kingdom, Belgium, The Netherlands and France.	
Benefits from having an ARO	<p>Spain has benefited in several ways:</p> <p>a) Spain is one of the favourites countries for international organised crime when trying to flee from justice and enjoy the proceeds of their crimes. The work carried out by the ARO helps recover those assets and avoid further criminal activities by offenders in our country.</p> <p>b) Spain has traditionally been a port of entry for drugs into Europe. The Special Anti-Drug Prosecution</p>	

	Office is a good instrument to fight against this situation and the work carried out by this office can be used in asset recovery processes.
Best practices	<ul style="list-style-type: none"> • Notary database: It is possible to have on-line access to Notary documents, using a card with a digital signature. Notaries are not aware of this information request, which is an advantage for the asset tracing process. • National Plan on Drugs: The fund of the National Plan on Drugs was established in order to manage goods coming from drug trafficking and related crimes, which are added to this fund under the ownership of the State after the judgement is handed down. It is notably for social reuse since the money goes, for instance, to drug prevention programmes, and the police can also use some of these assets under certain circumstances.
Things to be improved	<ul style="list-style-type: none"> • More direct access to the central bank account register, which can only be accessed with authorisation from a judge or a prosecutor. • Establishment of an ARO bringing together all powers, including the management of assets.

APPENDIX

ARO CONTACT DETAILS	
NAME OF ORGANISATION AND UNIT	<ol style="list-style-type: none"> 1) Organised Crime Intelligence Centre (CICO) Office of the Secretary of State for Security Ministry of the Interior 2) Special Anti-Drug Prosecution Office Ministry of Justice 3) Asset tracing Office (OLA) Central Economic Crime Unit National Police Force

	<p>4) Technical Unit of the Judicial Police Judicial Police Headquarters Civil Guard</p>
<p>HEAD AND CONTACT POINT</p>	<p>1. The Director of CICO is Mr. José Luis OLIVERA SERRANO 2. Prosecutor Maria Dolores LÓPEZ SALCEDO is the contact person for the Special Anti-Drug Prosecution Office. 3. OLA Police Inspector José Manuel Colodrás Lozano 4. UTPJ Captain Juan Mancebo Hidalgo</p>
<p>CONTACT DETAILS</p>	<p>1) Calle Recoletos, 22 28001 Madrid Tel.: + 34 91 537 27 11 / 33 Fax + 34 91 537 27 47 cico@mir.es</p> <p>2) Calle Génova, 20, 7ª planta 28004 Madrid Phones: + 34 91 397 33 88 + 34 91397 32 45 Fax: + 34 91 3973240 dolores.lopez@fiscalia.mju.es</p> <p>3) Calle Julián González Segador, s/n 28043 Madrid Phones: +34 91 582 41 28 / 41 29 Fax: +34 91 582 2380 josemanuel.colodras@policia.es cgpj.bbcola@policia.es</p> <p>4) Calle Príncipe de Vergara, 246 28016 Madrid Tel.: +34 91 541 61 21 Fax: +34 91 514 62 84 utpj-reg@guardiacivil.es</p>

UNITED KINGDOM

<i>ARO BACKGROUND</i>	
Creation or designation	<p>The Serious Organised Crime Agency (SOCA) is a non-departmental public body of the Government of the United Kingdom under Home Office sponsorship. SOCA is a national law enforcement agency, established as a body corporate under Section 1 of the Serious Organised Crime and Police Act 2005, which operates within the United Kingdom and collaborates (through its network of international offices) with many foreign law enforcement and intelligence agencies. The UK Asset Recovery Office and UK CARIN Office were placed within SOCA in 2008.</p>
<i>ARO STRUCTURE</i>	
Nature	<p>The Agency was formed on 1 April 2006 following a merger of the National Crime Squad, the National Criminal Intelligence Service, the National Hi-Tech Crime Unit (NHTCU), the investigative and intelligence sections of HM Revenue & Customs on serious drug trafficking, and the Immigration Service's responsibilities for organised immigration crime. SOCA operates with greater powers in England and Wales than in Scotland and Northern Ireland and as such works with the Scottish Crime and Drug Enforcement Agency and the Organised Crime Task Force (Northern Ireland), which share some of its functions in their respective jurisdictions</p>
Structure and staff	<p>SOCA has around 4,000 officers worldwide. SOCA is a non-departmental public body, led by a Director General (DG). The DG is responsible for SOCA operations and administration. SOCA is governed by a Board comprising the executive team, led by the DG, plus six non-executive members including the Chair.</p>

	The UKARO is a department within SOCA. It is located within the UKFIU. It has close working relationships with the UKFIU Egmont team, and works alongside many other departments within SOCA.	
Relationship with the AMO, FIU and CARIN contact point	<p>Because the UKARO is located as a branch of the UKFIU, it has close working relationships with the UK Egmont team. Within the UKFIU, the UKARO is also able to analyse UK suspicious activity reports (SARs) to locate assets that are described within SARs.</p> <p>The UK does not have a central AMO. Instead, the UK prosecutors and UK Crown Prosecution Service Proceeds of Crime Unit are responsible for applying for confiscation of criminal assets. It is also possible in some cases to appoint receivers to manage the property before permanent confiscation and/or sale.</p>	
<i>OPERATION OF THE ARO</i>		
Case management and communications	The UKARO uses SIENA for information exchange. There is access to the secure e-mail systems of our SOCA liaison officers, or through Egmont Secure Web.	
Access to databases	Notaries	No
	Central bank account register	No – in the UK there is no central bank account register. However, we may be able to locate intelligence on bank accounts
	Central land register	Yes
	Central company register	Yes
Statistics	<p>2010 – 8 CARIN received, 42 ARO received</p> <p>2011 – 15 CARIN received, 55 ARO received</p>	
Benefits from having an ARO	The work carried out by the UKARO has helped to trace and recover assets and avoid new criminal activities by offenders in our country.	

Best practices	
Things to be improved	<p>Intelligence should be suitably sanitised and securely transmitted. Every request should have a mandatory link to the UK.</p> <p>No request should be a fishing exercise, where there is no previous suspicion to crime connected to the UK.</p>

APPENDIX

<i>ARO CONTACT DETAILS</i>	
NAME OF ORGANISATION AND UNIT	SERIOUS ORGANISED CRIME AGENCY ARO UK
HEAD AND CONTACT POINT	Head: Barry Ellis
CONTACT DETAILS	Tel.: +442072388636 Fax: +442079830278 Email: ukaro@soca.x.gsi.gov.uk



CNP

	 <p>GOBIERNO DE ESPAÑA</p>	<p>MINISTERIO DEL INTERIOR</p>	<p>DIRECCIÓN GENERAL DE LA POLICÍA</p> <p>COMISARÍA GENERAL DE POLICÍA JUDICIAL</p>
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