



**CARDS Regional Police Project in South-eastern Europe**

## **Overview of legislation for the confiscation of proceeds of crime in South-Eastern Europe**

**Prepared by  
Robert Golobinek  
Strasbourg, 2007**

## Contents

<b>1</b>	<b>Introduction</b> .....	<b>4</b>
<b>2</b>	<b>Country profiles</b> .....	<b>6</b>
2.1	ALBANIA – COUNTRY PROFILE .....	6
2.1.1	Existing legislation.....	6
2.1.2	Extended Confiscation .....	7
2.1.3	Drafting the Legislation.....	8
2.1.4	Institutions .....	9
2.1.5	Conclusions.....	9
2.1.6	General overview .....	11
2.2	BOSNIA AND HERZEGOVINA.....	15
2.2.1	Existing legislation.....	15
2.2.2	Extended Confiscation .....	17
2.2.3	Drafting the legislation.....	18
2.2.4	Institutions .....	18
2.2.5	Conclusions.....	19
2.2.6	General overview .....	20
2.3	CROATIA – COUNTRY PROFILE .....	22
2.3.1	Existing legislation.....	22
2.3.2	Extended confiscation .....	24
2.3.3	Drafting the legislation.....	25
2.3.4	Institutions .....	25
2.3.5	Conclusions.....	26
2.3.6	General overview .....	27
2.4	“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” – COUNTRY PROFILE .....	30
2.4.1	Existing legislation.....	30
2.4.2	Extended confiscation .....	32
2.4.3	Drafting the legislation.....	33
2.4.4	Institutions.....	33
2.4.5	Conclusions.....	34
2.4.6	General overview .....	36
2.5	KOSOVO – PROJECT AREA PROFILE .....	38
2.5.1	Existing legislation.....	38
2.5.2	Extended confiscation .....	41
2.5.3	Drafting the legislation.....	41
2.5.4	Institutions .....	41
2.5.5	Conclusions.....	42
2.5.6	General Overview .....	44
2.6	MONTENEGRO – COUNTRY PROFILE .....	46
2.6.1	Existing legislation.....	46
2.6.2	Extended confiscation .....	46
2.6.3	Drafting the legislation.....	47
2.6.4	Institutions .....	47
2.6.5	Conclusions.....	47
2.6.6	General Overview .....	48
2.7	SERBIA – COUNTRY PROFILE .....	50
2.7.1	Existing legislation.....	50
2.7.2	Extended confiscation .....	52
2.7.3	Drafting the legislation.....	52
2.7.4	Institutions .....	53
2.7.5	Conclusions.....	53

2.7.6	General Overview .....	54
<b>3</b>	<b>International Standards</b> .....	<b>56</b>
3.1	INTERNATIONAL LEGAL INSTRUMENTS .....	56
3.2	COMPARATIVE OVERVIEW .....	58
3.2.1	The Netherlands.....	58
3.2.2	Denmark .....	59
3.2.3	Germany .....	60
3.2.4	Ireland.....	60
3.3	RELATION TO THE HUMAN RIGHTS OBLIGATIONS .....	63
<b>4</b>	<b>Conclusions</b> .....	<b>65</b>

For additional information please contact:

Economic Crime Division  
Directorate General of Human Rights and Legal Affairs  
Council of Europe

Tel +33-3-9021-4506  
Fax +33-3-8841-3955  
Email alexander.seger@coe.int

The opinions expressed in this technical report do not necessarily reflect official positions of the Council of Europe or of the European Commission

## 1 Introduction

Confiscation of the proceeds of crime is an efficient tool to combat serious and organised crime. Nevertheless, the implementation of international standards and, moreover, the implementation of existing legal provisions in practice still pose challenges for many countries in Europe.

One of the outputs of the CARDS Regional Police (CARPO) project in South-eastern Europe was to tackle the issue of financial investigation aimed at the confiscation of the proceeds of crime from legal, institutional and operational perspectives.

The purpose of this overview is to present existing legislation in the countries which participated in the CARPO project (Albania, Bosnia and Herzegovina, Croatia, "the Former Yugoslav Republic Of Macedonia", Serbia [including Kosovo], and Montenegro) in the field of identification, tracing (financial investigation), freezing and seizing (temporary measures) and confiscating proceeds of crime, with particular emphasis on extended confiscation, from the perspective of international standards.

All countries have the legislation in place that allows for the identification, tracing, seizing and confiscation of proceeds of crime, with some specific obstacles which will be described later.

The main deficiency is the absence of services (and provisions) for managing seized and confiscated proceeds and the absence of provisions related to extended confiscation. The lack of implementation of existing legislation in practice also results in the absence of data gathering and proper databases on financial investigation, temporary and final confiscation. This results in an lack of statistics, which would have permitted strategic analysis.

The legislation for extended confiscation is implemented only in Albania; legal provisions also exist in Bosnia and Herzegovina and Croatia, where they are (still) not used in practice. The reversal of burden of proof on origin of the property is always related to the person who is found guilty of a crime, where his property exceeds his legal (reported) income.

In the transition countries with developing democracy, rule of law and economic systems (unemployment, financial and banking systems, cash-based economy, obsolete databases on property, land registers, etc.), the possibility of extended confiscation, properly balanced and limited in line with human rights standards, is even more important in order to efficiently combat illegal enrichment gained by criminal activities.

Extended confiscation is promoted by many international legal instruments and is regulated and efficiently implemented in some European countries.

The meaning of extended confiscation<sup>1</sup> for the purpose of this overview should be understood as a measure, which allows confiscation (and seizure) of the property of the convicted person, when it can be assumed that it derives from criminal offences (and/or is disproportionate to legally reported incomes) and the person is not able to provide evidence that the property has legal origin.

---

<sup>1</sup> According to the 2005 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Article 3/4): "Necessary measures to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law."

The countries of the former Yugoslavia share the same legal history. After the separation, most countries further developed their criminal legislation, respecting the development of international law and internal specifics, as well as the transfer to a market economy. Some countries introduced prosecutor-led investigation and abolished the formal court investigation, led by the investigative judge; other countries are in the process of drafting legal changes accordingly.

Relevant institutions will also be mentioned, since a number of the employees were participating at the roundtables and/or training sessions on this issue organised during the CARPO project. In some cases, the awareness raising is still needed; whilst in others advanced training would better meet the specific needs of the institutions with existing (limited) practice for the purpose of their specialisation. On some occasions, the need for proper support and motivation of investigators was mentioned. Lack of (financial) motivation of investigators in some countries may prevent targeting proceeds of crime, since it may result in "pressure" or intimidation of investigators by criminals and potential corruption.

The purpose of this overview is to provide general information on existing legislation, plans for its change, and information on responsible law enforcement institutions in the South-eastern European countries. It may serve as the basis for future detailed analysis.

Sources of information for this paper are limited to the available legal texts of existing legislation (some of them are translated into poor English) and draft proposals for amendments. Additional sources include information and data provided during the CARPO roundtable meetings in the project areas with the management from the police, prosecution and judiciary, as well as outcomes and conclusions of the in-country training sessions and regional conferences during the period 2004-2007. The paper also relies on the information provided in country specific parts of the CARPO training manual on "Financial investigations and the Confiscation of Proceeds from Crime (1<sup>st</sup> edition published in September 2006 and 2<sup>nd</sup> edition in June 2007).

## 2 Country profiles

### 2.1 Albania – Country profile

#### 2.1.1 Existing legislation<sup>2</sup>

Confiscation is regulated by Article 36 of the Criminal Code (hereinafter CC), which provides for the confiscation of the instrumentalities and the proceeds of crime, or any other property, the value of which corresponds to the value of the proceeds of crime.

Confiscation is also regulated in case of partial or complete alteration of proceeds into other properties, when they are merged with other lawfully gained property, up to the amount of the proceeds of crime, and other revenues or benefits, deriving from these proceeds (Articles 36/3 and 4 CC).

**Temporary confiscation (seizure, sequestration)** is divided into several groups according to the purpose for which it is conducted.

#### **Seizure (sequestration) of evidence**

The Court and the prosecutor can order the sequestration (attachment) of real evidence and objects, connected with the criminal offence, when they are indispensable to revealing the facts (Article 208 Criminal Procedure Code – CPC). The sequestration is conducted by the body which issued the sequestration order, or by the judicial police officers, to whom such powers have been conferred. When sequestering correspondence, stock, bank documents, or other bank deposits, the court is the responsible body for issuing the sequestration order. In urgent cases, with the exception of correspondence, the prosecutor can also issue the sequestration order. In urgent cases, when traces and objects may change or be lost and the prosecutor is not able to intervene urgently, the officers of the judicial police who carry on the investigation may seize the evidence and objects connected to the criminal offence (Article 300/2 CPC).

**Preservative sequestration** is ordered when there are grounded reasons to believe that the defendant does not guarantee the payment of a penalty fine, expenses of the proceedings, or any other obligation to the state patrimony (Article 270 of the CPC).

#### **Temporary confiscation (freezing, seizure and prohibition of disposal) of the proceeds of crime**

The preventive sequestration aims primarily at the prevention of a danger to aggravate or prolong the consequence of criminal offence, or facilitate the commission of another criminal offence (Article 274 of CPC). The preventive sequestration is ordered by the court, upon the request of the prosecutor and can be applied to any kind of property, object or proceeds of crime that are liable to confiscation according to the Article 36 of CC.

Confiscation under certain circumstances (set in Article 287 CPC) is possible even when the person is not held as a defendant or cannot be convicted.

---

<sup>2</sup> Law No. 7895, 27.1.1995, Criminal Code of the Republic of Albania, amended by Law No.9086, 19.06.2003.  
Law No. 7905, 21.3.1995, Criminal Procedure Code of the Republic of Albania, amended by Law No. 8460, 11.2.1999.  
Law No 9284, 30. 09.2004, on the Prevention and Fighting of Organised Crime.  
Law No. 8610, 17.05.2000, on the Prevention of Money Laundering, amended by Law No. 9084, 19.6.2003.  
Law No. 9258, 15.07.2004, on Measures for the Suppression of Terrorism Financing.

**“Financial investigation”** is not specifically defined by the CPC and no special provision for the access to bank data exists.

### 2.1.2 Extended Confiscation

The Law on the Prevention and Striking at Organised Crime (Law on OC) sets different rules for confiscation and seizure. The law introduces extended confiscation. The purpose of the law is to allow for the investigation of origin of the property of the person, suspected (reasonable suspicion) of certain (listed) crimes or suspected of connection to criminal organisations (see Article 3 and 9); it also allows for the temporary and final confiscation of property, for which lawful origin is not verified. The procedure used for financial investigation, seizure and confiscation is civil or administrative and the link to (possible) criminal procedure is regulated (Article 4/3 and 27). A conviction for the criminal offence is not required.

The prosecutor has to provide sufficient data (or well grounded reasons to believe) to indicate the involvement of the suspect in the listed criminal activities, which resulted in proceeds of crime and/or disproportion of the value of assets and reported income, or influence of criminal organisation over the property (Articles 8 and 9). The suspect can be asked during the investigation to prove the lawful origin of his assets and rebut the substantiated presumption (Articles 9 and 13).

The application of the law is limited to persons for whom there is reasonable suspicion of participation and commitment of criminal offences in the criminal or terrorist organisation and/or the criminal offences related to trafficking of drugs, goods, human beings and smuggling, *inter alia* (Articles 109, 109/b, 110/a, 114/b, 128/b, 278/a, 282/a, 283/a and 284/a CC)<sup>3</sup>.

It is also applicable to the spouse, children, relatives, third and legal persons, when there is data which shows that assets or activities are owned by the suspect. An interesting point is that the law can be used for the confiscation of assets of suspects, illegally derived before the entry of the law in force (Article 3).

Article 8 regulates the possibility to extend the investigation to the assets or economic activity, which may be under threat or influence by the criminal organisation or the value of property is not in conformity with suspect’s income or economic abilities. In such cases, the prosecutor can ask the court to compel the owner to justify the lawfulness of its provenance.

Article 13 sets the criteria for sequestration of assets, ordered by the court on the request of the prosecutor. The court orders the sequestration of assets that might be, directly or indirectly, in the ownership of a person under investigation, when:

- a) the value is disproportionate to the declared income or his economic activity;
- b) on the basis of sufficient data, there are well-grounded reasons to believe that objects are the product of unlawful activities or constitute an investment of them.

The court may compel the person under investigation or the owner of assets to justify the lawfulness of their provenance.

---

<sup>3</sup> a) participation in criminal organisations and structured criminal groups and committing of crimes on their behalf; b) participation in terrorist organisations, or armed gangs and committing of crimes on their behalf; c) committing of crimes for terrorist purposes; d) extortion; e) trafficking of human beings; f) trafficking of women with the purpose of sexual exploitation; g) trafficking of minors, smuggling of arms and ammunitions; h) trafficking of narcotic substances; i) organisation and leading of criminal organisation.

The application of the law in practice and its relation to criminal procedure still raises some questions. The procedure for financial investigation, seizure and confiscation is separated from the criminal procedure. The law states that civil and administrative procedural rules are applicable (Article 4/3). Article 27 regulates the relation to criminal procedure and related proceeds of crime. In such cases, seizure and confiscation may also be ordered on the basis of this law, but the implementation is suspended when proceeds are seized in criminal procedure, until the criminal procedure is ended. The measures under this law end in case of confiscation of the same assets in criminal procedure. In practice, the prosecutor starts the procedure, regulated by this law, after the result of criminal procedure provides required data and evidence, even if the trial has not begun. The procedure is therefore parallel, but separated from the criminal form.

Confiscation is ordered on the basis of justified request of the prosecutor. The court orders the confiscation of the sequestered (seized) assets for which lawful origin is not verified (Article 24) within three months of the request

The court refuses to order the confiscation in the case where (Article 26):

- the data are insufficient to prove the participation of the suspect in the criminal activities (Article 3);
- it is revealed that, that the sequestered assets have lawful provenance;
- it is revealed that the sequestered assets are not, directly or indirectly, in the full, or partial ownership of the suspected person.

**Temporary confiscation** (preliminary sequestration) is regulated in Article 7.

In case of danger of disposal or concealment of proceeds or property which can be confiscated under the extended confiscation regime, the prosecutor may ask the court to order their prior sequestration, even before the date of the judicial session. The measure of sequestration is valid for a six month period, with possible extension up to one year.

**Temporary measures in case of influence of criminal organisations**

In case of suspicion that the ownership of assets and economic activities are under threat or influence by criminal organisations, or that they might facilitate the activity of the person who is suspected according to the Law on OC (influence of criminal organisations – Article 8; and listed crimes – Article 9), the court can order, on the request of the prosecutor, the temporary suspension of the administration and disposition of the activities and assets that are used, directly or not, for the performance of the economic activities that are under threat or under the influence of criminal organisations (Article 9).

In case of real and concrete danger that the assets will be lost, misappropriated or alienated, the prosecutor may ask the court to order sequestration (Article 10).

### 2.1.3 Drafting the Legislation

The Draft by-law on Agency for Management (2007), prepared by the Agency, has not been adopted yet. Amendments to the Law on Money Laundering are under preparation. The Minister of Finance established a working group at the General Directorate for money laundering in 2007.



#### 2.1.4 Institutions

##### **Judicial police**

Judicial police, even *ex officio*, detect the criminal offences in order to prevent further consequences, search for the criminals, carry on investigations and collect everything which contributes to the application of the criminal law (Article 30 CPC). The judicial police carry on any investigational operations which are assigned or delegated by the prosecutor. The Sector against Financial Fraud Economic Crime and Corruption in the criminal police is the central unit for the implementation of the financial investigation.

##### **Prosecutor**

The prosecutor conducts criminal prosecution, controls preliminary investigation, brings accusation before the court and undertakes the measures to secure the implementation of the decisions (Article 24 CPC)<sup>4</sup>. After the criminal offence has been reported, financial investigation is guided by the prosecutor, who can delegate the actions to the judicial police officers (Article 304 CPC).

The **Prosecution Office on Serious Crimes** is a specialised unit, which also deals with targeting the proceeds of crime. At the moment there are two prosecutors dedicated to financial investigation.

The **Tirana District Prosecution Office task force** brings together units of judicial police, taxation police and a customs unit on anti-smuggling.

The **Joint investigative unit against economic crime and corruption**, attached to the Prosecution Office (Director Altin Dumani), was created by joint order on 22 May 2007 by the Minister of Finance, the General Prosecutor, the Minister of the Interior and the state information service.

##### **Agency on the Management of Sequestered and Confiscated Property**

The Law on Preventing and Striking at Organised Crime created the Agency and defines its mandate and tasks. The administrative management is limited to the proceeds that derive from crime and fall under the scope of this law. Since the necessary by-law (Article 36/2 and 3) is not adopted, the agency is not operative yet.

The duty of the administrator is safekeeping and administering the sequestered assets and increasing their value, if possible (Article 20). The agency also plays a role after a confiscation order (judgment) is issued.

Safekeeping and administration costs are paid from the seized funds. If the seized funds are not sufficient or the seized property is returned, the costs are paid from the state budget by the Agency (Article 23/1).

#### 2.1.5 Conclusions

Financial investigation is not specifically defined in the CPC and no special provision for the access to bank data exists. Monitoring of bank accounts is not regulated in the CPC.

Albania is the only country in the region with extended confiscation in place. It has not shared the same legal history with the countries of the former Yugoslavia, but has similarities to the Italian

---

<sup>4</sup> See also the Law No. 8737 (12.02.2001) on the functioning and organization of the prosecution in the Republic of Albania.

systems. The Law on the Prevention and Striking at Organised Crime provides legal basis for investigation of the origin of assets in case of suspicion of illegal origin (limited to listed criminal offences<sup>5</sup>) or control by an organised criminal group. During seizure the suspect or owner may prove the legal origin of the property. The procedure used is civil or administrative and not criminal. The conviction is not required.

There are still some difficulties regarding the implementation of the law in practice, especially related to Article 8 (influence of criminal group) and operation of the Agency for management (restricted to the Law on OC).

At the Prosecution Office on Serious Crimes, two prosecutors are dedicated to conduct financial investigation (together with judicial police). 21 cases the over past years have resulted in (extended) confiscation of proceeds of crime. Overall data on financial investigation, seizure and confiscation of proceeds does not exist.

The limited application of the law in practice (and jurisprudence) does not allow for detailed assessment of compliance with international standards, especially human rights standards. Although the judgment for criminal offence is not necessary, and there may be no relation to criminal procedure (but in practice there usually is), the presumption on illegal origin (or control by a criminal organisation) of the property has to be substantiated by the prosecutor. The presumption is refutable if the suspect or owner provides data and makes legal origin probable. The scope of the application of law is limited to the list of serious criminal offences or relation to an organised criminal group (principle of proportionality). In my opinion the international standards related to extended confiscation are generally met.

---

<sup>5</sup> One of the issues is also the application of the law in drug related criminal offences, since only trafficking drugs across the borders falls under the scope of the law on OC.

2.1.6 General overview

<b>CC</b>		Albania
Confiscation	36 CC	<p><b>Article 36 (new): Confiscation of the instruments and proceeds of the criminal offence</b></p> <p>1. The confiscation must be issued by the court and means obtaining and transferring in favour of the state:</p> <p>d) items, the production, use, possession or disposal of which constitute a criminal offence, even where there is no conviction decision.</p> <p>2. If the proceeds of crime are transformed or converted, wholly or in part, into other properties, the latter is subject to confiscation.</p> <p>3. If the proceeds of crime are mixed with other lawfully gained property, the latter are confiscated to the value of the proceeds of crime.</p> <p>4. Income or other benefits from proceeds of crime, property which is the outcome of transformed or converted proceeds of crime or property which is mixed with these proceeds, are subject of confiscation in the same amount and manner as proceeds of crime.</p>
Direct/indirect proceeds	36/1b	<p>b) proceeds of the criminal offence, which includes any kind of property and also the legal documents or instruments that prove titles or other interests in the property that derives or earned directly or indirectly from committing the criminal offence;</p> <p>c) rewards whether given or promised, for committing a criminal offence;</p>
Value confiscation	36/1ć	<p>ç) any other property, the value of which corresponds to that of the proceeds of the criminal offence;</p>
Third persons	Yes	
Legal person	45	<p><b>Criminal sanctions for juridical persons</b></p> <p>If a legal person exercises activity that constitutes criminal work, the court may rule the total or partial cessation of the activity and the confiscation of the earnings, means and every other property resulting from that activity.</p>
Extended confiscation	8, 13 OC	
<b>CPC</b>		
<b>Financial investigation</b>	274	Tasks of the police - Article 30 CPC
Sims	221 etc.	
Access to bank data	191?	No specific provision: <b>Article 191 "acquiring of documents"?</b>
<b>Temporary confiscation</b>	274	<p><b>Article 274 - The scope of the preventive attachment</b></p> <p>1. When there is a danger that free possession of an object related to the criminal offence may aggravate or prolong its consequences or facilitate the commission of other criminal offences the competent court, on demand of the prosecutor, orders its attachment by reasoned decision.</p> <p>2. The attachment may also be ordered for objects which are permitted to be confiscated.</p> <p>3. When the circumstances of execution change, the court, on the demand of the prosecutor or interested person, nullifies the attachment.</p>
Freezing bank accounts	210	<p><b>Article 210, Seizures in banks</b></p> <p>The court may order the seizure of bank documents, negotiable instruments, sums deposited in current accounts and any other thing, even if they are in safety boxes, when there are reasons to believe that they are relevant to the criminal offence, even when they do not belong to the defendant or are not in his name. In case of exigency this decision might be taken by the prosecutor.</p>

Procedure Appeal	212, 275 276	
Management	214, 215/3, 220	<b>Article 214 Custody of seized items</b> The items seized are kept in the custody of the secretariat... <b>Article 215: Sealing of seized items</b> <b>Article 220: Expenses for seized items</b>
<b>Confiscation</b>	275	Article 275 <b>Cessation of seizure</b> 1. The court or prosecutor with the decision of acquittal or dismissal of the case, orders the return of items seized to the one they belong, unless they must be confiscated because they have served or were assigned to commit a criminal offence or because they are product or profit of the criminal offence. 2. When a decision of conviction has been issued, the effects of seizure continue if the confiscation of the items seized has been ordered. 3. The items seized are not returned if the court decides to maintain the seizure to guarantee the credits.
<b>Special legislation</b>		<b>Law on the Prevention and Striking at Organised Crime</b>
<b>Links</b>		<a href="http://www.gpz.gov.al">www.gpz.gov.al</a> <a href="http://www.parlament.al">www.parlament.al</a>
		<b>Institutions (specialised)</b>
Judicial police		<b>Sector against Financial Fraud Economic Crime and Corruption</b>
Prosecutor		<b>Prosecution Office on Serious Crimes</b> <b>Tirana District Prosecution Office task force</b>

<b>Law on OC</b>	2 OC	<b>Article 2 Purpose</b> preventing and striking at organised crime through the detection, identification, sequestration and confiscation of unlawful properties of persons suspected as participants in organized crime, as well as determining the way these assets are used.
Financial investigation	4, 6 OC	<b>Article 4 Object of the Investigations</b> 1. Investigations are performed about the financial means, assets, economic activities, manner of living, and sources of income of the <b>persons contemplated in article 3 of this law. ....</b> 3. The investigations and trials according to this law are supported in the civil and administrative procedural rules in force, in addition to those contemplated and specifically referred to in this law. <b>Article 6 Obligation to Hand Over Information and Documents</b>
Temporary confiscation	7,9, 10 OC	<b>Article 7 Preliminary Sequestration</b> 1. When there is a real and concrete danger of the loss, misappropriation or alienation of funds, assets and other rights for which the implementation of the measure of confiscation is contemplated according to the provisions of this law, the prosecutor may ask the court to order their prior sequestration, even before the date of the judicial session is set. ... <b>Article 9 Temporary Suspension of the Administration and Disposition of Property</b> 1. When there are sufficient data to judge that the disposition of assets and the exercise of the economic activities defined in article 8 facilitates the activity of persons suspected according to this law or persons against whom a criminal proceeding has begun for one of the crimes contemplated by Articles 109, 109/b, 110/a, 114/b, 128/b, 278/a, 282/a, 283, 283/a, 284/a, 284/c, 284/c, 287, 333,

		<p>333/a and by chapter VII of the Criminal Code, the court orders, on the request of the prosecutor, the <b>temporary suspension of the administration and disposal</b><sup>6</sup> of the activities and assets that are used, directly or not, for the performance of these economic activities.</p> <p>...</p> <p>3. In a decision given according to point 1, the court also designates one or more administrators from the list of experts of the Agency...</p> <p><b>Article 10 Sequestration</b></p> <p>1. When there is a real and concrete danger that the activities and assets specified in Article 9 will be lost, misappropriated or alienated, the prosecutor may ask the court to order sequestration, in conformity with what is contemplated in the provisions of this law.</p>
Appeal/ procedure to prove legal origin	8, 13, 28	
Management	20 etc. OC	<p><b>Agency on the Management of Sequestered and Confiscated Property</b></p> <p>Agency responsible only for OC cases! It is not operative yet (absence of by-law)</p>
Confiscation	24 - 26 OC	<p><b>Article 24 Request for the Confiscation of Sequestered Assets</b></p> <p>The measure of confiscation is ordered on the request of the prosecutor, who submits to the court the reasons on which he bases the request.</p> <p><b>Article 25 Decision of the Court on Confiscation</b></p> <p>1. Within three months... the court orders confiscation of sequestered assets whose lawful provenance is not verified. ...</p> <p><b>Article 26 Refusal of the Request for Confiscation</b></p> <p>The court orders the refusal of the request for confiscation of assets and revokes the measure of sequestration, even on its own initiative, when</p> <p>a) the data is insufficient to prove the participation of the suspected person in the criminal activities contemplated in article 3 of this law; b) it is revealed that the sequestered assets have a lawful provenance; c) it is revealed that the sequestered assets are not, directly, or indirectly, in the full or partial ownership of the suspected person.</p>
Extended confiscation	8, 13 OC	<p><b>Article 8 Extension of the Investigation to Subjects Threatened by Criminal Organisations</b></p> <p>When there is sufficient data to judge that the ownership of assets and the exercise of specified economic activities are under threat or influence by criminal organisations or are in such conditions that might facilitate the activity of persons who are suspected according to this law, the prosecutor asks the court to compel a person who has the title of ownership or who own under any title funds or assets of any kind with a value that is not in conformity with his income or economic abilities, in order to justify the lawfulness of its provenance.</p> <p><b>Article 13 Criteria for the Sequestration of Assets</b></p> <p>1. On the request of the prosecutor, and setting out the respective reasons, the <b>court orders the sequestration of assets</b> as to which there are data that they might</p>

	<p>be, directly or indirectly, in the ownership of a person against whom investigations according to this law are being conducted, when:</p> <ul style="list-style-type: none"><li>a) their value turns out to be of dimensions that do not respond to the income declared or the economic activity conducted by him;</li><li>b) on the basis of sufficient data, there are well-grounded reasons to think that these items are the product of unlawful activities or constitute an investment of them.</li></ul> <p>2. The prosecutor may ask the court to compel the person against whom investigations are being conducted, or those who have the title of owner or own any kind of title, funds or assets of any kind with a value that does not comport with their income or economic abilities to justify the lawfulness of their provenance.</p>
--	---

## 2.2 Bosnia and Herzegovina

### 2.2.1 Existing legislation<sup>7</sup>

Bosnia and Herzegovina is governed by local (entity and federal) institutions and the (Office of the) High Representative, who also holds the legislative powers.

Each entity (the Federation of Bosnia and Herzegovina, Republika Srpska and the Brčko District) has its own criminal legislation, which in principle has to be compliant with the state (federal) one. This paper refers to the State Bosnia and Herzegovina legislation. The Criminal procedure code of Republika Srpska has special provisions related to organised crime (Articles 504a to 504n), following the example of the Serbian CPC. At the moment the only state law enforcement agency is the State Investigations and Protection Agency (SIPA), which was established in 2004. In addition, the efforts of the EU to centralise entity police forces were not successful, which has resulted in some problems in their co-operation.

The reform of criminal (procedural and material) legislation in 2003 brought many changes: abolishment of the court investigation, investigation led by the prosecutor, guilty plea, and plea bargaining and agreement of guilt,<sup>8</sup> etc. Lack of proper training, especially for the prosecutors and judges, results in some difficulties in the application of the "new" legislation in practice. This especially relates to the understanding of the new role and relations between prosecution and the police.

Bosnia and Herzegovina signed the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime on 30 March 2004.

### Confiscation

**Article 74** of the CC defines the confiscation of objects which have been used or are meant for commission of a criminal offence, or which have resulted from committed criminal offence. This is a security measure, to be decided by the court. Objects can be also confiscated in case they are not the property of the offender, if so required for the interest of public safety and moral. Third parties have the possibility to submit a claim for compensation of damages.

**Article 110** of the CC provides the basis for the confiscation of the proceeds from crime: no one can keep the proceeds from crime. The proceeds are confiscated by the court decision which determines that the criminal offence has been committed.

**Article 111** of the CC specifies the manner of confiscation of the proceeds from crime. The proceeds from crime might consist of money, valuable objects (things) and any other economic advantage (things, rights, movable or immovable property) and benefits, derived from the proceeds.

Confiscation of the proceeds is also possible from a third party in cases where the proceeds have been transferred to that person without compensation, or with compensation which does not correspond to the real value, under condition that the person knew or should have known that that property was acquired through criminal offence.

---

<sup>7</sup> Criminal Code of Bosnia and Herzegovina (OJ of Bosnia and Herzegovina No. 3/03).

Criminal Procedure Code of Bosnia and Herzegovina (OJ of Bosnia and Herzegovina No. 36/03).

Law on Police Officials BiH (OJ of Bosnia and Herzegovina No. 27/04).

Law on State Agency for Investigation and Protection (OJ of Bosnia and Herzegovina No. 27/04).

Law on Prevention of Money Laundering (OJ of Bosnia and Herzegovina No. 29/04).

<sup>8</sup> Article 231 CPC.

The court may require the convicted person to pay a sum of money corresponding to the value of the proceeds from crime (value based confiscation).

If the proceeds have been intermingled with legal property, such property is liable to confiscation, not exceeding the value of the intermingled proceeds.

**Article 112** of the CC defines a relation between the measure of confiscation of proceeds and a property claim of the person injured by the criminal offence. The court orders the confiscation of material gain, which exceeds the awarded property claim of the injured party.

### **Procedure for the confiscation of proceeds**

The confiscation of the proceeds from crime is pronounced by the court verdict by which the accused is declared guilty, but also in a ruling on application of a correctional measure, or by a verdict by which it has been established that the accused has committed criminal offence in a state of mental incapacity. The court indicates the objects or value of confiscated money (Article 396 CPC).

The court may establish the value of acquired proceeds by free estimation of evidence, in the case that its establishment is linked to disproportional difficulties or with a significant delay the procedure (Article 394 CPC).

### **Financial investigation**

Financial investigation is not specifically defined by the legislation. On the basis of Article 392 CPC, the property gain is established in criminal procedure *ex officio*. The prosecutor is obliged to collect evidence during the procedure and examine the circumstances that are important for the establishment that the proceeds have been acquired by criminal offence.

Article 72 provides legal basis for access to bank data. The preliminary proceedings judge may (with grounds for suspicion), at the motion of the prosecutor, order a bank or other legal person which performs financial activities to submit data concerning bank accounts of the suspect and other related persons. In urgent cases the same might be ordered by the prosecutor, who is obliged to inform the judge immediately about it, so that the judge may issue an order within 72 hours. The monitoring order is not specifically regulated.

### **Temporary measures (seizure, prohibition of disposal)**

The **seizure of instrumentalities and evidence** is ordered by the preliminary proceedings judge, on the motion of the prosecutor or authorised official with previously obtained prosecutor's approval (Article 65 CPC). Objects may be seized even without court order if there is danger of delay, but the prosecutor is obliged to submit a request to a judge for subsequent approval within 72 hours (Article 66 CPC).

On the basis of Article 72 CPC, the court may order to the legal or physical person to freeze financial transaction for which there is a suspicion of it being related to a criminal offence or suspicion that it is intended for commission of a criminal offence, or that it serves to conceal a criminal offence or to conceal the proceeds. Based on the motion of the prosecutor, the court may order that financial means or cash is seized and deposited in a special account and kept until the end of proceedings.

The temporary measure of **seizure of illegally obtained property** is regulated in Article 73 CPC which provides the basis also for the other necessary measures to prevent any use, transfer or



disposal of such property. The court issues a temporary measure on the motion of the prosecutor and the measure can be pronounced at any time during the criminal proceedings. In case of danger of delay, seizure and other measures can be conducted by an authorised official (police). The prosecutor has to be immediately informed and ask for the approval of the court within 72 hours.

Article 395 envisages temporary security measures. The court is obliged to define temporary security measures, even *ex officio*, and apply the provisions applicable to the judicial enforcement procedure. In practice, the most frequent measures are the prohibition of disposal (sale), seizure and deposition of cash and freezing the money in the bank account of the suspect or the accused.

## **Management**

Seized proceeds are stored in the court or its safekeeping is provided in some other way (Article 70). The question of the management of seized objects (proceeds) is not properly resolved, since described provision can not address all the problems related to the management of seized property. There is no established specialised institution for management.

### 2.2.2 Extended Confiscation

Article 110/3<sup>9</sup> is a novelty and specifies that the court can confiscate the proceeds from crime in a separate procedure, if there is probable cause to believe that the proceeds have been acquired by criminal offence and the owner or possessor is not able to give evidence that the proceeds have been acquired legally.

Burden of proof for legal origin of the proceeds is shifted to the owner or possessor of such proceeds. The CPC of Bosnia and Herzegovina does not have provisions which could be applied for the separate procedure for (extended) confiscation of proceeds. Therefore the provision is not used in practice, although some judges stated that they have been following its goal by using free estimation of the value of proceeds (Article 394 CPC).

Generally the provision allows wide use of extended confiscation, since it is not limited to the (list of) certain serious criminal offences (principle of proportionality). The standard of proof (probable cause to believe) is quite low regarding the suspicion on criminal origin of proceeds, but at the same time it is limited to a criminal offence (singular), which may indicate the need for closer connection to a specific criminal offence (not criminal offences), other than prosecuted and judged. The presumption of illegal origin of property is on the basis of imbalance of property and the reported income is also not mentioned. The standard of evidence for the suspect or the owner to prove legal origin of property is not precise (reputability of the presumption). Since there is no data available on the practice of using the provision it is hard to predict the position and future practice of the courts. On the basis of linguistic explanation of the provision, its practical application may be problematic from a human rights standards' point of view.

Some attempts were mentioned to provide legal basis for "separate procedure", which is required by the CC, but they were not supported by the government. The proposal mentioned was prepared by Irish and American experts and introduced the plain civil procedure, which would, in my opinion, be hard to implement in the existing continental legal system (even if some Anglo-Saxon instruments – such as plea bargaining – were inserted into the criminal procedure).

---

<sup>9</sup> 110/3 CPC: The court may also confiscate the gain referred to in paragraph 1 of this article in a separate proceeding if there is probable cause to believe that the gain derives from a criminal offence and the owner or possessor is not able to give evidence that the gain was acquired legally.

### 2.2.3 Drafting the legislation

As the provision of Article 110/3 CC is not applied in practice, and since it is interpreted that the special procedure needs regulation, the proposal for special law on extended confiscation has already been discussed in Bosnia and Herzegovina, but was rejected by the government. The proposal was very reliant on the Irish model. The Minister of Justice of Bosnia and Herzegovina (Mr. Jusuf Halilagić) is working on new proposals for the law.

### 2.2.4 Institutions<sup>10</sup>

#### **Police**

The authorised (law enforcement) official is defined by Article 20 CPC: it is the person with appropriate authority within the police bodies in Bosnia and Herzegovina, including the State Investigations and Protection Agency (SIPA), State Border Service (SBS), judicial and financial police (even if there is no service with such name), as well as within customs bodies, tax administration<sup>11</sup> and military police. Apart from entity Police services, other law enforcement agencies have limited scope of roles, responsibilities and powers in the framework of criminal investigation and procedure.

**SIPA**<sup>12</sup> is the only state law enforcement agency empowered to act in the whole territory of Bosnia and Herzegovina. Its task is also to target the proceeds of crime during criminal investigation. One of its organisational units, the Financial Intelligence Department (Financial Intelligence Unit), also acts on the basis of the Law on Money Laundering Prevention.

#### **Prosecutor**

The prosecutor leads the investigation and is obliged to collect evidence and examine the circumstances relevant for the establishment of property gain during the investigation. The prosecutor may order the police to execute investigative tasks. The general role of the prosecutor is defined in Article 35 CPC. Authorised officials are required to act in the criminal procedure under the order of the prosecutor as well as independently within the scope of their powers (Article 218 CPC).

Apart from the SIPA, the law enforcement institutions and prosecution service do not have a specialised unit dedicated to financial investigation. There are no databases or statistics on financial investigation, temporary measures or confiscation in place.

#### **Court**

The preliminary proceedings judge decides on temporary securing measures and allows access to bank data. While Article 73 CPC requires the proposal for such measures from the prosecutor (or

---

<sup>10</sup> Links: [www.vijceministara.gov.ba](http://www.vijceministara.gov.ba), [www.fbihvlada.gov.ba](http://www.fbihvlada.gov.ba), [www.vladars.net](http://www.vladars.net), [www.bdcentral.net](http://www.bdcentral.net) (Government of District Brčko), [www.parlament.ba](http://www.parlament.ba), [www.parlamentfbih.gov.ba](http://www.parlamentfbih.gov.ba), [www.narodnaskupstinars.net](http://www.narodnaskupstinars.net), [www.mpr.gov.ba](http://www.mpr.gov.ba) (Ministry of Justice Bosnia and Herzegovina), [www.vladars.net/lt/min/mpr.html](http://www.vladars.net/lt/min/mpr.html) (Ministry of Justice RS), [www.fbihvlada.gov.ba/indexx.html](http://www.fbihvlada.gov.ba/indexx.html) (Ministry of Justice of Federation Bosnia and Herzegovina)

<sup>11</sup> The Law on Indirect Tax Administration (Article 2/b) defines the role of Indirect Tax Administration of Bosnia and Herzegovina (ITA) (Sector for enforcement of custom and tax regulations, Department for Investigation) in the framework of criminal procedure, and that the CPC rules for police apply to ITA.

<sup>12</sup> One of the tasks within the scope of SIPA's competence is the prevention, detection and investigation of criminal offences falling within the jurisdiction of the Court of Bosnia and Herzegovina, in particular: organised crime, terrorism, war crimes, trafficking in persons and other criminal offences against humanity and serious financial crimes.

authorised official, in the case of freezing a bank account), Article 395 CPC requires that the court *ex officio* decides on temporary security measures when the forfeiture of property gain is possible.

The court may pronounce the confiscation (defining the objects and value of money) in a verdict by which the accused is declared guilty, in a ruling on the application of a correctional measure and in a verdict establishing that the accused committed the criminal offence in the state of mental incapacities but where harmful consequences occurred.

#### 2.2.5 Conclusions

Bosnia and Herzegovina introduced prosecutor's led investigation.

Most results in deprivation of illegally gained benefit in Bosnia and Herzegovina are achieved through plea bargaining in cases of money laundering, with tax evasion as a predicate offence. The problem is that the confiscation of proceeds of crime is often "forgotten" in such deals (the goal is punishment)! The financial investigation is still not an integrated part of criminal investigation in practice.

Lack of clear legal possibilities for separate procedure on extended confiscation (Article 110/3 CC) prohibits the use of existing provision. The specific legal basis for the access to bank data is missing. The monitoring order is not regulated either. Discussion showed that not all proceeds were confiscated, but just money, found in bank accounts. The prosecution and court will consider possible guidelines to include the question of confiscation of proceeds in every agreement on guilt.

The SIPA is still not fully operational in performing its duties as a state law enforcement agency. Co-operation among Entities police and other law enforcement agencies still remains a challenge in some cases.

Absence of the Agency for management of seized and confiscated property was raised as a problem in practice.

There are no databases or statistics on financial investigation, seizure and confiscation of proceeds of crime.

Article 110/3 introduced the possibility for extended confiscation. The court can confiscate the proceeds from crime in a separate procedure, if there is a probable cause to believe that the proceeds have been acquired by criminal offence and the owner or possessor is not able to give evidence that the proceeds have been acquired legally.

Separate procedure for (extended) confiscation of proceeds, specified by Article 110/3 is not defined. Thus the provision is not used in practice, although some judges stated that they have been following its goal by using the instrument of free estimation of the value of proceeds (Article 394 CPC).

2.2.6 General overview

<b>CC</b>		<b>Bosnia and Herzegovina</b>
Confiscation	74, 110, 111	Article 110: The Basis of the Confiscation of Material Gain
Direct/indirect proceeds	111	Article 111: Ways of Confiscating Material Gain
Value confiscation	111/1	
Third persons	111/1	
Legal person	yes	See 396/3 CPC
Extended confiscation	110/3	110/3: The court may also confiscate the gain referred to in paragraph 1 of this Article in a separate proceeding if there is a probable cause to believe that the gain derives from a criminal offence and the owner or possessor is not able to give evidence that the gain was acquired legally.
<b>CPC</b>		
<b>Financial investigation</b>	392/2	Article 392: Forfeiture of Property Gain Obtained by Commission of Criminal Offence The property gain obtained by commission of a criminal offence shall be established in a criminal procedure <i>ex officio</i> . The Prosecutor shall be obligated to collect evidence during the procedure and examine the circumstances that are important for the establishment of the property gain obtained by commission of a criminal offence.
Sims	116, 117	
Access to bank data	72/1	
<b>Temporary confiscation</b>	65, 66 72, 73, 395	Seizure of objects Article 73: Temporary Seizure of Illicitly Gained Property and Arrest in Property ... At any time during the proceedings, the Court may, upon the motion of the Prosecutor, issue a temporary measure seizing the illicitly gained property under the Criminal Code of Bosnia and Herzegovina, arrest in property or shall take other necessary temporary measures to prevent any use, transfer or disposal of such property...
Freezing bank accounts	72/4	Article 72: Order Issued to a Bank or to Another Legal Person
Procedure Appeal		Article 395: Temporary Security Measures ...When the forfeiture of property gain obtained by commission of criminal offence is a possibility, the Court shall <i>ex officio</i> and under the provisions applicable to the judicial enforcement procedure define temporary security measures. In that case, the provisions of Article 202 of this Code shall apply....
Management	70	Article 70: Safekeeping of the Seized Objects and Documentation ...shall be deposited with the Court...
<b>Confiscation</b>	396	Article 396: The Contents of the Decision That Pronounces a Measure of Forfeiture of Property Gain
Free estimation of value by judge	394	
<b>Special legislation</b>		Special procedure is foreseen for extended confiscation (Article 110/3 CC). Not defined yet.
		<b>Institutions (specialised)</b>

Extended confiscation in South-Eastern Europe

Criminal police		SIPA (State police), entity police services, customs, tax administration
Tax administration	20	Police powers
Prosecution		Article 218: Prosecutor Supervising the Work of the Authorised Officials
Court		

## 2.3 Croatia – Country profile

### 2.3.1 Existing legislation<sup>13</sup>

Extended confiscation is regulated by the last amendments of the Criminal Code in 2006 (Article 82/2). The conceptual changes of the Criminal Procedure Code (CPC) are under preparation. The proposal is expected by the end of 2007. The court investigation will be abolished. Special legal basis for the temporary securing measures for confiscation of proceeds of crime is prescribed by the Law on the Office for Suppression of Corruption and Organized Crime (USKOK). USKOK is a specialised unit within the State prosecutor's office.

#### **Confiscation**

Article 80 of the Criminal Code defines the securing measure of confiscation (seizure) of the object which was intended to be used or was used for the commitment of a criminal offence or has resulted from criminal offence, when there is a danger that the object would be used again for the perpetration of a criminal offence or for reasons of public safety or for moral reasons.

Article 82 of the Criminal Code regulates obligatory confiscation of direct and indirect proceeds of crime from the perpetrator, pursuant to a court decision. The proceeds of crime can also be confiscated from a third person or legal person, if they have not been acquired in good faith.

The Law on the Responsibility of Legal Entities for Criminal Offences from 2004 established corporate criminal liability and sanctioning of unlawful behaviour through which a legal person acquires unlawful proceeds for itself or third persons. The provision of Article 20 of the mentioned Law prescribes compulsory confiscation from the legal person of the proceeds that have been acquired as a result of a criminal offence.

Value based confiscation is regulated by Article 82/2 CC and by Article 20/4 of the Law on Responsibility of Legal Entities for Criminal Offences. The property claim of the victim is regulated by Article 82/4 CC and 464/3 CPC.

Articles from 463 to 471 of the Criminal Procedure Code (CPC) regulate the procedure for the confiscation of proceeds of crime.

The court orders the confiscation of the proceeds of crime by a decision, declaring the defendant guilty of the offence charged (Article 468/1 CPC). The objects or sum of money to be confiscated have to be stated in the decision. The court can fix the amount of property gain to be confiscated by its own discretion, when the assessment would cause undue difficulties or a significant delay in the proceedings (Article 466 CPC).

---

<sup>13</sup> Criminal code (OJ 110/97, 27/98, 50/00, 51/01, 105/04, 84/05, 71/06).

Criminal procedure code (OJ 110/97, 58/99, 112/99, 58/02 and revised text 62/03).

Law on the office for the suppression of corruption and organised crime (OJ 88/01, 12/02, 33/05, 48/05).

Law on the prevention of money laundering (OJ 69/97, 106/97, 67/01, 114/01).

Law on responsibility of legal entities for criminal offences (OJ 151/03).

Law on witness protection (OJ 163/03),

Law on execution (OJ 57/96, 29/99).

[www.vsrh.hr/EasyWeb.asp?pcpid=366](http://www.vsrh.hr/EasyWeb.asp?pcpid=366)

The rights of a third person or legal person, to whom proceeds of crime were transferred, are protected during the pre-trial and trial procedure. They have to be summoned for interrogation and have the right to propose evidence and ask questions during the main hearing (Article 465 CPC).

### **Financial investigation**

Financial investigation is not specifically defined by criminal legislation. The legal basis can be found in Article 464 CPC, which states that the property benefit is determined in the criminal procedure *ex officio*. The court and other authorities conducting the criminal procedure are obliged to obtain evidence and investigate the circumstances relevant for determination of proceeds of crime.

Legal basis for access to relevant data for financial investigation during the pre-investigation (police) phase can be found in Article 186 (177) CPC (general powers of the police) and Article 174/3 (powers of the prosecutor).

Access to bank data is regulated in Article 219 CPC. The investigative judge can require from a bank to deliver information on the bank accounts of the defendant or any other person against whom the proceedings for the confiscation of proceeds of crime have been initiated. The investigative judge can also order a bank to disclose the data in the pre-investigation (police) phase if the assets are related to criminal offences committed by a group or criminal organisation, or criminal offences of drug abuse, or criminal offences for which a sentence of imprisonment for more than three years can be pronounced (Article 219/3 CPC).

### **Temporary measures**

The investigative judge (during investigation) or court (during trial) shall *ex officio* order provisional security measures, when confiscation of proceeds is under consideration, pursuant to the provisions of the execution procedure (Article 467 CPC). The Law on execution defines temporary securing measures in execution procedure in Articles 297-299 (prohibition of disposal, seizure...).

The court can order the freezing of a financial transaction, suspected to represent a criminal offence, or suspected of concealing a criminal offence or proceeds of crime. Frozen money is deposited in a special account and kept until the conclusion of the proceedings, or until the conditions for its return are met (Articles 219/5 and 6 CPC). Monitoring of bank accounts is not regulated by the CPC.

The court can order temporary seizure of objects, which have to be seized according to the CC or represent the evidence (218 CPC). Based on the provision of Article 218/8, the police can also seize the objects when performing its powers based on Articles 186 (general powers of the police) and 196/1 CPC (urgent investigative measures). The provision is interpreted in a way that the police cannot seize the proceeds of crime, unless they represent evidence of the crime. Certain objects are excluded from the seizure (Article 218/3 CPC).

Article 463 sets the rules for confiscation (seizure) of objects in case the criminal proceeding does not terminate with a judgment of conviction, for the reasons of public safety or the protection of the honour and dignity of citizens.

The limitations for the application of the temporary measures during pre-investigative procedures should be considered in the new CPC. Also, the lack of the provisions for the management (and selling) of seized and confiscated objects and proceeds of crime should be tackled. The creation of

an agency for administration and management would do well to follow the good examples from some European countries.

### **Law on USKOK**

The Law on the Office for Suppression of Corruption and Organised Crime (USKOK) regulates the organisation and responsibilities of the USKOK, the co-operation with other state bodies, as well as the jurisdiction of the courts and temporary securing measures for confiscating the proceeds of crime. USKOK is a specialised prosecution service, responsible for prosecution of serious crime and targeting the proceeds of crime.

The application of the law and the responsibilities of USKOK are limited to the list of (serious) crimes (Article 21). Special procedure for the access to bank data (Article 42a) and temporary measures for securing later confiscation of the proceeds of crime are defined in Articles 44-56. For the temporary securing measures, the rules of the execution procedure are applied (Article 44/1). The confiscation itself is not regulated by the Law on USKOK, since the confiscation is ordered in the criminal procedure.

USKOK can request that the bank delivers relevant data on bank accounts if certain conditions are met (Article 42a). If the bank denies revealing the bank data, USKOK can ask the investigative judge to issue an order. The court can also issue the order for monitoring of bank transactions (Article 42a/4).

Temporary securing measures are ordered by the court, which has the jurisdiction based on Article 24 for the criminal offences listed in Article 21, upon the grounded proposal of USKOK. The procedure is urgent and can be initiated before the criminal procedure begins. The value of the property benefit from listed criminal offences can be determined in accordance with the civil procedure rules.

The court orders the temporary securing measures if there are grounds for belief that the benefit or property derives directly or indirectly from a listed criminal offence, if its value exceeds 100 000 HRK, and there is a danger that during the criminal procedure the perpetrator will make the confiscation difficult or impossible (Article 50/1). The securing measures are defined in the execution law. Freezing of bank accounts is regulated in Article 50/5 (amended in 2005). The court decision on temporary measures has to be confirmed in 21 days. During that period the court summons the parties, where the owner can make probable, that the conditions set in Article 50/1 do not exist (Article 52/3). The burden of proof lies on the owner only in relation to the temporary securing measures. The measures can be extended for six months and can last for a maximum of one year. If the criminal procedure is not initiated in one year the court will cancel the decision upon the proposal of the owner of the secured property.

It was stated that USKOK is applying the provisions in practice and has also set the standard that each police criminal report has to provide data on property benefit of the suspect and on property, which can be confiscated (report on financial investigation).

#### **2.3.2 Extended confiscation**

Extended confiscation was introduced by amendments to the Criminal Code in 2006<sup>14</sup>. It was stated that the provision is not clear to the prosecutors and that additional procedural rules (CPC and Law on USKOK) are needed for its application in practice.

---

<sup>14</sup> U članku 82. iza stavka 1. dodaje se novi stavak 2. koji glasi:



The linguistic interpretation shows that the prosecution has to establish the link (grounded belief) between the concrete criminal offence, committed by a group of people or a criminal organisation; establish that the acquired property (benefit) is in time relation with the concrete criminal offence; and show that the legal origin of the acquired property cannot be established.

The burden of proof on the legal origin of the property is not literally transmitted to the defendant, which means that the prosecution has to also search for the origin of the assets (benefit), but does not prevent the defendant in providing the evidence on legal origin of the property.

The application of the provision is limited to the concrete (prosecuted) criminal offence, committed by a group of people or criminal organisation. Establishing such link might prove to be difficult in practice, since criminal organisations are not limited to one type of (continuing) criminal offence. The broader definition: "criminal offences" might provide better possibilities. In addition, the limitation in relation to the group of people or criminal organisation may be too restrictive in practice, when not all (or many) participants of the commitment of criminal offence can be discovered, nor their role proved in criminal procedure.

The court practice will have to provide answers to these questions and to the question of the standard of evidence (grounded belief) for the link between criminal offence and assets.

The question is also whether the provision may be used for the property, which was acquired prior to the adoption of the law.

### 2.3.3 Drafting the legislation

The conceptual changes of Criminal Procedure Code (CPC) are under preparation by a working group, established by the Ministry of Justice, and are expected by the end of 2007. The court investigation will be abolished. The provisions on management of seized and confiscated objects and property might be included.

### 2.3.4 Institutions

#### **Police**

The department for financial crime within the criminal police (CP) has the leading role in conducting the financial investigation and targeting proceeds of crime. It is also responsible for the money laundering investigations. It provides assistance in major cases, where financial investigation is conducted in co-operation with other units within the CP. It coordinates financial investigations and provides support to the regional criminal police units.

---

„(2) Kao imovinska korist iz stavka 1. ovoga članka smatra se i ona korist koju je ostvarila grupa ljudi ili zločinačka organizacija koja je u vremenskoj povezanosti s počinjenim kaznenim djelom i za koju se osnovano može smatrati da potječe od tog djela, jer se njezino zakonito porijeklo ne može utvrditi.“ Dosadašnji stavci 2., 3. i 4. postaju stavci 3., 4. i 5.

New Article 82/2 CC (unofficial translation): As the property benefit (proceeds of crime) from paragraph 1 of this article also the benefit is to be considered, created by the group of people or criminal organisation, which is in time relation with the committed criminal offence and grounded belief that it derives from this criminal offence exists, since its legal origin cannot be determined.

The proposal in 2007 to establish a specialised unit in the criminal police, responsible only for conducting the financial investigation, was not supported. The discussion on the best approach for specialisation is still ongoing.

General police powers are regulated in Article 186 CPC, which, through access to data important for the criminal procedure, provides the legal basis for the financial investigation.

#### **Prosecution service**

In the system of court investigation the prosecutor guides the pre-investigation (police) investigation. The investigative measures during the pre-investigation phase are ordered by the investigative judge, upon the proposal of the police or the prosecutor.

According to Article 42, CPC the prosecutor undertakes the necessary measures aimed at discovering the commission of criminal offences and the perpetrators undertakes inquiries into criminal offences, and requires and entrusts the implementation of individual investigatory actions and measures aimed at collecting the data relevant for the institution of criminal proceedings. The prosecutor can request from banks, organisations and other legal persons to deliver the data, except those that are protected as a secret (Article 174 CPC).

#### **Office for Suppression of Corruption and Organised Crime (USKOK)**

The USKOK is a specialised unit within the State prosecutor's office. It was created by the Law on USKOK in 2001. USKOK is responsible for investigation and prosecution of listed (serious) criminal offences and for tracing and seizing the proceeds of crime. Systematic data or statistics on conducted financial investigations and temporary securing measures are not kept by the police or prosecution. Nevertheless, many cases were mentioned where temporary measures were ordered. USKOK provided data on one final judgment in 2006, where proceeds were confiscated, and some cases where provisional measures were ordered upon their proposal.

#### 2.3.5 Conclusions

The specialisation for financial investigation within the criminal police is still being discussed, since the proposal for the creation of a separate unit was not adopted in 2007.

USKOK has broader possibilities for combating organised crime and corruption, provided by the Law on USKOK, including with special rules for temporary securing measures for later confiscation of direct and indirect proceeds from listed criminal offences.

There are no statistics or data on financial investigation and temporary confiscation kept within the police or prosecution service. Management of seized objects and property is identified as a real problem in practice. Legal basis for the creation of the agency for management of seized objects and property is under discussion.

**Financial investigation** is not specifically defined by the CPC or the Police law. Monitoring of bank accounts is possible only in cases which fall under the Law on USKOK.

The **temporary measures** in the pre-investigative phase are possible in limited cases on the basis of CPC. The Law on USKOK provides broader possibilities and prescribes civil procedure for deciding on temporary securing measures.

**Extended confiscation** was introduced in 2006 (Article 82/2 CC), but has not been "tested" in practice yet. Questions regarding the wording of the new provision raise some concerns of an overly restrictive interpretation for its use in practice. The question is also whether the provision may be used for the confiscation of property, which was acquired prior to the adoption of the law.

2.3.6 General overview

<b>CC</b>		<b>Croatia</b>
Confiscation	80, 82	Article 80: Seizure of objects Article 82: Confiscation of Pecuniary Gain Acquired by a Criminal Offence
Direct/indirect proceeds	?	Not specifically
Value confiscation	82/2	To pay equivalent sum of money
Third persons	82/3	
Legal person	20	Article 20 of the Law on Responsibility of Legal Entities for Criminal Offences: Confiscation of illegally gained benefit (2) The illegally gained benefit referred to in paragraph (1) of this Section means any increase or prevention of a decrease of the legal entity's property in consequence of the commission of a criminal offence. (...)
Extended confiscation	82/2 new	As property benefit (proceeds of crime) from paragraph 1 of this article is to be considered also the benefit, created by the group of people or criminal organisation, which is in time relation with the committed criminal offence and grounded belief that it derives from this criminal offence exists, since its legal origin can not be determined. (Unofficial translation)
<b>CPC</b>		
<b>Financial investigation</b>	464/2 174	(2) The court and other authorities before which <b>criminal proceedings</b> are conducted shall in the course of proceedings obtain evidence and investigate circumstances which are relevant for the determination of pecuniary benefit.
Sims	Yes	
Pre trial phase	?, 219/3	
Access to bank data	219/3	Article 219 (new 234) (3) The investigating judge may require a bank to deliver him information on the bank accounts of a defendant or another person against whom proceedings for the confiscation of pecuniary benefit obtained in consequence of the commission of an offence are being conducted. Such a request may be made even before the commencement of an investigation or before the commencement of proceedings for the confiscation of pecuniary benefit if it is likely that the money obtained by involvement in the commission of criminal offences committed by a group ... or a criminal organization ... or of a criminal offence of the misuse of drugs ...punishable by imprisonment for a term of more than three years are placed in those bank accounts.
<b>Temporary confiscation</b>	218 objects 467 Proceeds  297-299 Execution law	Article 218 (new 233): Temporary Seizure of Objects (1) Objects which, according to the Criminal Code, have to be seized or which may be used to determine facts in proceedings... Article 467 (new 486) When the confiscation of pecuniary benefit is under consideration, the court shall, by virtue of the office, and pursuant to the provisions dealing with enforcement proceedings, order provisional security measures. In such a case, the provisions of Article 136 (new 142) paragraph 2 of this Act shall respectively apply.
Pre trial	218/8	218 (8) The police authorities may seize the objects ... when proceeding pursuant to the provisions of Article 186 and Article 196 paragraph 1 of this Act or when executing a court's warrant.
Freezing bank accounts	219/5	219/5 The court may order by a ruling an individual or legal entity to suspend temporarily the execution of a financial transaction if the suspicion exists that it represents an offence or that it serves to conceal an offence or to conceal the benefit obtained in consequence of the commission of an offence.

Extended confiscation in South-Eastern Europe

Procedure Appeal		
Management	219/6	219/6 ...financial means ... shall be deposited in a special account to be kept until the termination of the proceedings or until the conditions are met for their recovery.
<b>Confiscation</b>	468 463 (objects)	Article 468 (new 487): (1) The court may order the confiscation of pecuniary benefit by a decision in which the defendant is found guilty of the offence charged. ... Article 463 (new 482): (1) Objects which must be seized according to the Criminal Code shall also be seized when criminal proceedings do not terminate with a judgement of conviction, provided that this is required by considerations of public safety or the protection of the honour and dignity of citizens. ...
<b>procedure</b>	465 469-471	Article 465 (new 484): (1)... the person to whom the pecuniary benefit was transferred as well as the representative of the legal entity shall be summoned for interrogation in pre-trial proceedings and at the trial. The summons shall state that the proceedings will be held even in their absence. ...
Free estimation of value by judge	466	Article 466 (new 485): The amount of pecuniary benefit shall be fixed at the discretion of the court whenever its assessment entails undue difficulties or a significant delay in the proceedings.
<b>Execution</b>		
<b>Special legislation</b>		Law on the Office for the Suppression of Corruption and Organised Crime
<b>Links</b>		<a href="http://www.vsrh.hr/EasyWeb.asp?pcpid=366">www.vsrh.hr/EasyWeb.asp?pcpid=366</a>
<b>Institutions (specialized)</b>		
Ministry of interior		Criminal police
Prosecutor		Office for Suppression of Corruption and Organized Crime (USKOK)

		<b>Law on the office for the suppression of corruption and organised crime (USKOK)</b>
<b>Financial investigation</b>	21 44	Limited to list of crimes (Article 21)
Sims	YES	
Pre trial phase	YES	Article 44/2: Civil procedure
Access to bank data	42a	
Monitoring order	42a/4	
<b>Temporary confiscation</b>	44-56 50/1 52/3	Article 50 (1) The court shall, at <b>the proposal of the Office</b> , order the securing measure of seizure of the means, proceeds or assets resulting from the criminal offence referred to in Article 21 hereof if: 1. there is ground to suspect that the means, proceeds or assets resulted directly or indirectly from the criminal offence referred to in Article 21 hereof; 2. the value of such the means, proceeds or assets does not exceed 100,000,00 Kuna; 3. there is ground to suspect that the offender mentioned in Article 21 hereof shall prior to the start of the criminal proceedings, or during the criminal proceedings, prevent or make significantly difficult the seizure of such means, proceeds or assets resulting from a criminal offence referred to in Article 21 hereof. (2) As a securing measure, the court may specify one or more measures provided

Extended confiscation in South-Eastern Europe

		in the <b>Seizure Act, specifically ...</b>
Pre trial		
Freezing bank accounts	50/5 new	
Procedure Appeal	44/2  46,47  53-55	<p>Article 44</p> <p>(1) ... the procedure in which the Office and the courts, with previous or provisional measures (securing measures), secure the means, proceeds or assets resulting from the criminal offences mentioned in Article 21 hereof.</p> <p>(2) The procedure referred to in paragraph 1 above does not constitute criminal proceedings, and it includes adequate implementation of the <b>provision of the Execution Law</b> (Official Gazette of the Republic of Croatia No. 57/96 and No. 29/99), unless specified otherwise herewith.</p> <p>(3) The confiscation of the means, proceeds or assets referred to in paragraph 1 above shall be carried out pursuant to the provisions for the seizure of proceeds included in the Criminal Procedure Act.</p> <p>Article 47: urgent procedure.</p> <p>51/4: 21 days, 52/4 and 5: 6 months, one year.</p>
	52/3	Reversal of burden of proof
Management		
Free estimation of value	49/2	

## **2.4 “The Former Yugoslav Republic of Macedonia” – Country profile**

### 2.4.1 Existing legislation<sup>15</sup>

Criminal legislation was amended in 2004 and 2005.

#### **Confiscation of the proceeds of crime**

Confiscation of the proceeds of crime is regulated by the Criminal code (CC Articles 97 to 100). Confiscation of direct or indirect property gain, which includes money, movable or immovable property of value, as well as every other property, proceeds or assets, material or immaterial rights from the perpetrator, is ordered by the court (Article 98/1 CC). Value based confiscation is regulated in Article 98/1 CC. The confiscation is also possible if there are factual or legal obstacles for conducting criminal procedure against the perpetrator of a crime (Article 97/3 CC). In such cases, the court may start special procedure for confiscation upon the proposal of the prosecutor, in order to examine the evidence and to establish if the objects were used for or produced by criminal offence, or that the property or property benefit derives from crime (Article 541 CPC).

The CC provides the legal basis for assets-sharing based on ratified international agreement (Article 97/4 CC).

The proceeds of crime can be confiscated from a third person, to whom they have been transferred without adequate compensation (Article 98/2 CC), and from a legal person (Articles 100, 96e and 28a CC).

The victim’s property claim for damages in criminal procedure and the relation to the confiscation of the proceeds of crime are defined in Articles 99 CC and 533/3 CPC.

The legal basis for the financial investigation, temporary measures for objects, instrumentalities and proceeds and the procedure for confiscation of proceeds of crime are set in the Criminal Procedure Code (CPC), Articles 219-227 and 532-543.

The confiscation of the proceeds of crime is determined by a court decision which finds the defendant guilty (Article 537).

The procedure for deciding on confiscation (providing evidence and statement) is defined in Article 534 and the procedure for defining the exact value of proceeds to be confiscated in Article 535 (statements from state bodies, expertise).

The confiscation is executed within a period of 30 days from the effectiveness of the verdict (Article 542). It is also stated that all legal acts concluded after committing the criminal act and with the purpose to reduce the value of the property, which is the subject of the confiscation measure, are nullified (Article 542/5).

---

<sup>15</sup> Criminal Code (OJ 37/1996, OJ 19/2004).

Criminal Procedure Code (OJ 17/1997, 44/2002, 74/2004), reviewed text (OJ 15/2005).

Law on the Public Prosecution Office (OJ 38/2004).

Law on Internal Affairs (OJ 19/1995, 55/1997, 38/2002 and 33/2003).

Law on the Financial Police (OJ 55/ 2002).

Customs Code (OJ 21/1998, 86/1999, 25/2000, 31/2001, 4/2002, 55/2002 and 42/2003).

Law on establishing and payment of the public revenues (OJ 13/2001, 61/2002, 24/2003, 77/2003 and 19/2004).

The Law on preventing money laundering and other incomes from punishable acts (OJ 46/2004).

Anti-Corruption Law (OJ 49/2002, 46/2004).

The confiscation of objects (including proceeds) is possible even if the criminal procedure does not finish with a verdict that finds the accused guilty, if it is in the interest of general security or for ethical reasons. Special decision is brought by the body before which the procedure was being conducted at the moment when the procedure was completed, i.e. interrupted (Article 532).

### **Temporary measures**

Temporary measures are regulated in two parts of CPC: Articles 220 and following are related to the temporary seizure of objects, evidence, instrumentalities and proceeds of crime (Article 220/2) during the (formal court) investigation; Articles 532 and following are related to temporary security measures of the property, which can be confiscated as proceeds of crime during the trial phase.

The temporary securing of objects or property is defined as temporary freezing, confiscation, freezing of funds, bank accounts and financial transaction, or gains from the criminal offence (Article 220/1), and, in the case of proceeds of crime, as freezing of means, bank accounts and funds (Article 220/2).

A temporary securing measure is ordered during the investigation by an investigative judge or council. The measure can last until the end of the procedure (Article 220/3). In the case of freezing a bank account, the measure has to be re-examined every two months (Article 220/4).

CPC defines the rules for the appeal (Article 223/2), return of the objects (Article 227) and their management (Article 220/5-7). Management of temporary confiscated objects is the court's responsibility. The general rules for management (real estate mortgage, deposit of money in a special account, possibility to sell seized objects) are not sufficient for proper management and preservation of value in practice. The absence of a specialised service (agency) and specific rules for management and disposal of seized and confiscated property create many problems in practice, as well as the loss of the value of seized objects.

Article 536 determines that the court *ex officio* orders temporary security measures to secure later confiscation of property and property benefit.

Temporary measures cannot be ordered during the police investigation phase, but only after formal court investigation begins. Such regulation may prevent the efficiency of the measures in practice, especially in demanding investigation of serious crime.

### **Financial investigation**

The financial investigation is not specifically defined by the CPC. Legal basis can be found in Article 533/2 which asks for *ex officio* determination of property benefit, deriving from a crime, in a criminal procedure.

The court and other bodies which conduct criminal procedure are obliged to collect evidence and to determine circumstances, which are important for the determination of the property and proceeds of crime (Article 533/2).

The pre-investigation phase (police investigation) is therefore not specifically covered by the law. General powers of the police are being used as the legal basis (Article 144) for the access to relevant data during the financial investigation (ownership of the property, tax reports, etc.). The obsolete databases, land register, evidence of legal persons, etc., present an obstacle for the efficient financial investigation.

There is no specific provision for access to bank data. In some cases the Article 144 CPP is being used, but the court decision is needed. Access to bank data, especially in case of foreign accounts, is being promoted through the Money Laundering Prevention Directorate (Ministry of Finance). This is the case even when no concrete suspicion of money laundering criminal offence exists!

There is an absence of clear provision, which would provide the legal basis for financial investigation, including during pre-investigation procedure, and clear legal basis for access to bank data is lacking in Macedonian legislation.

The amendments to the Criminal Procedure Code in 2004 enabled the application of special investigative measures (Article 146), but their use in practice is limited.

#### 2.4.2 Extended confiscation

Extended confiscation is not regulated in criminal legislation. The Government plans to introduce extended confiscation in future legal changes.

The high taxation (up to 75%) of discovered unreported incomes/property targets the proceeds of crime in administrative procedure, where the burden of proof of the source of income lies with the person under inspection. The rules can be applied when confiscation of the proceeds of crime is not possible in criminal procedure. The rules apply for public officials in accordance with the Law on Corruption (Articles 33, 34, 35 and 36). The practical use of this possibility is very limited.

Covering of the origin of the disproportionately obtained property (Article 359-a)<sup>16</sup> is a Macedonian specialty. The purpose of the provision is to target the proceeds of crime and is related to the corruption prevention measures (Articles 33, 34 and 37 of the Law on Corruption Prevention) for public officials.

The official person commits a crime if:

- he/she gives false data on his/her income within the reporting of the material situation obligation
- his/her property significantly exceeds his/her legal and reported income and he/she covers the real source.

The foreseen sentence is six months to five years imprisonment and a fine. In addition, the unreported property is to be confiscated (including value-based confiscation).

The provision forces the public official to explain the imbalance of existing and reported income/property and to reveal the real source of the property (under threat of punishment). From this perspective, its compliance with human rights standards (right of non-self-incrimination) is questionable. Based on the data provided, the provision has not yet been used in practice.

---

<sup>16</sup> Article 359-a CC (Covering of the origin of disproportionately obtained property):

(1) The official person and responsible person in public enterprise or public institution who, against his/her lawful duty for reporting of the material situation gives false data on his/her income, or if his/her property significantly overcomes his/her legal and reported for taxation income and covers the real sources, shall be sentenced with imprisonment of six months to five years and with a fine.

(2) The property that significantly overcomes the income that is obtained and is reported for taxation for which the perpetrator covers the real sources shall be confiscated and if the confiscation is not possible from the perpetrator, another property with similar value shall be confiscated. The property is also confiscated from third parties that received it without proper compensation.



The implementation of the confiscation regime (without extended confiscation) may be particularly difficult, since approximately 50% of payments in Macedonia are cash transactions.

#### 2.4.3 Drafting the legislation

In June 2007, the Ministry of Justice prepared the Draft law on Management of Seized and Confiscated Objects and Proceeds of Crime which was discussed during the CARPO workshop.

Changes to the CPC related to witness protection are in the parliamentary procedure (June 2007). The second part of the CPC (conceptual) changes, related to the abolishment of court investigation (and possibly changes related to extended confiscation) will follow in the end of the 2007.

A government decision (implementing the strategy for changes to penal legislation) asked for civil procedure confiscation, but is interpreted by the Ministry of Justice as a request for extended confiscation with civil law tools. Since changes of CPC require a two-thirds majority in the parliament (constitutional provision), the Ministry of Justice intended to include relevant legal changes on extended confiscation a separate law (either in the Draft law on management of proceeds or in the Draft law on Agency for combating organised crime). It was suggested to include relevant provisions for extended confiscation to CPC and PC, since both drafts deal with other matters.

A proposal for the new Law on Finance Police is under preparation in cooperation with experts from the Italian *Guardia di Finanzia*.

#### **Recommendations from the CARPO workshop on amending criminal legislation to introduce extended confiscation**

##### **Amendments to CC**

- 98 or 97 – extended confiscation,
- 98/4: relation to the agency - use of confiscated property (budget),
- 359a CC – Covering of the origin of disproportionately obtained property by public officials (compliance with the human rights standards)?

##### **Amendments to CPC**

- 533: FI and temporary measures should be possible in pre-investigation procedure,
- insert provision for the access to bank data,
- 223 and 536 (non suspension appeal and add procedure to prove the legal origin during temporary measure (also prior to main hearing),
- provisions related to management of seized property and relation to the Draft Law on Management: 219/6, 220 (add prohibition of disposal), 227, 542 (execution of confiscation).

#### 2.4.4 Institutions

##### **Police**

The Department for Organised Crime (Sector for Financial Crime) was created in 2005 within the Ministry of Internal Affairs and is not included in the Criminal Police Department.

A Financial Police was set up within the Ministry of Finance in 2002. It went through many reorganisations and personnel changes, and is still in the process of establishing itself fully, in order to perform its tasks. Changes of the Law on Financial Police are being prepared.

The role of the Financial Police and Customs Administration in the criminal procedure is defined in Article 145 CPC. The Financial Police is responsible for detection and investigation of tax exemption, laundering of money and other profits from a punishable act, smuggling, illegal trade and other crimes that involve greater amount of tax, customs or other profits. The competences of the Financial Police partly overlap with the tasks of the Sector for Financial Crime within the Organized Crime Department regarding financial investigations, which creates additional challenges for good co-operation between the institutions.

The Law on Financial Police also introduces the methods for establishing income, such as: net weight value method, expenses method, bank deposits method, percentage margin method and special rate method.

The Public Revenue Department within the Ministry of Finance provides data on tax reports, which are an important source of information for financial investigation. It may have an important role in parallel to financial investigation, due to the possibility of (high) taxation of unreported income/property, when confiscation of the proceeds of crime is not possible in criminal procedure.

### **Prosecution service**

In the system of court investigation, the prosecutor guides the pre-investigation (police) investigation. The investigative measures during the pre-investigation phase are ordered by an investigative judge, upon the proposal of the police or the prosecutor.

The Department for prosecuting perpetrators of crimes in the field of organised crime and corruption was created in 2004 within the Public Prosecution Office. Its role is to initiate criminal proceedings for crimes that are prosecuted *ex officio* and are committed by an organised group of at least three persons that acts for a certain period of time in order to acquire direct or indirect financial gain or other type of material benefit, and which commits one or more crimes, as well as other types of crimes for which the law envisages a sentence of imprisonment of at least four years (Article 29 of the Law on the Public Prosecution Office).

#### 2.4.5 Conclusions

Support for the relevant institutions to implement existing legislation on financial investigation, temporary securing and confiscation of proceeds of crime is still needed. The Financial Police is not fully operative yet. Overlapping competences with the Sector For Financial Crime bring little improvement to already poor co-operation. There are no statistics or data on financial investigations and temporary confiscation kept within the police or prosecution service. Management of seized objects and property represents a real problem in practice. The Ministry of Finance prepared a draft proposal for the Law on Management of Seized and Confiscated Objects and Property, which foresees the creation of a special agency for management within the Ministry of Justice.

Financial investigation is not specifically defined in the CPC and no provision for access to bank data exists. The provision on general powers of the police is being used in rare cases when financial investigation is being conducted. Monitoring of bank accounts is not regulated in the CPC. Some records are not updated (land register, records of legal persons...), which, together with up to 50% cash-based economy, present real obstacles for efficient results in practice. In some cases the FIU (Money laundering prevention directorate) is promoted for the access to bank data, even if there is no concrete suspicion of a money laundering criminal offence. There are only limited legal possibilities for use of SIMS. Implication in practice is very limited.

The temporary measures are only possible after court investigation begins; the pre-investigation procedure (police investigation) is not covered, which may present a real obstacle for efficiency of the measures.

Confiscation of direct and indirect proceeds and value-based confiscation are regulated. Confiscation is possible from third persons and legal persons as well and even under certain circumstances when criminal procedure cannot be finished.

Extended confiscation is not regulated by the criminal legislation. The Government committed itself to amend the legislation, in order to provide legal basis for extended confiscation.

The criminal offence "covering of the origin of the disproportionately obtained property" (Article 359a CC) is a Macedonian specialty. Its compliance with human rights standards (right of non-self-incrimination) is questionable, but based on the data provided; the provision has not been used in practice yet. Possibility for high taxation (up to 75%) of unreported income and property for public officials follows the anti-corruption aims.

2.4.6 General overview

<b>CC</b>		"The Former Yugoslav Republic of Macedonia"
Confiscation	97	97/1 No one may retain the direct or indirect property gain gained through a crime. (...)
Direct/indirect proceeds	97/1	Article 98: Manner of confiscating (1) The material profit acquired to a criminal activity comprising money, movable and immovable objects of value, as well as any other assets, property or equity, material or immaterial rights shall be confiscated from the perpetrator, and if this confiscation is not possible, other items shall be confiscated from the perpetrator, which correspond to the acquired profits. (...)
Value confiscation	98/1	
Third persons	98/2 + 537/3 CPC	98/2: ...from third parties to whom it has been transferred without an appropriate compensation, if they did not know, and could know and were obligated to know that it had been acquired through a criminal activity.
Legal person	100 28a, 96e +537/3 CPC	100: If a legal entity gains property gain from the crime of the offender, this gain shall be confiscated from it. 28a: Conditions for criminal accountability of a legal entity 96e: Confiscation of property, material profits and confiscation of objects from legal person.
Extended confiscation	No	Taxation up to 75% of unreported income/property of official persons Article 359a: Covering of the origin of disproportionately obtained property
<b>CPC</b>		
<b>Financial investigation</b>	533/2	Article 533 (1) The property and property benefit gained by the committing of the criminal act is certified in a <b>criminal procedure ex officio</b> . (2) The court and the other bodies before which the criminal procedure is conducted are obliged during the procedure <b>to collect evidence and to inspect circumstances</b> which are important for the determination of the property and property benefit. ...
Sims	146	
Pre-trial phase	No	533/1
Access to bank data	No	No specific provision - general police powers (Article 144)
<b>Temporary confiscation</b>	220/2 - 223 536	Article 220 (1) The investigative judge or the council by a decision can determine temporary securing of the <b>objects and means which are related to the criminal act</b> . (...) The temporary securing of objects or property is understood as temporary freezing, confiscation, holding funds, bank accounts and financial transaction <b>or gains from the criminal acts</b> . (2) (...) the court may bring a decision for freezing the means, accounts and funds for which there is a ground for suspicion that they <b>are gains from the criminal act</b> . (...)  Article 536 (1) When the conditions for confiscation of the property and <b>property benefit</b> are fulfilled, the court will <i>ex officio</i> order temporary security measures established with Article 219 of this Law. (...)
Pre-trial	No	See 223/1; only after (court) investigation
Freezing bank accounts	220/2, 4,7,8	
Procedure	223	Article 223
Appeal	536/3,	(1)The measures for temporary securing and confiscation of the objects or

Extended confiscation in South-Eastern Europe

	4  227+5 32	property, are determined by a decision of the court, the investigative judge during the investigation and after initiation of criminal charges, the court council i.e. a judge. (...)  Article 227 (1)The <b>objects</b> which during the procedure are temporarily confiscated shall be returned to the owner i.e. holder if the procedure ceases and there are no reasons for their confiscation (Article 532). (...)
Management	220	
<b>Confiscation</b>	532- 543 537  532	Article 537 (1) The court may pronounce confiscation of property benefit in the verdict with which the accused is found guilty, in the decision for court reprimand or in the decision for application of an educational measure, respectively in the decision with which is pronounced the security measure. (...)  Article 532 (1) The objects, which according to the Criminal Law have to be confiscated, will be confiscated when the criminal procedure <b>will not finish with a verdict that finds the accused guilty, if it is in the interest of the general security or for ethical reasons.</b> (...)
<b>Procedure</b>	534  541 + 97/3 CC	Article 534 (1) ... the person to whom the property benefit is transferred as well as the representative of the legal person will be <b>summoned</b> for hearing at the <b>previous procedure</b> and <b>at the trial.</b> (...)  Article 541 (1) When there are <b>factual and legal obstacles for conducting criminal procedure</b> against certain person, the court may enforce <b>special procedure</b> for confiscation of the property and the property benefit and seizure of objects upon the proposal of the Public Prosecutor.... (2) ...the court will examine the evidence necessary to establish whether or not it is a matter of property or property benefit obtained with the commission of criminal offence or it is a matter of the objects used, or produced by the criminal act or they have to be confiscated (...)
Estimation of value	No 535	535/1: If with other facts the court cannot determine the value of the property and property benefit that has to be confiscated, it will <b>order expertise.</b> (...)
<b>Execution</b>	542	542/1 The process for confiscation of the property or property benefit has to be performed <b>in the period of 30 days after the verdict becomes legally valid.</b> (...)
<b>Special legislation</b>	No	
<b>Links</b>		<a href="http://www.pravo.org.mk">www.pravo.org.mk</a>
<b>Institutions (specialized)</b>		
Ministry of interior	144 CPC 157+2 19	Criminal police MoI, Organised Crime Department (OCD) – Financial Crime Sector (FCS)
Custom administration	145/1 CPC	
Financial police	145/2 CPC	
Prosecutor		Section for prosecution of the perpetrators of the criminal acts in the field of the organised crime and corruption
Court		

## 2.5 Kosovo – Project area profile

### 2.5.1 Existing legislation<sup>17</sup>

The conflict in Kosovo brought many economic challenges: economic dependency on the Diaspora's remittances, privatisation, establishing a market economy and financial sector, growing investments in infrastructure, housing, as well as the building of institutions, transfer of authority from UNMIK to local authority etc – all these present a challenge for fighting economic and organised crime and corruption. State systems and organisations are still under development. Transfer of powers and responsibilities from UNMIK<sup>18</sup> Police to Kosovo Police Service (KPS) is ongoing. International prosecutors and judges are working together with local people.

Confiscation of the proceeds of crime is regulated by the Provisional Penal Code (hereinafter CC) in Articles 82–85, and by the Provisional Criminal Procedure Code (hereinafter CPC) in Articles 490–499, and confiscation of objects in Articles 60 CC and 247–252 CPC. The Law on Suppression of Money Laundering contains provisions, related to temporary securing and confiscation of the proceeds of crime in sections 11 and 12, which could be applicable not only in cases of money laundering.

### Confiscation

Material benefit (money, objects of value or any other material benefit) acquired by the commission of a criminal offence has to be confiscated by the judgment establishing the commission of a criminal offence (Article 82 CC). Value-based confiscation is regulated by Article 83/1 CC<sup>19</sup>.

Confiscation of material benefit is also possible from a third person to whom it has been transferred without compensation or with a compensation that does not correspond to the real value, if such person knew or might have known that the material benefit had been acquired by the commission of a criminal offence. When the material benefit has been transferred to close relatives, it can be confiscated from them, unless they prove that they have given compensation for its entire value (Article 83/2 CC). The proceeds of crime (material benefit) can also be confiscated from a legal person (Article 85 CC). Pursuant to Article 491 CPC, the court summons the third person or representative of legal person for examination and during the trial they can present the evidence and put questions to the accused, witnesses and expert witnesses.

---

<sup>17</sup> Provisional Criminal Code of Kosovo (UNMIK/reg/2003/25, 2004/19).

Provisional Criminal Procedure Code of Kosovo (UNMIK/reg/2003/26).

Customs Code (UNMIK Regulation 2004/1 On the Customs Code of Kosovo).

Law on the deterrence of money laundering and related criminal offences (UNMIK Regulation 2004/2, 2005/42, 2006/9, 2006/49: indefinite prolongation, 2006/53).

Law on tax administration and procedures (2004/48).

Links: [www.ks-gov.net](http://www.ks-gov.net), [www.kosovopolice.com](http://www.kosovopolice.com), [www.unmikonline.org/](http://www.unmikonline.org/), [www.ks-gov.net/GazetaZyrtare/](http://www.ks-gov.net/GazetaZyrtare/), [www.unmikonline.com](http://www.unmikonline.com), [www.kuvendikosoves.org](http://www.kuvendikosoves.org), [www.euinkosovo.org](http://www.euinkosovo.org).

<sup>18</sup> UNMIK is the international civil presence established pursuant to United Nations Security Council Resolution 1244 (1999) in the territory of Kosovo, incorporating the Police and Justice Pillar; the Interim Civil Administration (United Nations) Pillar; the Institution-Building (OSCE) Pillar; and the Economic Reconstruction and Development (EU) Pillar.

<sup>19</sup> The perpetrator shall be obliged to pay an amount of money corresponding to the material benefit acquired. The court can allow the payment in instalments over a period not exceeding two years.

Confiscation (seizure) of objects used or destined for use in the commission of a criminal offence, or objects derived from the commission of a criminal offence, is regulated by Article 60 CC. Such objects may be confiscated if they are the property of the perpetrator or if it is necessary for the interests of general security.

According to Article 489 CPC, such objects shall be confiscated even when the accused is not declared guilty by the judgment in a separate ruling, if there is a danger that the objects might be used for a criminal offence, or for the interests of public safety or moral considerations.

Pursuant to the Article 494 CPC, the confiscation of the proceeds of crime may be imposed in a judgment in which the accused is declared guilty or where a judicial admonition is imposed, as well as in a ruling on a measure of mandatory rehabilitation treatment of perpetrators addicted to alcohol or drugs. The court has to specify the object or sum of money to be confiscated (payment can be done by instalments). The court can determine the exact value of material benefit by a free evaluation (Article 492 CPC).

Confiscation of objects originating from a specified criminal offence<sup>20</sup> (unlawfully given or accepted rewards, gifts or benefits) is under certain conditions<sup>21</sup> possible by a separate ruling of the court even without a conviction (judgment) of the accused (Article 498 CPC).

Confiscation of indirect proceeds is not specifically regulated, but could be understood by the interpretation of the Article 83/1 CC (or any other material benefit).

### **Financial investigation**

The court and other agencies conducting the proceedings must *ex officio* collect evidence and inquire into the circumstances, in order to determine the material benefit acquired by the commission of the criminal offence (Article 490 CPC). According to Article 499/3, such obligation also applies in pre-trial proceedings.

Access to bank data is considered as a special investigative measure (SIMs) and is regulated in Articles 256/1 xiii, 256/11 and 257/1, 2, respecting the conditions for the use of SIMs. An order is issued by the pre-trial judge upon the proposal of a prosecutor to the bank or other financial institution to disclose the financial data of the suspect (Article 257/1) or other person (Article 257/2) when there is grounded suspicion that the person committed criminal offence or the person participates in financial transactions of the suspect. Some prosecutors were of the opinion that the requested standard of grounded suspicion is too restrictive. Monitoring of bank accounts is not regulated.

SIMs are regulated in Articles 256-267, but in practice their use is limited.

### **Temporary securing measures (seizure)**

According to Article 493 CPC, the court (investigative judge or the presiding judge<sup>22</sup>) can *ex officio*, or upon the prosecutor's proposal, order the seizure of property that can be confiscated, or other security measures in accordance with the execution procedure provisions (prohibition of disposal...).

---

<sup>20</sup> Receiving Stolen Goods, Unjustified Giving and Acceptance of Gifts, Accepting Bribes, Giving Bribes and Trading in Influence (Articles 272, 250, 251, 343, 344 and 345 CC).

<sup>21</sup> If the legal elements of a criminal offence are established and it is also established that certain objects originate from the criminal offence or that a reward, gift or benefit was given or accepted.

<sup>22</sup> Article 116 CPC.

The freezing of financial transactions is not specifically regulated; as a result, general provisions for temporary securing measures and seizure are used (Articles 493, 116, 490 and 499 CPC). Pursuant to the above-mentioned articles, a freezing order is issued by the pre-trial judge upon the proposal of the public prosecutor.

### **Management**

The court is responsible for the management of seized or otherwise secured objects and the proceeds of crime. The court has to proceed particularly quickly and to operate economically, rationally and as a good manager (Article 497/1). The procedure for management, which is foreseen by Article 497/2, is still not adopted. The general provision for management is in the opinion of Kosovo officials not sufficient. The problems with inappropriate stored objects with decreasing value call for proper legislation.

The objects which have to be confiscated on the basis of CC (Article 60), or might present evidence or proceeds of crime, may be (temporarily) seized by the police. Such objects shall be put into the custody and control of the public prosecutor (Article 247 CPC). The selling of the seized object (Articles 60 CC and 247 CPC) is regulated only for the object, found on the defendant, belonging to an unknown person, if the object is perishable or the expenses for management are considerable. The proceeds of selling should be transferred to the bank for safekeeping (Article 252 CPC).

### **Special Legislation**

The Law on the Deterrence of Money Laundering and Related Criminal Offences regulates the confiscation and provisional securing measures, which are not only related to money laundering cases, but are also applicable to proceeds of crime. The relation between the CPC and this law does not seem to be clear to the Kosovo officials, and in practice it is not used for securing and confiscating the proceeds of crime, which are related to money laundering cases.

The provisions of section 11 and 12 are more detailed as relevant provisions of CPC and provide broader possibility for efficient deprivation of property benefit.

According to section 10.3, the standard of proof that the property constitutes the proceeds of crime is relaxed. The representations (made as part of an undercover investigation) may only indirectly support the belief that the property constitutes the proceeds of crime (section 10.3). If the person is claiming ownership of the property, notified to be confiscated, the person should provide the date and circumstances under which the ownership or beneficiary status in regard to the property was (legally) acquired (section 11.4c).

The provision of section 11.1b supports the interpretation that the law is applicable, not only to money laundering cases, but also to "all other circumstances", when the prosecutor may submit a motion for confiscation of property that results from the proceeds of crime, or that was used or intended to be used to commit or facilitate money laundering or the predicate criminal offence from which the proceeds of crime are derived. Value-based confiscation is regulated in section 11.8.

The prosecutor can propose a temporary measure for securing the property even if no criminal proceedings are being conducted. In such cases, the investigative judge of the court where the property is located has the jurisdiction to decide on a measure (section 12.2). The conditions for the temporary measures and types of measures are defined in section 12.1 and 12.4<sup>23</sup> (12.4b: freezing of financial transaction).

---

<sup>23</sup> The court may order the following:

- that no person or entity may sell, transfer, encumber, destroy or otherwise deal with the property;



The management of secured property is regulated in section 12.9. The court can also decide to sell seized property if there is a danger that the property will perish, waste, or otherwise decline in value, or if the costs of maintaining are disproportionate, or if the owner agrees to the sale.

The unclear situation with the application of the law is still not clarified. Its validation was extended indefinitely by UNMIK regulation 2006/49.

#### 2.5.2 Extended confiscation

Extended confiscation is not regulated in Kosovo. The KPS presented a proposal to the Ministry of Justice for the introduction of relevant legal basis, based on the Regional Strategy on tools for combating organised crime (2005).

According to the Law on the Deterrence of Money Laundering and Related Criminal Offences, the standard of proof that the property constitutes the proceeds of crime is loosened (section 10/3). The representations (made as part of an undercover investigation) may only indirectly support the belief that the property constitutes the proceeds of crime (section 10.3). The person who claims ownership of the property to be confiscated should provide the date and circumstances under which the ownership or beneficiary status in regard to the property was (legally) acquired (section 11.4c).

#### 2.5.3 Drafting the legislation

The working group for changes to the CPC and the CC has been setup by UNMIK Department of Justice. Draft amendments are not available yet.

#### 2.5.4 Institutions

The Ministry of Justice was established in 2006. "Later transfer of competencies" to the Ministry for Internal Affairs has been effectuated by UNMIK Regulation No. 2006/26 of 27 April 2006 (attachment XVI (ii)). The transfer of competencies from UNMIK Police to Kosovo Police Service (KPS) has also started: "monitoring of Kosovo police service, as authorised by SRSG, acting through the police commissioner and without interventions in the actions of the Kosovo Police Service and in implementing criminal investigations".

Within the KPS Directorate for Organised Crime the Financial Investigation unit is responsible for conducting financial investigations. It was stated that the unit is understaffed. Reorganisation is expected due to the transmission of UNMIK powers to KPS.

The **Customs Service** is responsible for investigating administrative and criminal offences provided in the Customs Code. Customs officers are considered as "police officers" and "judicial police officers" under certain sections of the Provisional Criminal Procedure Code. The standards for co-operation and exchange of information with the KPS are still to be established.

- 
- that no bank or financial institution may transfer the property;
  - in the case of immovable property, that the competent authorities shall refuse to verify a contract of sale or to register the transfer of the property;
  - that, in the case of businesses, a trustee be appointed by the court to control the property;
  - that authorised customs or police officers seize the property.

The **Tax Authority** does not have police powers. Pursuant to Article 59 of the Tax Code, the Tax Authority may disclose information concerning a taxpayer to the law enforcement agencies for the use in investigation of tax and financial offences without a court order. In the case of other criminal offences a court approval has to be obtained.

The **Financial Information Center (FIC)** was established in 2004 within the Police and Justice Pillar by UNMIK Regulation 2004/2 on the prevention of money laundering. The FIC is a centralised unit responsible for the collection of information related to money laundering or financing of terrorist activities, and the distribution of that information to law enforcement agencies.

### **Prosecutor**

The role of the prosecutor during the preliminary criminal proceedings and during the investigation phase is regulated by Law on the Public Prosecutor's Office (LPPO) and CPC. The prosecutor is responsible for investigating criminal offences and supervising the work of the judicial police (Article 46/1 LPPO). The prosecutor can undertake the necessary measures, within his powers, for the detection of criminal offences and the discovery of perpetrators and is entitled to undertake investigative actions while directing or supervising the investigation in preliminary criminal proceedings (Article 47).

The criminal (pre-trial) investigation is initiated and led by the prosecutor when there is reasonable suspicion that the person committed a criminal offence (Article 220 CPC). During criminal proceedings he can undertake necessary measures by himself or through the judicial police (Article 51).

The Special Prosecutor's office (four local and five international prosecutors) was established in 2006. Its role is to combat serious organised and economic crime: in particular, abuse of privatisation, procurement procedures and donations and abuse by budgetary users (based on auditor's reports).

### 2.5.5 Conclusions

The post-war situation affects the economy and keeps the standard of living of people low; in addition, the unsolved question of the status of Kosovo affects the capacity of institutions and (state) systems, which makes the fight against crime and targeting the proceeds of crime even more challenging. The relation and "co-operation" between international police officers, prosecutors, judges and local authorities is changing and depends on the transfer of responsibility. Local institutions (KPS Financial investigation unit, Special Prosecutor's office) still need support and training in the field of financial investigation.

The existing confiscation regime has some deficiencies. Confiscation of indirect proceeds is not specifically regulated, but could<sup>24</sup> be applied by the interpretation of Article 83/1 CC. Access to bank data is considered as a Special Investigative Method and its application is restricted to the conditions applicable to SIMs (grounded suspicion is required). Freezing of financial transactions is not specifically regulated, but is applied in practice on the basis of general rules related to seizure and temporary securing measures for the confiscation of the proceeds of crime. Management of temporary seized and secured objects and the proceeds of crime present a problem in the absence of concrete provisions (and institutions) for management, which would specifically allow selling during the procedure, among other details.

---

<sup>24</sup> In the absence of the jurisprudence, this is my personal view.

The Law on Deterrence of Money Laundering and Related Criminal Offences also regulates temporary measures and confiscation of the proceeds of crime, which are not just related to the criminal offence money laundering. Still, its application in practice is limited and its relation to the general CPC provisions is not solved, therefore its more advanced provisions are not fully used in practice.

Extended confiscation is not regulated by criminal legislation. Limited possibilities and some elements of loosened standard of proof are provided by the Law on Prevention of Money Laundering.

Further support for the application of existing legislation is still needed, despite the presence of internationals (who sometimes have difficulties understanding the Kosovo legal system).

2.5.6 General Overview

		<b>Kosovo</b>
Confiscation	82 CC	The material benefit collected or retained through criminal activity shall be confiscated by the court judgment establishing the commission of a criminal offence.
Third person, family	83/2	
Legal person	85	
Value conf	83/1 499/2 CPC	...to pay an amount of money corresponding to the material benefit acquired.
Confiscation (seizure) of objects	60	Objects used or destined for use in the commission of a criminal offence or objects derived from the commission of a criminal offence may be confiscated if they are property of the perpetrator.
Extended confiscation	no, but	The Law on the Deterrence of Money Laundering and Related Criminal Offences (section 10.3): the standard of proof that the property constitutes the proceeds of crime is loosened. The representations (made as part of an undercover investigation) may only indirectly support the belief that the property constitutes the proceeds of crime. If the person is claiming ownership of the property, notified to be confiscated, the person should provide the date and circumstances under which the ownership or beneficiary status in regard to the property was (legally) acquired (section 11.4c).
CPC		
Financial investigation	490	(1) The material benefit acquired by the commission of a criminal offence or as a result thereof, shall be determined in criminal proceedings <i>ex officio</i> . (2) The court and other agencies conducting the proceedings shall be bound to collect evidence and inquire into circumstances which are important for the determination of the material benefit.
Pre-trial procedure	499/3	(3) The provisions of Article 490 paragraph 1 of the present Code shall apply <i>mutates mutandis</i> to the pre-trial proceedings; in addition to the bodies before which the criminal proceedings are conducted, other bodies provided for by this law shall also participate in the collection of data and the investigation of the circumstances of importance for the determination of the proceeds of crime.
Access to bank data (as SIMS)	256/1 xiii 256/11 257/1,2	Disclosure of financial data: obtaining information from a bank or another financial institution on deposits, accounts or transactions Court order: disclosure of bank and financial information of third parties
SIMS	256-267	
Temporary securing measures	493  116/2,3  247	Where confiscation of the material benefit acquired by the commission of a criminal offence is warranted, the court is obligated to order the temporary confiscation, or "securing" of that benefit. The court can make this determination <i>ex officio</i> , or upon the application of the public prosecutor. Temporary measures securing a property claim arising out of the commission of a criminal offence may be ordered in criminal proceedings according to the provisions that apply to enforcement proceedings upon a motion from authorised persons. temporary seizure of objects
Freezing order		Not specifically regulated.
Management	497	The procedure for managing confiscated items and property is to be

Extended confiscation in South-Eastern Europe

	252	provided by the competent public entity in the field of judicial affairs – not adopted yet. Management and selling of seized objects.
Confiscation	494	(1) Confiscation of the material benefit acquired by the commission of a criminal offence may be imposed in a judgment in which the accused is declared guilty or a judicial admonition is imposed, as well as in a ruling on a measure of mandatory rehabilitation treatment of perpetrators addicted to alcohol or drugs.
Confiscation procedure	491	Summon and examine third and legal person
Free estimation	492	Estimation of value by the court
Confiscation without the conviction	498/1	The court shall permanently confiscate the material benefit if it is established that the criminal offence (Receiving Stolen Goods, Unjustified Giving and Acceptance of Gifts, Accepting Bribes, Giving Bribes and Trading in Influence) was committed and that the asset in the defendant's possession originated from the criminal offence.
Links		<a href="http://www.ks-gov.net">www.ks-gov.net</a> , <a href="http://www.kosovopolice.com">www.kosovopolice.com</a> , <a href="http://www.unmikonline.org/">www.unmikonline.org/</a> , <a href="http://www.ks-gov.net/GazetaZyrtare/">www.ks-gov.net/GazetaZyrtare/</a> , <a href="http://www.unmikonline.com">www.unmikonline.com</a> , <a href="http://www.kuvendikosoves.org">www.kuvendikosoves.org</a> <a href="http://www.euinkosovo.org">www.euinkosovo.org</a>
Money Laundering Law	1.3.2004	UNMIK Regulation 2004/2, entitled "On the Deterrence of Money Laundering and Related Criminal Offences"
	11/1b	Provisions applicable also for other criminal offences (?) Public prosecutor may submit a motion for the confiscation of property that is the proceeds of crime or was used or intended to be used to commit or facilitate money laundering or the predicate criminal offence from which the proceeds of crime are derived.
Confiscation	11	The prosecutor is allowed to submit the motion for confiscation regardless of whether criminal proceedings are initiated against a person in connection with the property. Once such a motion is submitted to the court, persons or entities may file petitions claiming to be the rightful owner of the subject property.
Value based	11/8	
Assumption, burden of proof	10/3 11/4c	The standard of proof that the property constitutes the proceeds of crime is loosened. The representations (made as part of an undercover investigation) may only indirectly support the belief that the property constitutes the proceeds of crime (section 10.3). If the person is claiming ownership of the property, notified to be confiscated, the person should provide the date and circumstances under which the ownership or beneficiary status in regard to the property was (legally) acquired (section 11.4c).
Temporary securing	12	The court can render a ruling ordering a temporary measure for securing property where there is a grounded suspicion that the property is the proceeds of crime and there is a substantial likelihood that the property will be unavailable for confiscation at the conclusion of the final confiscation proceedings if a temporary measure for securing the property is not taken
Freezing	12/4b	
Pre-trial phase	12/2	Even if no criminal proceedings are being conducted
Procedure	12/6	30+30 days

## 2.6 Montenegro – Country profile

### 2.6.1 Existing legislation<sup>25</sup>

The legislation is generally in line with international standards, but its further use in practice may present some obstacles for its efficient implementation. The systematisation and coherence of provisions (after 2006 changes) could be improved.

In Montenegro progress was made in the field of confiscation of the proceeds of crime by amending the CPC in 2006. A special provision related to organised crime was added (Article 523<sup>26</sup>).

With the 2006 amendments the main lacks were tackled:

- access to bank data: prior to the 2006 changes the access to bank data was considered as SIMS and was limited to criminal offences, where imprisonment for 10 years was possible, or to organised crime (Article 242a). The Police sometimes still find a way to access bank data through FIU powers/access, by qualifying the criminal offence as money laundering.
- temporary confiscation (securing measures): prior to 2006 the temporary confiscation was possible in pre-trial procedure only for organised crime (new Article 541/4 and Article 523).

The existing Article 526/3 of the CPC<sup>27</sup> deals with the procedure during the temporary confiscation and allows unfreezing of seized property, if legal origin of property is proved or there are reasons to believe that the property does not derive from criminal offences. Similar provision is in new draft proposal for changes to the CPC in the Article 94/3<sup>28</sup>.

The provision is not used in practice, since extended confiscation is not defined in the criminal code. When value-based confiscation is applied, it is the legal property (in value of proceeds of crime) that is confiscated! The evidence of defence on the legal origin of the property in such cases should not be relevant for the purpose of unfreezing seized property.

### 2.6.2 Extended confiscation

There are no provisions allowing for extended confiscation. The last changes to the CPC (2006) introduced procedure for unfreezing of temporary confiscated (seized) property with reversal of burden of proof (Article 526/3).

---

<sup>25</sup> Criminal code (OJ [70/2003](#), [13/2004](#), [47/2006](#)).

Criminal procedure code (OJ [71/2003](#), [7/2004](#), [47/2006](#)).

<sup>26</sup> Article 523 (1) If there are grounds for suspicion or a reasonable suspicion that a criminal offence of organized crime has been committed, the Court may order a measure of temporary confiscation of objects and property gain regardless of the conditions set forth in the provisions of Articles 81 to 87 and Articles 538 to 545 of this Code.

(2) Unless otherwise prescribed by the provisions of this Chapter, in the proceedings of temporary confiscation of objects and property gain referred to in Article 1 of this Code, provisions of the Law in Executive Proceedings as well as relevant provisions of this Code shall be applied accordingly.

<sup>27</sup> 526/3 The Panel may revoke (and change) the measure referred to in Paragraph 1 of this article if a legitimate origin of objects and property gain is proved on the basis of authentic documents and/or if there are reasons to believe that objects and property gain do not originate from a criminal offences of organized crime and that they are not obtained by concealing of the origin and grounds of their acquisition.

<sup>28</sup> 94/3 Vijeće će mjeru iz stava 1 ovog člana ukinuti ako se vjerodostojnim ispravama dokaže zakonitost porijekla predmeta ili imovinske koristi ili ako se učini vjerovatnim da predmeti ili imovinska korist ne potiču iz krivičnog djela, niti da su pribavljeni prikrivanjem porijekla i osnova sticanja.

### 2.6.3 Drafting the legislation

Montenegro made the commitment to change the CC and CPC, which provides for the opportunity for improvements, including in the field of confiscation of proceeds of crime. The action plan for the implementation of the Program for fight against corruption includes the plan for changes to the CC related to extended confiscation. The creation of the working group is foreseen in late 2007.

The working group for the (conceptual) changes of CPC was established in 2007. Members: Prof. Drago Radulović (head), Radule Kojovic (judge supreme court), Ranka Carapic (High state prosecutor), Sucko Bakovic (Special OC prosecutor), Vlado Vukotic (policija), Orle Markovic (attorney), Vuksan Vuksanovic (MoJ).

The working group plans to present the first working draft of the new CPC to the Council of Europe in July 2007. The main purpose is to abolish the court investigation, but some changes in the field of confiscation are foreseen as well. It is expected that legislation would enter the parliamentary procedure by the end of the year 2007.

Some considerations for possible changes:

- Extended confiscation: amendments to Article 113 CC.
- Amendments to CPC Articles 541 (temporary confiscation), 526/3 (unfreezing seized property), 542 (confiscation).
- New draft proposal: relevant Articles: 86, 90 (access to bank data and freezing the transaction), 91-98, 94 (temporary measures) and 493 (financial investigation is also possible in the police phase), 496 (securing claim for confiscation).
- To add a provision allowing the investigating judge to decide on selling the temporary confiscated property in case of high costs for safekeeping (in absence of special law on agency for management and methods for safekeeping).

The Ministry of Finance plans to draft the Law on Agency for the Management of Seized and Confiscated Objects and Property by late 2007.

### 2.6.4 Institutions

The police still needs strong support and motivation to perform the financial investigation. Low salaries and threats from criminal groups were also mentioned.

The Special Prosecutor's office for organised crime deals with serious crime. It is planned to set concrete standards for financial investigation and temporary confiscation, after conceptual changes to the CPC enter into force. The current practice of Special Prosecutor's service is to request a list of the property of a suspect as an appendix to every police criminal report.

Judges were not interested in participating at the CARPO trainings. There is a lack of awareness and expertise in the field of temporary confiscation and confiscation in the judiciary system.

### 2.6.5 Conclusions

The relevant institutions still need strong support and motivation to perform the financial investigation and to apply temporary securing measures and confiscation of proceeds of crime.

Some databases are not up to date (land register, register of legal persons...)

Temporary measure (seizure or prohibition of disposal) is in (some rare) cases proposed against the whole property of the suspect. Even if there was imbalance between legally reported property and actually possessed, the link between the value of proceeds of concrete crime and the value of property was not really established. Such practice raises of the issue of the application of the principle of proportionality, bearing in mind that extended confiscation is not regulated, and may lead to the property claim of suspect after acquittal. The question is whether this is the consequence of (wide) Article 523 CPC. Court practice is not established yet.

There are no systematic databases or statistics on financial investigation, temporary measures and confiscation available. Nevertheless, based on available data provided by institutions, temporary measures were applied in four cases against 25 suspects in 2005 and in six cases against 40 suspects in 2006 (8 MIO €). Most cases are related to money laundering criminal offences with abuse of powers as the predicate offence and are still in the investigation phase. There is no final judgment for money laundering in Montenegro yet.

**Main obstacles/problems:**

- absence of a specialised agency for handling seized/confiscated property,
- incomplete evidence of immovable (illegal buildings),
- absence of legal possibility for extended confiscation / reversal burden of proof,
- the CPC is not applied in practice (SIMS, access to bank data only for organised crime).

2.6.6 General Overview

<b>CC</b>		<b>Montenegro</b>
Confiscation	112	(1) No one shall be allowed to retain any material gain obtained by a criminal offence. ...
Direct/indirect proceeds	113	(1) Money, things of value and any other property gain obtained by a criminal offence shall be seized from the offender; should such a seizure be not possible, the perpetrator shall be obliged to pay for the monetary value of the obtained property gain. ...
Value confiscation	113/1	
Third persons	113/2,3	without or obviously inadequate compensation
Legal person	113/3 ?	113/3 may be so interpreted (other persons), + 542/3 CPC, 539/2
Extended confiscation	No	
<b>CPC</b>		
<b>Financial investigation</b>	538/2 247	In the course of proceedings, the Court and other authorities before whom criminal proceedings are conducted shall be bound to obtain evidence and investigate circumstances that are relevant to the determination of material gain.
Sims	237	
Access to bank data	242a/1	2006 changes: suspicion of criminal offence
<b>Temporary confiscation</b>		
Freezing bank accounts	242a/2	2006 changes: in case of suspicion of intent to use for criminal offence or hiding the criminal offence or proceeds of crime – investigating judge decision.
securing of property	541 523 OC	2006 changes 541/4: also in pre-trial procedure 523 (wide provision for organised crime)
Procedure Appeal	525 new	(526/3) The Panel may revoke the measure referred to in Paragraph 1 of this article if a legitimate origin of objects and property gain is <b>proved on the basis of</b>



Extended confiscation in South-Eastern Europe

Procedure to prove legal origin	541a,b, v,g 526/3 527, 528	authentic documents and if there are reasons to believe that objects and property gain do not originate from a criminal offences of organized crime and that they are not obtained by concealing of the origin and grounds of their acquisition.
Management	529	Competent state authority? (blank provision)
<b>Confiscation</b>	542	Judgment
Procedure	539	
Free estimation of value	540	
<b>Special legislation</b>	NO	
<b>Links</b>	NO	
		<b>Institutions (specialised)</b>
Police		
Prosecutor		Special prosecutor service for combating organised crime
Judge		Investigating judge: court investigation

2.6.6.1.1

		<b>CPC - draft proposal (June 2007)</b>
Financial investigation	493	(including in pre-trial)
Sims	yes	
Access to bank data	90/1	Prosecutor
Temporary confiscation	91, 94 496	(including in pre-trial) (securing measures - coherence with article 91?)
Freezing bank accounts	90/2, 4	
Appeal/ procedure to prove legal origin	90/6, 94 94/3	(3) Vijeće će mjeru iz stava 1 ovog člana ukinuti ako se vjerodostojnim ispravama <u>dokaže</u> zakonitost porijekla predmeta ili imovinske koristi ili ako se <u>učini vjerovatnim</u> da predmeti ili imovinska korist ne potiču iz krivičnog djela, niti da su pribavljeni prikrivanjem porijekla i osnova sticanja.
Management	97	(blank norm)
Confiscation	494, 497	
Free estimation of value	495	

## **2.7 Serbia – Country profile**

### **2.7.1 Existing legislation<sup>29</sup>**

The new Criminal Procedure Code (hereinafter the new CPC) was adopted in 2006 (OJ 46/2006, 49/07). Initially foreseen *vacatio legis* (1 June 2007), it was prolonged after the constitution of the new parliament until 31 December 2008 (see chapter 3 below). The Criminal Code (hereinafter CC) was adopted in 2005.

#### **Confiscation of proceeds of crime**

The confiscation of the proceeds of crime is regulated by Articles 87 and 91 to 93 of CC. Article 87 CC foresees the deprivation of objects intended for the commission of a crime or objects resulting from crime, if they are property of perpetrator. These objects can also be deprived in cases where they are not property of the perpetrator, if that is required for the interests of general security or for moral reasons.

According to the Article 91 CC, no one can retain property benefit gained from crime. The benefit is confiscated by a court decision, which confirms commission of the crime. Money, valuable objects and all other property benefits gained from crimes shall be deprived from a perpetrator, and where deprivation is not possible, the perpetrator shall be obliged to pay monetary values which equal gained property benefits (Article 92/1 CC). Property benefit can also be deprived from a person to which ownership rights over that benefit were transferred, with no reimbursement, or with the reimbursement which does not correspond to real property value (Article 92/2 CC). The property claim of the victim in criminal procedure is regulated by Articles 93 CC, 201-212 and 513/3 CPC. Confiscation of proceeds of crime from legal person is not explicitly regulated, but it is possible by interpretation of Article 92/2 CC (transformation of benefit to a person) and Article 514 CPC (the role of the representative of a legal person during the procedure for confiscation).

The legal basis for the financial investigation, temporary seizure of objects, instrumentalities and proceeds and the procedure for confiscation of the proceeds of crime is set in the Criminal Procedure Code, Articles 82-86, 234, 504a-504h (special provisions related to organised crime) and 513-520.

The confiscation of the proceeds of crime is determined by a decision of the court, finding the defendant guilty (Article 517 CPC). The procedure for deciding on confiscation (providing evidence and statement) is regulated by Article 514 CPC and the possibility for the court to assess the exact value of proceeds by free estimation is regulated by Article 515 CPC.

#### **Temporary measures**

---

<sup>29</sup> Criminal Procedure Code (OJ 70/2001, 68/2002, 58/2004, 85/2005, 115/2005, 85/2005 and 115/2005).

Criminal Procedure Code (OJ RS 46/2006, 49/07), date of enforcement 1.1.2008.

Criminal Code (OJ RS 85/05).

Law on Execution Procedure (OJ 125/04).

Law on organisation and responsibilities of state bodies in combating organised crime (42/02, 27/03, 39/03, 67/03, 29/04, 45/05, 61/05).

[www.srbija.sr.gov.yu/](http://www.srbija.sr.gov.yu/) (Serbian Government)

[www.parlament.sr.gov.yu/content/cir/aktivnosti/skupstinske\\_arhiva.asp](http://www.parlament.sr.gov.yu/content/cir/aktivnosti/skupstinske_arhiva.asp) (National Assembly)

Temporary measures are regulated in two parts of the CPC. Articles 82 and following are related to the temporary seizure of objects, evidence, instrumentalities and results (proceeds) of crime. Article 516 is related to temporary securing measures for the property, which can be confiscated as proceeds of crime and Article 234 regulates freezing of bank accounts.

The temporary seizure of objects intended for the commission of a crime or objects resulting from crime or objects that could serve as evidence can be ordered by the court (Article 82 CPC). Such objects can be seized by the police, performing its tasks according to Article 225 and 238 CPC (Article 82/4 CPC).

**Temporary securing measures** during the criminal procedure are ordered *ex officio* by the court (investigative judge or the judge) according to the rules of execution procedure<sup>30</sup> (Article 516 CPC). Temporary measures cannot be ordered during the police investigation phase, but only after formal court investigation begins. Such regulation may prevent the efficiency of the measures in practice, especially in demanding investigation of serious crime.

**Freezing** of financial transactions can be ordered by the investigative judge upon the prosecutor's proposal, when it is suspected that the transaction represents a criminal offence or is intended to commit a criminal offence or to conceal the offence or proceeds of crime (Article 234/2 CPC).

**Management** of seized and secured objects and property benefit is not adequately regulated by Serbian legislation. Temporary seized objects shall be transmitted to the court or their safekeeping should be secured in another proper manner (Article 82/1 CPC). The Law on Criminal Sanctions Execution (hereinafter CCSE) foresees the transfer of confiscated means to the state budget (Article 327 CCSE). Article 212 CCSE regulates the disposal of confiscated objects. The court can decide to sell them in accordance with provisions of Law on Execution Procedure, to hand them over to the relevant state bodies, crime museum, scientific or charity institutions, to destroy or to handle them in accordance with special regulations. Means obtained from sale of deprived objects are the revenue of the Republic of Serbia budget.

The **financial investigation** is not specifically defined by the CPC. Legal basis can be found in Article 513/1 which asks for *ex officio* determination of property benefit, deriving from a crime, in a criminal procedure. The court and other bodies, which conduct criminal procedure, are obliged to collect evidence and to determine circumstances, which are important for the determination of the property and proceeds of crime (Article 513/2 CPC). Pre-investigation phase (police investigation) is therefore not specifically covered by the law!

The investigative judge can, upon the prosecutor's request, order the bank or financial institution to disclose data on the suspect's account (Article 234/1). Access is limited to the suspect's bank account and only in the case of suspicion of a criminal offence, punishable by a minimum of four years of imprisonment. The limitations are in my opinion too restrictive to allow for efficient financial investigation. Monitoring of bank accounts is not regulated.

SIMs are regulated by Articles 232-234 and 504lj CPC.

### **Special provisions related to organised crime**

Special rules related to organised crime are regulated by CPC in Articles 504a-504h. In the case of grounds for suspicion or grounded suspicion of organised crime, temporary confiscation of objects and property benefit can be ordered by the court, regardless of the conditions set in Articles 82-88 and Articles 513-520 of CPC. Rules of the Law on Execution Procedure shall apply accordingly

---

<sup>30</sup> See Articles 300 and 303 of the Law on execution procedure.

(Article 504r CPC). The provision allows for temporary confiscation also during pre-investigation (police) procedure. The scope of the provision is not quite clear, since the conditions set by the CPC for seizure of objects and temporary confiscation of proceeds are not applicable and no clear conditions are determined for the use of Article 504r CPC. The procedure, proposal and decision, appeal, hearing, time period and execution of temporary confiscation is regulated by Articles 504 s, t, ć, u, f and h.

In accordance with Article 504k CPC, the prosecutor can ask state bodies, bank or financial institutions to provide data on a particular person, which can serve as evidence of criminal offence or proceeds of crime. The provision is not limited to the data on suspect and to the investigation phase (as in Article 234/1 CPC). The prosecutor can also ask for information on suspicious transactions related to money laundering.

The prosecutor can order the freezing of bank transactions, issue of securities or valuable objects (Article 504k/2 CPC).

Special provisions related to organised crime were transferred to the new CPC (2006) as general ones<sup>31</sup>.

According to the Law on Organisation and Responsibilities of State Bodies in Combating Organised Crime<sup>32</sup>, specialised units for combating organised crime were created within the Police, Prosecution service and courts.

#### 2.7.2 Extended confiscation

Extended confiscation is not regulated in criminal legislation. The new Government announced the introduction of extended confiscation during the pre-election campaign. It was stated that the OSCE is expected to provide the expertise in drafting legal changes in respect to the extended confiscation.

Amendments to the Criminal Code (CC) in 2003 introduced a secondary penalty of general confiscation (Article 39a), which could be inflicted upon a person, convicted for a criminal offence which is related to organised crime, to at least four years imprisonment. The court could deprive a convicted person of all of his assets, except for those he is specifically allowed to keep. Such general confiscation was contrary to the human rights standards defined by the European Convention on Human Rights (ECHR). The necessary additional legal provisions for the application of the article were not adopted. The provision does not exist in the new CC (2005) any more.

#### 2.7.3 Drafting the legislation

##### **Draft law on Direction for Seized/Confiscated Assets Management:**

The proposal is a step forward, but in my opinion does not deal with some important issues regarding the management of assets and powers of Direction and the use of confiscated objects and property.

##### **Changes of CPC (applicable from 13 December 2008)**

The new CPC has not brought many improvements in the field of targeting the proceeds of crime. The provisions related to targeting proceeds from organised crime (504a-h CPC) are of a general

---

<sup>31</sup> See chapter 3.

<sup>32</sup> See chapter 4.

nature in the new law (Articles 86-94 of the new CPC). At the same time, the general provisions (234, 513-520 CPC) are still included in new law (Articles 491-497 new CPC). The coherence and systematisation of some provisions could be improved.

The questionable provision 504r, which provides for temporary confiscation of objects and property benefit, despite the general conditions set by the CPC, was slightly changed (Article 87 new CPC). It is limited to the cases of grounded suspicion that the object or benefit derives from criminal offence punishable by ten or more years of imprisonment (before the relation to organised crime was requested). The scope and the conditions for its use are still not determined. Possible amendments were mentioned before the enforcement of the law.

#### 2.7.4 Institutions

##### **Police**

Within the Ministry of Interior, the Department for Combating Organised Crime (SBPOK) is also specialised in conducting financial investigation within its powers in combating organised crime.

A tax (financial) police was established, but is not yet fully operational. The regulation of their powers is insufficient, since only part of police powers can be applied when investigating criminal offences (tax evasion etc.). It was stated that the role of the tax police in the field of deprivation of the proceeds of crime is very limited in practice.

General powers of the police are regulated in Article 225 CPC.

##### **Prosecutor**

The criminal procedure begins with (court) investigation, established by the investigative judge upon the prosecutor's proposal. The prosecutor guides the pre-criminal (police) investigation. In the case of organised crime (special provisions in Articles 504a-), the prosecutor can order the freezing of financial transactions (504k CPC), including in the pre-investigation procedure. Special prosecutors are also supposed to target the proceeds of crime.

The investigative judge orders the investigative measures, access to bank data, freezing of bank accounts and temporary securing measures during pre-trial procedure (pre-criminal and investigation phase).

According to the 2002 Law on Organisation and Responsibilities of State Bodies in Combating Organised Crime, specialised units in police, prosecution service and courts were created:

- Special unit for combating organised crime (Specialised prosecution service) within the District prosecution service in Belgrade,
- Department for combating organised crime (SBPOK) within the Ministry of Interior,
- Special unit for proceedings in criminal cases determined by the law (Special Unit of district court and Special Unit of appeal court) within the district court and the appeal court in Belgrade.

#### 2.7.5 Conclusions

Extended confiscation is not regulated in Serbia.

The main obstacles of the existing legislation are related to the limited access to bank data only for suspects of a criminal offence, punishable by more than four years of imprisonment (Article 234

CPC), monitoring of bank accounts is not regulated. Financial investigation in pre-investigative phase is not specifically regulated (interpretation of Articles 513 and 225).

Temporary measures cannot be ordered during the police investigation phase, but only after formal court investigation begins (Article 516 CPC), except in cases of organised crime, when temporary measures can be imposed also in pre-investigation (police) phase (Article 504r CPC).

Management of seized and secured objects and property benefit is not adequately regulated by Serbian legislation.

Confiscation of indirect proceeds is not explicitly regulated (Article 92 CC). Confiscation in cases when criminal procedure does not conclude with judgment (in case of time limitation, death of the defendant during the procedure etc.) is not regulated.

Confiscation of proceeds of crime from a legal person is not explicitly regulated, but it is possible by interpretation of Article 92/2 CC (transformation of benefit to a person) and Article 514 CPC (the role of the representative of a legal person during the procedure for confiscation). Criminal responsibility of legal persons is not regulated.

The special provisions of the CPC related to organised crime also allow temporary confiscation during pre-investigation (police) procedure (Article 504r). The scope of the provision is not quite clear, since the conditions set by the CPC for seizure of objects and temporary confiscation of proceeds are not applicable and there are no clear conditions determined. The provision of Article 504k CPC related to access to bank data is not limited only to the data on the suspect and to the investigation phase (as in Article 234/1 CPC).

The new CPC has not brought many improvements in the field of targeting proceeds of crime. The existing provisions related to targeting proceeds from organised crime (504a-h CPC) which were transformed into the new CPC and are no longer limited to organised crime cases. Since the existing general provisions were also included into new CPC, the coherence and systematisation of some provisions could be improved.

Specialised institutions within police, prosecution and court for combating organised crime were established in 2003.

#### 2.7.6 General Overview

<b>CC</b>		
Confiscation	91 CC 87 CC	confiscation of proceeds confiscation of objects
Direct/indirect proceeds	92/1	
Value confiscation	92/1	
Third persons	92/2, 92/3	
Legal person	92/2	and 514 CPC
Extended confiscation	NO	
<b>CPC</b>		
<b>Financial investigation</b>	513	
Sims	232-234 504lj (OC)	

Extended confiscation in South-Eastern Europe

Pre-trial phase	no 513	interpretation of 225 (general police powers)
Access to bank data	234 504 k (OC)	limited to data on suspect and crime punishable more than 4 years of imprisonment order of prosecutor
<b>Temporary confiscation</b>	82 516 504r (OC)	objects proceeds without conditions provided by CPC
Pre trial	no 516 yes 504r (OC)	
Freezing bank accounts	234/2 504k/2 (OC)	investigative judge prosecutor
Procedure Appeal	82-86 504 s, t, ć, u, f, h (OC)	objects
Management	no 504 h (OC)	responsible authority (which is not determined or established) - draft proposal
<b>Confiscation</b>	517	
<b>procedure</b>	514 518, 519	third and legal person legal remedies
estimation of value	515	free estimation of court
<b>Execution</b>		Law on Criminal Sanctions Execution and Law on Execution Procedure
<b>Special legislation</b>	504a - h	organised crime Law on Organisation and Responsibilities of State Bodies in Combating Organised Crime
<b>Links</b>	Government Parliament	<a href="http://www.srbija.sr.gov.yu/">www.srbija.sr.gov.yu/</a> <a href="http://www.parlament.sr.gov.yu/content/cir/aktivnosti/skupstinske_arhiva.asp">www.parlament.sr.gov.yu/content/cir/aktivnosti/skupstinske_arhiva.as p</a>
<b>Institutions (specialized)</b>		
Ministry of interior		Department for combating organised crime (SBPOK) within Ministry of Interior
Tax police		Ministry of finance
Prosecution		Special unit for combating organised crime (Specialised prosecution service) within the District prosecution service in Belgrade
Court		Special unit for proceedings in criminal cases determined by the law (Special unit of district court and Special unit of Appeal court) within District court and Appeal court in Belgrade

### 3 International Standards

Several international legal instruments of the United Nations, the Council of Europe and the European Union promote the implementation of extended confiscation, according to the principles of the domestic law.

The legislation on extended confiscation in Europe is very diverse. It is obvious that the solutions follow a country specific (criminal) legal system and are affected by court practice, which has resulted in several amendments over the years of implementation.

Extended confiscation provisions were also tested by the European Court of Human Rights, which developed rich jurisprudence and standards of compliance of such legislation with human rights standards<sup>33</sup>.

For the purpose of this paper, German, Dutch, Danish and Irish legislation will be briefly presented. The reasons for the implementation of extended confiscation in these countries are different, but usually related to the (public) awareness and request for an efficient fight against crime (murder of journalist in Ireland, gang fights in Denmark etc.).

All the above-mentioned countries also have the "standard" confiscation system in place. Extended confiscation is usually limited to certain serious crimes (either punishable by imprisonment or a fine over a certain limit) or other conditions.

#### 3.1 International Legal Instruments

The Council of Europe, European Union and United Nations adopted several legal instruments to promote extended confiscation with (civil) reversal of burden of proof of the source of income or property of the perpetrator. However only the recent Council of Europe 2005 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw), which is still not in force, introduced an obligation for states (Article 3/4), with possible reservation (Article 53/4).

**2005 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw), Article 3, paragraph 4:**

Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law.

The UN Vienna and the UNTOC Convention suggest that states may consider the possibility of requiring that an offender demonstrates the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

**1988 Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances (Vienna Convention), Article 5, paragraph 4:**

Each Party may consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings.

---

<sup>33</sup> See also chapter 5 of the CARPO "Manual on financial investigations and confiscation of proceeds from crime".



**2000 Convention Against Transnational Organised Crime (UNTOC Palermo Convention),**  
Article 12, paragraph 7:

States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

**2000 European Union Action plan:** the prevention and control of organised crime: a European Union strategy for the beginning of the new millennium included the question of reversed burden of proof in the Recommendation 19<sup>34</sup>.

Recommendation 19:

An examination should be made of the possible need for an instrument which, taking into account best practices operating in the member States and with due respect to fundamental legal principles, introduces the possibility of mitigating, under criminal, civil or fiscal law, as appropriate, the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime.

**Council Framework Decision (2005/212/JHA) on Confiscation of Crime-Related Proceeds, Instrumentalities and Property** of 24 February 2005 defines an obligation for the member States to adopt necessary measures to enable extended powers of confiscation. Measures should be adopted by member States by 15 March 2007.

The Framework Decision describes three possibilities for (extended) confiscation

- of property (wholly or in part),
  - which belongs to a person convicted of an offence
  - committed in the framework of criminal organisation (offences related to drug trafficking, counterfeiting of euro, money laundering and predicate offences, illegal migration, trafficking in human beings) or terrorism etc.:
- where a court based on specific facts is fully convinced that the property is derived from criminal activities or from similar criminal activities of the convicted person during a period prior to conviction for the offence, which is deemed reasonable by the court in the circumstances of the particular case,
  - where it is established that the value of the property is disproportionate to the lawful income of the convicted person and a court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that convicted person.

Such confiscation may also extend to:

- the property acquired by the closest relations of the person concerned and;
- the property transferred to a legal person in respect of which the person concerned — acting either alone or in conjunction with his closest relations — has a controlling influence.

Paragraph 4 of Article 3 leaves the possibility to Member States to use procedures other than criminal procedure to deprive the perpetrator of the property in question.

### 3.2 Comparative overview

Some European countries<sup>35</sup> introduced some forms of reversed burden (or better, a division) of proof on the origin of the assets<sup>36</sup>. The discretionary power is held by the court. The state has to present some evidence to suggest that the asset may be criminally derived or that the defendant could not have acquired the assets legally, taking into account his legitimate income. This can be limited to a certain period of time prior to the conviction and/or to certain types of (serious) crime. It is not necessary that the asset in question is directly linked to the crimes of which a person has been convicted.

The following examples of legal solutions may be used as a model for countries interested in implementing extended confiscation to their legislation. Apart from the legal text, the interpretation and its use in practice through jurisprudence is important, therefore some main characteristics will be mentioned.

The main (comparative) characteristic of the German system is the “brutto” principle and the subsidiary use of extended confiscation (Article 73d). The Netherlands jurisprudence introduced the “net” principle (pure enrichment: illegal advantages) with the deduction of perpetrator's costs for the commitment of criminal offence. Criminal financial investigation is regulated as a special procedure, parallel, but separated from criminal proceedings, conducted by the prosecutor (Special prosecutor's office BOOM). Denmark created its legislation based on the Dutch model, but the “brutto” principle is used. Ireland implemented separate civil procedure for confiscation of the proceeds of crime and criminal judgment is not required. Creation of specialised units (in police, prosecution or multidisciplinary units) followed the regulation of extended confiscation to assure its implementation in practice.

#### 3.2.1 The Netherlands

##### **Article 36e Penal Code**

1. Upon the request of the Public Prosecution Service, in the case of a separate judicial decision, an obligation to pay a sum of money to the State for the purpose of deprivation of illegally obtained advantages may be imposed on the person who has been convicted on account of a criminal offence.
2. This obligation may be imposed on the person as referred to in the first sub section, who has obtained advantages by means of or from the assets arising from the criminal offence referred to or similar offences or offences subject to a fine of the fifth category, in respect of which there are sufficient indications that these have been committed by him.
3. Upon the request of the Public Prosecution Service, in the case of a separate judicial decision, payment of an amount to the State for deprivation of illegally obtained advantages may be imposed on the person who has been convicted on account of a crime subject to a fine of the fifth category, and against whom a criminal financial investigation has been initiated, if, in view of that investigation it is plausible that other criminal offences, in one way or another, have also led to the convicted person obtaining illegal advantages.
4. The judge may determine that the amount to be paid is to be lower than the estimated advantage. (Old provision: The judge determines the estimated amount of the illegally obtained advantage. Advantage includes the saving on expenses.)
5. (...)
6. Claims legally allocated to injured third parties are deducted when determining the scope of the amount at which the illegally obtained advantage is estimated.

---

<sup>35</sup> See also: “Evaluation of laws and systems in FATF members dealing with asset confiscation and provisional measures”, 21.7.1997, [www.oecd.org/fatf/evaluati.htm](http://www.oecd.org/fatf/evaluati.htm)

<sup>36</sup> For more details see “Reversal of burden of proof in confiscation of the proceeds of crime: a Council of Europe Best Practice Survey”, Council of Europe, 2000.

Paragraph 2 extends the confiscation of the proceeds of the prosecuted criminal offence, for which the perpetrator is convicted, to the proceeds of similar or listed criminal offences, where sufficient indications that offences were committed by the criminal exist. In such a case it is not necessary that the criminal procedure is constituted (indictment or trial) for such criminal offences, but the link between "the suspect" and the offence (sufficient indications), which resulted in property benefit (advantages), is sufficient for deciding on confiscation.

Paragraph 3 provides for the possibility for confiscating illegally obtained advantages of a person, convicted of a listed crime (punishable by fine of fifth category), if it plausible that other criminal offences have also led to the illegal advantages of the convicted person. In such a case, the special criminal financial investigation (Article 126 CPC) has to show the imbalance of legally reported income and existing property. The standard of proof of the state is to make the presumption of illegal origin of property (advantages) plausible. The connection of the person to the other criminal offences does not have to be proved or indicated, as pursuant to paragraph 2.

It is not specifically stated that the defendant has the obligation to provide evidence to refute the (sufficient) indications (paragraph 2) or plausible assumption (paragraph 3), but the defence in practice provides many arguments and evidence, at least to lower the estimated value of illegal advantages that are to be confiscated.

Settlement on property benefit from a criminal offence (Article 511c CPC) and its deprivation (payment) between the defendant and prosecutor is promoted. Agreement and replacement of temporary secured (seized) property of defendant with money or surety is promoted to limit the costs of management.

### 3.2.2 Denmark

#### **Article 76a Penal code**

1. Total or partial confiscation of property belonging to a person found guilty of a punishable act may take place when:
  - 1) the act committed is of a nature which may entail a significant gain, and
  - 2) according to the law, the act committed is punishable by imprisonment of six years or more or it is a violation of the legislation on euphorians.
2. Under conditions mentioned in subsection (I) above total or partial confiscation of property which the spouse or cohabitant of the offender has acquired may take place unless:
  - 1) the property has been acquired more than five years prior to the punishable act upon which the confiscation according to subsection (I) is based or
  - 2) the matrimony or cohabitation was not in force at the time of acquisition.
3. Under conditions mentioned in subsection (I) above total or partial confiscation of property transferred to a legal person upon whom the offender alone or together with his closest relations has a decisive influence may take place. The same shall apply if the person in question received a significant part of the income of the legal person. Confiscation may not take place if the property was transferred to the legal person more than five years prior to the punishable act upon which confiscation according to subsection (I) above is based.
4. Confiscation according to subsection (I-III) may not take place if the offender renders probable that the property has been acquired in a legal way or with legally acquired means.
5. In place of confiscation of certain property according to subsection (I-III) above an amount corresponding to the value of the property or a part of the value may be confiscated.

The (extended) confiscation of property of the convicted person is limited to the criminal offences, punishable by six years or more of imprisonment and to significant gain. Confiscation of property is

possible also from the spouse or cohabitant of the convicted person or from a legal person, if the property is gained or transferred within five years prior to the commission of criminal offence and the convicted person has decisive influence or received significant part of the income of the legal person.

The law provides basis for full (or partial) confiscation of property of the convicted person, unless he renders probable that the property has been acquired in a legal way or with legally acquired means. There is no need to establish any link with other criminal offences (prior to the prosecuted one). The link between the property (obtained within five years prior to the prosecuted criminal offence) and the presumption that its origin is illegal has to be sufficient to sustain the arguments and evidence of the defendant to make the legal origin of the (part of) property probable.

### 3.2.3 Germany

#### **Section 73d Penal Code** (Extended Forfeiture)

1. If an unlawful act has been committed pursuant to a law which refers to this provision, then the court shall also order the forfeiture of objects of the perpetrator or inciter or accessory if the circumstances justify the assumption that these objects were acquired as a result of unlawful acts, or for the purpose of committing them. Sentence 1 shall also be applicable if the perpetrator or inciter or accessory does not own or have a claim to the object only because he acquired the object as a result of an unlawful act or for the purpose of committing it. Section 73 subsection (2), shall apply accordingly.
2. If forfeiture of a particular object after the act has become impossible in whole or in part, then Sections 73a and 73b shall to that extent be applied by analogy.
3. If, after an order of forfeiture pursuant to subsection (1) due to another unlawful act which the perpetrator or inciter or accessory committed before the order, a decision must again be made as to the forfeiture of objects of the perpetrator or inciter or accessory, then the court, in so doing, shall consider the order already issued.
4. Section 73c shall apply accordingly.

Since 1992 the "gross payment principle" has been applied, according to which confiscation (forfeiture) extends to the whole proceeds of the offence, without deduction of expenditure incurred.

The proposal for amendment of the provision was not accepted (confiscation of proceeds related to the victims property claim – Article 73/1). In practice, the main problem is proving the illegal origin of property if the defendant has legal incomes.

### 3.2.4 Ireland

The Proceeds of Crime Act (PCA) and the Criminal Assets Bureau Act (CAB) were adopted in 1996, in order to fight against organised crime efficiently by targeting the property of the criminals.

CAB is a multidisciplinary agency, consisting of police, customs, tax and social welfare officers, who can use their original powers and access to databases in the framework of their responsibilities within the CAB. CAB's task is to identify and seize, in whole or in part, the assets of persons who derive or are suspected to derive, directly or indirectly, assets from criminal activity or the benefit of such assets.

According to the Revenue and Social Welfare Acts, the proceeds of criminal activity or suspected criminal activity are subjected to tax and the value of unjustified social welfare benefits (overpayment) of the person engaged in criminal activity can also be claimed and confiscated.

The Proceeds of Crime Act (amended in 2005) introduced civil procedure (and civil standards of proof of criminal activity) for *in rem* confiscation of proceeds of criminal activity. No conviction in criminal procedure is required. The high court decides on temporary confiscation and confiscation.

The subject of temporary measures (interim order for 21 days (section 2) and interlocutory order for 7 years (section 3)) and confiscation (disposal order (section 4)) is specified property, in possession or control of a person, exceeding the value of €13.000, which constitutes, directly or indirectly, proceeds of crime or which was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime. The value of the property exceeds €13.000. Serious risk of injustice should be considered by the court when deciding on the disposal order. The belief of the CAB Chief Superintendent that the asset represents, in whole or in part, the proceeds of criminal conduct can be used as evidence (Article 8).

The Irish civil law model can be used as an example, but would be a challenge for direct application into the continental legal system. Nevertheless, the CAB could serve as good example of a multidisciplinary agency, also targeting the taxation of proceeds of criminal activities and unjustified social welfare benefits.

#### Proceeds of Crime Act

##### Section 4: Disposal order

(1) Subject to subsection (2), where an interlocutory order has been in force for not less than 7 years in relation to specified property, the Court, on application to it in that behalf by the applicant, may make an order ("a disposal order") directing that the whole or, if appropriate, a specified part of the property be transferred, subject to such terms and conditions as the Court may specify, to the Minister or to such other person as the Court may determine.

(2) Subject to subsections (6) and (8), the Court shall make a disposal order in relation to any property the subject of an application under subsection (1) unless it is shown to its satisfaction that that particular property does not constitute, directly or indirectly, proceeds of crime and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime.

(3) The applicant shall give notice to the respondent (unless the Court is satisfied that it is not reasonably possible to ascertain his or her whereabouts), and to such other (if any) persons as the Court may direct of an application under this section.

(4) A disposal order shall operate to deprive the respondent of his or her rights (if any) in or to the property to which it relates and, upon the making of the order, the property shall stand transferred to the Minister or other person to whom it relates.

(5) The Minister may sell or otherwise dispose of any property transferred to him or her under this section, and any proceeds of such a disposition and any moneys transferred to him or her under this section shall be paid into or disposed of for the benefit of the Exchequer by the Minister.

(6) In proceedings under subsection (1), before deciding whether to make a disposal order, the Court shall give an opportunity to be heard by the Court and to show cause why the order should not be made to any person claiming ownership of any of the property concerned.

(7) The Court, if it considers it appropriate to do so in the interests of justice, on the application of the respondent or, if the whereabouts of the respondent cannot be ascertained, on its own initiative, may adjourn the hearing of an application under subsection (1) for such period not exceeding 2 years as it considers reasonable.

(8) The Court shall not make a disposal order if it is satisfied that there would be a serious risk of injustice.

##### Section 8: Provisions in relation to evidence and proceedings under Act

(1) Where a member or an authorised officer states (a) in proceedings under section 2, on affidavit or, if the Court so directs, in oral evidence, or (b) in proceedings under section 3, in oral evidence, that he or she believes either or both of the following, that is to say:

(i) that the respondent is in possession or control of specified property and that the property constitutes, directly or indirectly, proceeds of crime,

(ii) that the respondent is in possession of or control of specified property and that the property was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime,

and that the value of the property or, as the case may be, the total value of the property referred to in both paragraphs (i) and (ii) is not less than 13.000 €, then, if the Court is satisfied that there are reasonable grounds for the belief aforesaid, the statement shall be evidence of the matter referred to in paragraph (i) or in paragraph (ii) or in both, as may be appropriate, and of the value of the property.

(2) The standard of proof required to determine any question arising under this Act shall be that applicable to civil proceedings.

(...)

### 3.3 Relation to the human rights obligations

The issue of a lightened burden of proof as to the origin of suspected criminal proceeds, as opposed to the criminal standard of proof, is related to the standards of the European Convention on Human Rights<sup>37</sup> (ECHR).

Even if the burden of proof on the guilt of the offender still remains with the State in criminal procedure, such provision affects the basic right to a fair trial (presumption of innocence and use of presumptions in criminal procedure) and the right to private property, described in the ECHR. The European Court of Human Rights developed jurisprudence and standards under which such legal possibility is in line with the Convention.

The use of statutory assumptions in order to divide the burden of proof between the public prosecutor and the defendant for the assessment and establishment of the confiscation penalty, especially when a person can be asked to explain himself about the origin of his assets in order to avoid their confiscation, might be in conflict with the following provisions in the ECHR:

- the right to a fair trial:

Article 6.1: "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. (...)".

- the presumption of innocence:

Article 6.2: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

- the protection of property:

Article 1 of first additional protocol ECHR: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. (...)".

The European Court of Human Rights (ECTHR) tested the consistency of the national legislations with the ECHR in several cases. The conclusions from the jurisprudence are the following:

- the presumption of innocence is applicable to the criminal proceedings as a whole<sup>38</sup>, including the establishment of a confiscation order as its part, and the respect of this presumption must be evaluated for the whole trial rather than for each phase separately;
- the use of presumptions of fact or of law is admissible within reasonable limits and should be in proportion with the relevance of the case (the proportionality principle) and maintain the rights of the defence (the principle of equality of arms)<sup>39</sup>. The presumptions may never be irrefutable and the court must dispose of a margin of appreciation. Therefore a total reversal of the burden of proof or a general confiscation is not allowed;

---

<sup>37</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, ETS 005, Council of Europe, Rome, 4.11.1950 and its additional protocols.

<sup>38</sup> Case Minelli v. Switzerland, 25.3.1983.

<sup>39</sup> Case Salabiaku v. France, 7.10.1988.

- the right of non-self-incrimination, as a part of the right to a fair trial, is subject to a strict interpretation by the European Court of Human Rights (ECTHR), but is not absolute: when sufficient and precise charges and evidence are brought forward, the defendant's attitude not to respond to anything can be considered to be a supplementary indication of guilt<sup>40</sup>. The statements obtained through administrative procedure, in which the suspect was bound to tell the truth are inadmissible in further criminal proceedings<sup>41</sup>;
- the ECTHR gives an autonomous definition of the notions "penalty" and "measure", and the applicability of the ECHR depends upon such qualification<sup>42</sup>. Relevant criteria are whether the measure is imposed following conviction for a criminal offence, what is the nature and purpose of the measure, its characterisation under national law, the procedures involved in the making and implementation of the measure, and its severity.

In the leading Phillips Case<sup>43</sup>, the ECTHR tested the compliance of some provisions of the United Kingdom 1994 Drug Trafficking Act related to confiscation of proceeds.

---

<sup>40</sup> Case Murray v. UK, 8.2.1996.

<sup>41</sup> Case Saunders v. UK, 17.12.1996.

<sup>42</sup> Case Welch v. UK, 9.2.1995.

<sup>43</sup> Case Phillips v. UK, 5.7.2001.



## 4 Conclusions

Targeting the proceeds of crime is an efficient approach in combating organised crime. An overview provides general information on existing legislation and responsible institutions in South-eastern European countries with the described initiatives for relevant legal changes and existing obstacles in practice. Implementation of existing legislation for identification, tracing, freezing, seizing and confiscation of the proceeds of crime in practice still needs additional support in all countries in the region, especially with providing assistance for specialisation (training), support for awareness raising on strategic and operational level.

Important steps were accomplished during the CARPO project – in particular under the output 2 on financial investigations aiming at confiscation of proceeds of crime – to increase the knowledge and use of extended confiscation among decision makers and practitioners from the law enforcement and the judiciary. Two main gaps were identified: the absence of rules and institutions in charge of the management of seized and confiscated property and the general absence of extended confiscation. The main achievements of the project to remedy to this situation were: the adoption of a strategy on financial investigations endorsed by the Ministers of Interior and Justice in all the project areas; the preparation of comprehensive country-tailored training manuals widely distributed to the law enforcement and judiciary institutions (as well as training academies) with a very practical approach; the training of a large number of practitioners from different services on financial investigations and confiscation of proceeds from crime; the identification of gaps in the legislation of the project areas which was addressed through legal expertises and discussed during roundtables with the legislation makers and practitioners in view of amending the legislation; the elaboration of new organisational settings for financial investigations ready for implementation in several project areas; and the strengthening of the co-operation among FIUs in the region through a number of joint training events and meetings of the Heads.

Extended confiscation is regulated and implemented only in Albania. Bosnia and Herzegovina adopted relevant changes to the CC, but in the absence of required rules for special procedure the provision is not applicable in practice. Croatia adopted changes to the CC in 2006 and there is no practice yet. Other countries expressed their interest (at least on expert level) for such a legal possibility, especially being informed on experience from Germany, the Netherlands and some other European countries.

Although legal instruments of the United Nations, European Union and Council of Europe promoted the introduction of extended confiscation, only the 2005 Warsaw Convention (not in force yet) established it as a request/international standard (with possible reservation).

The (mis)understanding of some senior officials in South-eastern European countries that extended confiscation is a breach of human rights standards still exists, therefore relevant jurisprudence of the European Court on Human Rights and the experience of European countries, where legislation was tested also by Constitutional court, is important information.

From the jurisprudence of the European Court of Human Rights, these main conclusions could serve for future regulation of extended confiscation:

- principle of proportionality: the use of extended confiscation should be limited to justified cases (serious crime),
- presumption (that the property derives from criminal activities) has to be refutable, therefore proper procedural rules have to be available (during temporary measures and deciding on confiscation) with ensured contradictory (possibility for defendant to produce evidence on legal source of property) and in connection to this,

- standard of proof should be accordingly regulated.

Examples of regulations and practical effects of extended confiscation regime in some European countries show diversion in legislation and approach in this field, as a result of legal tradition and court jurisprudence, which also resulted in legal changes after a period of use. From the experience of European countries mentioned in chapter 3, it can be concluded that presumption on illegal origin of the property of (later convicted) person is based on (a) the believe of his connection to other (previous) criminal activities, which resulted in property benefit or/and (b) disproportion of acquired property during time period prior to criminal offence and his legally reported incomes. The opportunity to provide evidence (or to otherwise convince the court) on the legal source of property is given during temporary measures and during trial. Decision on (extended) confiscation in most cases (except in civil law procedure in Ireland) follows the conviction for a criminal offence. In order to ensure application of legislation on extended confiscation in practice, special agencies were created.

The creation of specialised agencies ensured application of new legislation in practice.

The information in the present paper could serve as the basis for in-depth analysis, which would also take into consideration the court practice of concerned countries.

\*\*\*\*\*

\*\*\*