

ILLICIT FINANCIAL FLOWS AND ASSET RECOVERY IN THE EASTERN PARTNERSHIP REGION

A Mapping of Needs and Recommendations

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Important Note: While much research for this report was done prior to the end of 2021, and while a number of political changes have taken place in early 2022, the recommendations flowing from this report can nevertheless be useful for officials from the EaP Countries and international stakeholders.

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Foreword

Illicit Financial Flows (IFFs) in the EU Eastern Partnership (EaP) region can be estimated at around EUR 29 billion every year. Undocumented flights of wealth to and from, as well as within, the EaP region (Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine) have severe repercussions on government revenues and development opportunities. IFFs, particularly those related to serious crimes, drain funds from the economy and may force governments to divert more resources to prevent and respond to criminal activities. The depletion of resources and loss of tax revenues caused by IFFs have a serious impact on the delivery of basic public services and undermine countries' development opportunities. Total IFFs in developing countries grew at an average annual rate between 7.2% and 8.1% over the period 2005-2014, reaching estimated levels between EUR 570 billion and EUR 895 billion in 2014.¹

The EU's long-term policy objectives outlined in the renewed agenda "Recovery, Resilience and Reform: Post-2020 Eastern Partnership Priorities", emphasize the importance of new region-wide initiatives and policies to reduce IFFs, to recover assets linked to organised crime and corruption, and to simplify and streamline the tracing, freezing, seizure, confiscation and recovery of illicitly-obtained assets. This should be accompanied by mechanisms and applications of good practices for the transparent management and liquidation of such assets. These important policies and mechanisms will enable EaP countries to capture billions in illicitly-obtained assets and to directly channel them into, for example, more schools, hospitals, community clinics, youth employment initiatives or other infrastructure needs for the public.

The European Union (EU) and the United Nations Interregional Crime and Justice Research Institute (UNICRI) present this study on "Illicit Financial Flows and Asset Recovery in the Eastern Partnership Region: A Mapping of Needs and Recommendations", which sheds light on the damage being caused to the EaP region as a result of unchecked IFFs. The study also highlights the importance of strengthening cross-border relationships within the region in order to maximise the capture of illicitly-obtained assets.

This study was prepared based upon data and information collected in 2021. Although political and security changes have taken place since then, the recommendations presented remain relevant for policy makers and practitioners from the EaP countries as well as international stakeholders.

The EU and UNICRI are committed to providing key support and expertise needed by EaP countries to more effectively respond to IFFs. In designing and implementing more effective responses to IFFs, many of which are identified in the recommendations of this study, EaP countries will be able to weaken the influence of organised crime, as well as inject much-needed resources into high-priority development needs to better serve their citizens.



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Table of Contents

Foreword	iii
Executive Summary	vi
Key Conclusions and Recommendations	vi

1

Introduction	x
1.1 Aim of the Report and Methodology	1
1.2 What is the Endgame in the Investigation of Organised Criminal Activity?	2
1.2.1 Dismantling Criminal Networks	2
1.2.2 Successful Asset Recovery	5
1.2.3 The Asset Recovery Cycle	8
1.2.4 Phase 1: Tracing and Identification of Assets	9
1.2.5 Phase 2: Freezing and Seizure of Assets	11
1.2.6 Phase 3: Asset Confiscation	12
1.2.7 Phase 4: Repatriation and Recovery of Assets	16
1.2.8 Phase 5: Social Re-Use	17

2

Overview of Serious Income-Generating Crime and Asset Recovery in the EaP Region	22
2.1 The Eastern Partnership	23
2.2 Serious Income-Generating Crime in the Eap Region and Key Region-Wide Initiatives Aimed at Limiting Such Crime	25
Cybercrime	25
Trafficking in Human Beings (THB)	26
Drug Trafficking	27
Money Laundering	28
Bribery and Corruption	29
Organised Property Crime	30
Smuggling of Goods	30
2.3 Asset Recovery in the EaP Region	34

Acronyms & List of Abbreviations	viii
Related Publications	56
ABOUT UNICRI	57
Bibliography	58

3

The Need for Social Re-Use Policies and Practices in the EaP Region 38

Education Sector	40
Healthcare Sector	41
Support to Personnel that Facilitate Criminal Justice Investigations	42
Support to Judiciaries and the Police in the EaP Region	44
Financing of Critical Projects	45
Minimum Wages Throughout the EaP Region	47

4

Recommendations 48

Key Recommendations	49
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Executive Summary

Illicit financial flows in the EaP region can be estimated at approximately EUR 29 billion annually.² The lack of comprehensive policies and mechanisms to capture these illicitly-obtained assets hampers development and creates an environment where organised crime can flourish. Given that organised criminal groups often engage in multiple forms of illicit activity (e.g., drug trafficking and money laundering, or perhaps tobacco smuggling and corruption), State responses to these activities must be holistic in nature, and often need more streamlined cross-border cooperation. The EaP region can benefit from adopting comprehensive and modern policies that incentivise inter-institutional cooperation, particularly in the tracing, seizure and confiscation of illicitly-obtained assets, information sharing and in

bolstering cross-border relationships. More extensive use of mechanisms and entities such as Europol, INTERPOL, as well as training through CEPOL would also contribute to greater success in inhibiting illicit financial flows, as well as weaken the corrupting influence of organised criminal activity.

While EaP countries have achieved important results towards recovering illicitly-obtained assets (for example, Ukraine's first civil confiscation case in 2021), implementing a common regional strategy and operational response, as well as harmonising regional or national legislation as much as possible with the EU, would be beneficial towards successful tracing, freezing, seizure, confiscation and return of illicitly-obtained assets.

Key Conclusions and Recommendations

- The seizure and confiscation of only 10% of the estimated EUR 29 billion lost to illicit financial flows in the region would cover the salary costs of over 6 000 teachers for ten years throughout the EaP region at an increased national average salary rate of 20%. In addition, this would fund the purchase of over 20 000 computers for students and teachers across the region and would cover school meal costs (often paid for by public funding) for thousands of students.
- Similarly, this amount could be used to pay the salaries of over 6 000 police officers and 3 000 judges throughout the EaP region at an increased salary rate of 20%, respectively for 20 and 15 years. This would attract more motivated and highly-qualified young people to work in the sector.
- If channelled toward improving the quality of criminal and financial investigations, recovered assets could cover the average salary costs of 1 600 psychologists (victim support counselors), interpreters, and financial analysts throughout the EaP region for 10 years. Bolstering financial analysis and adopting, as standard practice, parallel financial investigations in all cases involving serious income-generating crime would likely serve

as a serious blow to organised criminal activity in the region.

- Consideration should be given to region-wide adoption, and widespread implementation, of civil confiscation and other non-penal mechanisms for forfeiture of assets. This should include the adoption of policies that allow for civil confiscation proceedings, independent of any pending criminal case.
- EaP countries should consider bolstered cross-border dialogue and regular information sharing, particularly with respect to the tracing, seizure and confiscation of assets that may be linked to serious income-generating crime; this includes benefiting from the practices shared by EU Member States, agencies and institutions such as Europol, the European Public Prosecutor's Office (EPPO) and Eurojust. Increased use of region-based training, study visits and capacity-building activities that engender the strengthening of peer-to-peer working relationships – e.g., between police, prosecutors, judges and financial intelligence

unit officials and their homologues in neighbouring countries - has been proven to produce tangible results in weakening the influence of organised crime and in capturing illicitly-obtained assets.

- Where not already adopted, consideration should be given by EaP countries to creating specialised prosecutorial offices and specialised judges to facilitate the adjudication of cases involving organised criminal activity (or other serious income-generating crime, such as corruption), with powers to more efficiently order the seizure and confiscation of assets linked to such crimes. Such powers should include the ability to order the confiscation of assets if shown to be linked to criminality in general, and not necessarily to a specific crime on a specific date. Exceptions should be made for third-party good-faith beneficiaries who have received or purchased property without reasonable knowledge that such assets were the product of criminality.

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Acronyms & List of Abbreviations

AMD	Armenian Dram
AML	Anti Money Laundering
AntAC	Anti-Corruption Action Centre
ARIN	Asset Recovery Interagency Network
ARMA	National Asset Recovery and Management Agency
ARO	Asset Recovery Office
AZN	Azerbaijani Manat
BYN	Belarusian Ruble
CARA	Criminal Asset Recovery Agency
CEPOL	European Union Agency for Law Enforcement Training
CSO	Civil Society Organisation
EAG	Eurasian Group
EaP	Eastern Partnership
EaP RAN	Eastern Partnership Risk Analysis Network
EMCDDA	European Monitoring Centre for Drugs and Drugs Addiction
IMPACT	European Multidisciplinary Platform Against Criminal Threats
ENP	European Neighbourhood Policy
EPPO	European Public Prosecutor's Office
EU	European Union
EU4MD	European Union for Monitoring Drugs
EUBAM	European Union Border Assistance Mission to Moldova and Ukraine
EUR	Euro
Eurojust	European Union Agency for Criminal Justice Cooperation
Europol	European Union Agency for Law Enforcement Cooperation
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FRONTEX	The European Border and Coast Guard Agency
GBP	Pound Sterling
GEL	Georgian Lari
GFAR	Global Forum on Asset Recovery
IBM	Integrated Border Management
IFFs	Illicit Financial Flows
INTERPOL	International Criminal Police Organisation

JAD	Joint Action Day
LEA	Law Enforcement Agency
LEI	Romanian Leu
ML	Money Laundering
MLA	Mutual Legal Assistance
MDL	Moldovan Leu
MoU	Memorandum of Understanding
MP	Member of Parliament
NABU	National Anti-Corruption Bureau of Ukraine
NAPC	National Agency for Prevention of Corruption
NBC	National Bureau Centres
NCB	Non-Conviction-Based
NGO	Non-Governmental Organisation
NRM	National Referral Mechanism
OECD	Organisation for Economic Co-Operation and Development
OLAF	European Anti-Fraud Office
OSCE	Organisation for Security and Cooperation in Europe
SAPO	Specialised Anti-Corruption Prosecutor's Office
SDGs	Sustainable Development Goals
SME	Small and Medium Sized Enterprises
SOCTA	Serious and Organised Crime Threat Assessment
StAR	Stolen Asset Recovery Initiative
THB	Trafficking in Human Beings
TIP	Trafficking in Persons
TOPCOP	Training and Operational Partnership Against Organised Crime
TVPA	Trafficking Victims Protection Act
UAH	Ukrainian Hryvnia
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNICRI	United Nations Interregional Crime and Justice Research Institute
USD	United States Dollar
UNTOC	United Nations Convention against Transnational Organised Crime
UWO	Unexplained Wealth Order
VAT	Value-Added Tax
WCO	World Customs Organisation
WL	Watch List



01.

Introduction

1.1 Aim of the Report and Methodology

This report focuses on serious income-generating crimes in the European Union Eastern Partnership (EaP) Region, with the aim of producing tailored recommendations that can be of use to all countries within the region, and which would facilitate improved outcomes in the seizure and confiscation of assets linked to such crimes. The report also aims to identify key recommendations that would encourage the adoption of policies throughout the region to channel any recovered assets to high-priority development needs, such as those within the health care or education sectors.

Dismantling criminal networks and improving asset recovery are the endgames in financial crime investigations. Given the breadth and width of organised criminal activity, including its cross-border dimension, this study (mapping) seeks to identify recommendations that can assist States in responding more holistically to a multi-dimensional phenomenon. A brief review of the economic and social impact of such criminality on the Eastern Partnership Region reveals that State responses cannot be done in silos (e.g., through a strictly, say, anti-drug trafficking policy or an anti-human trafficking policy); these and other forms of organised crime (as well as corruption) need to be attacked on multiple fronts. For example, human trafficking, like most other forms of organised criminal activity, breeds both money laundering and corruption, and feeds other forms of criminality. Accordingly, addressing human

trafficking as a singular problem may be a short-sighted approach, and any response within that silo is bound to have limited impact.

For the purposes of this report, the term “serious” and/or “organised” crime will be used interchangeably with the term “serious income-generating crime”, which can include acts of corruption. This report highlights that it should no longer be the norm that any investigation involving organised crime is not accompanied by a parallel financial investigation, as the motive for most organised criminal activity is financial gain. Illicit businesses should be treated as such, and “going after the money” should be standard law enforcement and prosecutorial practice in nearly all cases involving income-generating crimes. Money, profits and assets are the lifeblood of organised criminal activity (as well as many forms of corruption); without such, such criminal activity is significantly weakened.

And yet, capturing such assets is still not enough; what a State does with those recovered assets is equally important. This report therefore also highlights that States should consider prioritising policies which inject recovered assets into high-priority development needs and provides examples of how recovered assets might be invested. Transparency in how recovered assets are to be distributed builds credibility with citizens, their confidence in the efficiency of institutions, and also increases citizen willingness to cooperate in providing information

to authorities that aids in identifying illicitly-obtained assets.

Data for this study was collected from a wide range of open sources retrieved between May and November 2021; in light of this, the reader should be

aware that some policy and operational changes may have occurred since then. Additionally, inputs were provided by multiple stakeholders, including national officials as well as international stakeholders working in the EaP region.

1.2 What is the Endgame in the Investigation of Organised Criminal Activity?

1.2.1 Dismantling Criminal Networks

International law has rightly emphasised the need to identify and dismantle criminal networks, including for example through the tools and mechanisms of the United Nations Convention against Transnational Organised Crime,³ the United Nations Convention against Corruption, and the UN Conventions related to drugs, as well as many other provisions and guidelines.⁴

Inherent in many of these instruments is the need to address money laundering, or rather the financial aspect of organised criminal activity. Still, much of the focus since the 1980s has been on traditional investigations of suspects, with the aim of charging and convicting them of specific crimes, without adequate emphasis on results-oriented financial crime investigations, even though the motive for many, if not most, forms of organised criminal activity (and corruption) is financial gain. While traditional criminal investigations against individuals remain critical, particularly in the

context of preventing victimisation, solid arguments can be made that, at the very least, parallel financial investigations (“going after the money”) must accompany investigations against particular individuals suspected of any serious income-generating crime.

The assumption that criminal activities are usually profit oriented, should guide the policies and operational practices of law enforcement entities, including police agencies, prosecutorial offices and judiciaries, as well as other entities such as financial intelligence units and anti-corruption bodies.

Timely tracing, freezing, seizure and confiscation of assets linked to organised criminal activity can significantly cripple the functioning of criminal syndicates, many of which operate with ever-increasing frequency across borders.⁵ Following the money in cases involving the likelihood of serious income-generating crime helps to identify and map out key players and hierarchies in criminal networks, including those that operate transnationally.⁶ With the advent of globalisation and the internet,

organised criminal groups have evolved and adapted rapidly. Globalisation increases access to multiple markets, and organised crime syndicates can extend their reach and influence, including the reach of their corrupting influence.

Countries must take advantage of cross-border instruments and cooperation mechanisms to counter this threat and understand the importance of prioritising the capture of illicitly-obtained assets as standard operating procedure in the dismantling of these illicit businesses. National policies and operational practices (as well as use of international and bilateral agreements) which accelerate and render agile cross-border cooperation in the tracing, freezing, seizure and confiscation of illicitly-obtained assets (and possibly the sharing of such assets) provide a solid counterweight to the threats, and corrupting influence,

posed by organised crime. Joint investigations, frequent dialogue and sharing of experiences with counterparts in neighbouring States, as well as other jurisdictions, are essential practices and must be more of the norm than the exception.⁷ In its 40 recommendations, the Financial Action Task Force (FATF)⁸ stresses the need for countries to ensure the broadest possible range of Mutual Legal Assistance (MLA) in relation to cases involving money laundering and terrorism financing, although this should not be understood to exclude investigations involving organised criminal activity (or high-level corruption). Nor should it be understood to exclude informal cross-border dialogue which may precede (and perhaps render unnecessary) formal MLA requests. Equally, they are not to be considered as being limited to the criminal justice sphere.



Countries should consider adopting measures that allow such proceeds or instrumentalities to be confiscated without requiring a criminal conviction (non-conviction based confiscation), or which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.

FATF Recommendation 4, paragraph 3

Such recommendations, as well as other aspects of international law, highlight the importance of dismantling the core component of serious income-generating crime, and urge States to adopt measures, both within and outside the criminal justice sphere, to capture assets. The process of doing so, more often than not, ends up in identifying those involved, facilitating the dismantling of such networks.

According to the European Commission, financial investigations should parallel all investigations concerning serious crime areas, including those related to terrorism.⁹ To this end, it is essential to adopt financial criminal analysis and investigation as a mainstreamed standard law enforcement practice in

all serious and organised crime cases, independently from the initiation or existence of a criminal case. Benefits of parallel financial investigations include the ability to connect suspects, known associates and their assets, as well as to identify witnesses and victims.¹⁰ Some entities have suggested investigative mechanisms that improve financial investigations, including subject profiles and evidence matrices; the former bring together all basic information on the suspect (e.g., age, fingerprints, known associates) and are constantly updated with the newest financial data and intelligence, while the latter aim to ensure that the investigation remains focused on the financial aspects and thus targeting the financial engine which is the key enabling and incentivising factor for organised crime.¹¹

E-MLAs

In cooperation with the EU, INTERPOL has explored the use of electronic transmission of Mutual Legal Assistance requests. This is just one of many useful modalities to render cross-border cooperation more agile and efficient.¹²

Also, the Hemispheric Information Exchange Network for Mutual Assistance in Criminal Matters and Extradition of the Organisation of American States is an example of a platform that has adopted a secure electronic communications system. The system facilitates communication on mutual legal assistance and extradition between relevant law enforcement authorities by means of a secure instant e-mail service to central authorities and a space for virtual meetings and exchange of relevant documents.¹³

According to the European Convention on Mutual Legal Assistance in Criminal Matters, requests for legal assistance can be forwarded through any electronic or other means of telecommunication under the condition that the requesting party is prepared, upon request, to produce a written record of it and the original.¹⁴

1.2.2 Successful Asset Recovery

The capture of assets is an equally important component to the endgame in organised crime investigations. During the investigation phase, some challenges that can emerge include difficulties in finding evidence that directly connects assets with suspects, or issues in establishing the direct monetary benefits that a certain offence has produced.¹⁵ Once the proceeds of crime have finally been identified via means of an investigation, countries should be able to initiate and successfully conclude key phases of the asset recovery cycle.

A key goal of asset recovery is deterrence, turning organised criminal activity and corruption into a higher-risk and lower-reward activity.¹⁶ At the same time, successful recovery of assets means that governments can invest funds into a stronger judicial system or, for example, in high-priority development sectors, such as the education, health care and employment sectors,¹⁷ factors which can increase resilience to organised criminal activity or resilience to corruption. Such investments can lead to stronger rule of law and higher trust in the work of a government.

Still, many obstacles exist during the asset recovery cycle, and these will be discussed in more detail throughout the report. Most often, these issues are practical and may be resolved by making more use of informal networks of communication, improving and incentivising inter-institutional cooperation, or through the adoption of non-penal measures to confiscate assets.

Both a moral and legal imperative, asset recovery must be a cornerstone in any successful fight against organised criminal activity, and in countering many acts of corruption. Yet, the mere recovery of assets, without policies and practices in place to optimise their liquidation and social re-use, can render “asset recovery” vacuous or hollow. Extensive research carried out by the United Nations Interregional Crime and Justice Research Institute (UNICRI)¹⁸ has demonstrated that successful recovery of only 10% of total estimated Illicit Financial Flows (IFFs) lost to criminal activity annually, when re-directed to high-priority development needs, would strongly contribute to citizens’ quality of life.¹⁹

IFFs derived from criminal activity have a detrimental effect on developing countries, and often mean fewer hospitals, schools, pensions, and job opportunities.²⁰ This lends greater credence to the prioritisation of tracing, seizure, confiscation and recovery of illicitly-obtained assets, and to the establishment or strengthening of policies that demonstrate to citizens that recovered assets are being injected into high-priority development needs.

Indeed, policy makers might consider asset recovery (including accelerated mechanisms for seizure and confiscation) and cross-border cooperation as valuable and opportunistic modalities to strengthen development projects within their countries. In this context, it is important that policy makers place additional focus and emphasis on policies that streamline and simplify such cross-border cooperation (as well as in-country inter-institutional cooperation)

with the overarching goal of capturing illicitly-obtained assets and directing such recovered assets to development initiatives.²¹

Such policies should include cross-border agreements that involve the sharing of recovered assets, as a means to incentivise cooperation. Such an

approach goes to the centre of United Nations Sustainable Development Goal (SDG) 16, aimed at promoting peaceful and inclusive societies for sustainable development, providing access to justice for all, and building effective, accountable and inclusive institutions at all levels.²²

Modern practices that work in asset recovery²³

Adopting mechanisms that accelerate criminal justice processes for confiscation.

For example, (1) mechanisms for plea bargaining, reconciliation or any other option where the defendant returns illicitly-obtained assets in exchange for a reduction of the sentence;²⁴ (2) mechanisms for the use of extended confiscation;²⁵ and (3) mechanisms for confiscation of equivalent value, which allow courts to enter orders for the seizure and confiscation of “legally-acquired” assets if the State (usually prosecutors) demonstrates that it has taken every reasonable measure to locate the illicitly-obtained assets, but was unable to do so.²⁶

Adopting mechanisms for accelerated non-conviction-based forfeiture of assets.

There is a clear global trend in the adoption of civil confiscation mechanisms (outside and independent of any criminal proceedings), in which assets are seized and often named as the defendant in a civil or administrative proceeding (also known as *in rem* proceedings), and in which the State has the initial burden (e.g., no reversal of the burden of proof) to demonstrate that the assets are linked to some form of criminal activity. In light of the fact that such proceedings do not allow the court to deprive anyone of his or her liberty, and that the only determination to be made is whether the assets are linked to criminality, the burden of proof is often lower, at least in common law jurisdictions; the State often needs only prove that it is “more likely than not” that the assets are linked to criminality, rather than to show that it is beyond any reasonable doubt that the assets are linked to a specific crime. Civil confiscation proceedings do not entail criminal culpability and have the advantage of recovering assets in a span of months, compared to a span of years, as is often the case in typical money laundering proceedings. Many States that have the most success in capturing assets of those involved in organised criminal activity or corruption have adopted some form of civil confiscation.

Adopting mechanisms for initiating proceedings for unexplained wealth or illicit enrichment. A slightly modified version of civil confiscation is the use of “Unexplained Wealth Orders (UWOs)”, in which the State must demonstrate that one’s assets far exceed his or her declared income (e.g., through public official annual declarations or through, say, filed tax returns) – these proceedings can take place in criminal courts or civil proceedings, depending on the adopted legislation and, as with civil confiscation, often do not require a criminal conviction, or even a parallel criminal proceeding.

Establishing dedicated Asset Recovery Offices (AROs). The most efficient AROs host under one roof access to a wide range of relevant databases (e.g., vehicle registry, business registry, tax information, etc.), getting a cross-institutional view of an individual's and his family's assets, as well as assets in the possession of known associates – those who launder assets often do not launder them in their own name. Best practises of AROs have demonstrated that having a specific mandate – tracing and management separated from confiscation – works best to avoid conflict of interest or even the perception of it. An entity in charge of seizing and confiscating assets should not be the entity that manages such assets, although there have been examples of successful exceptions (e.g., Belgium).

Training of specialised forensic financial analysts. Modern and productive practices ensure that investigations of one's assets are initiated in parallel to ALL criminal investigations involving serious income-generating crime. This is an acknowledgement that such crimes are simply illicit businesses, and to effectively fight this, equal effort is needed to take away the assets which are the incentive for such conduct. This produces significantly greater success in ensuring that crime does not pay. Thus, the recruitment and training of forensic financial analysts to facilitate parallel financial investigations is no longer an option, but an imperative.

Development of strong inter-institutional cooperation mechanisms. Experience in asset recovery shows that while better understanding is needed with respect to good practices in the tracing, freezing, seizure and confiscation of assets, a larger, more inhibiting factor is simply the lack of inter-institutional coordination. This is often the result of poorly structured and unnecessarily overlapping institutional mandates and roles, or poor or non-existent mechanisms to incentivise inter-institutional cooperation, and poor understanding by officials of the roles of other institutions in the processes needed to successfully seize and confiscate assets linked to criminality. Corruption and/or a mentality of unwillingness to cooperate with other institutions also plays a role.

Accordingly, in almost every country, stronger measures to “incentivise” inter-institutional cooperation are needed – this may include, for example, results-oriented budgeting for State institutions that is conditioned on tangible outcomes related to inter-institutional cooperation, particularly the timely sharing of qualitative information, increased volume of seizures and/or confiscations and/or increased number of money laundering convictions or civil confiscation decisions.

This requirement could come from supranational bodies or review mechanisms that have clear and well-defined guidelines and can check, against specific standards, whether inter-institutional cooperation is being correctly implemented.

1.2.3 The Asset Recovery Cycle

This section will offer the reader an explanation of how the asset recovery cycle works, from the initial investigation phase to a key goal of asset recovery, which is re-investment of recovered and liquidated assets into high-priority development sectors or other social re-use. Each step will be briefly outlined, giving due consideration to sub-thematic issues that often emerge during any of the below phases.

For example, the principle of sovereignty may hamper and delay the asset tracing and recovery phases, as this principle suggests that all seized and confiscated assets in a foreign jurisdiction must be returned to the Requesting State; this can lead to fewer incentives in the Requested State (where the assets are located) to

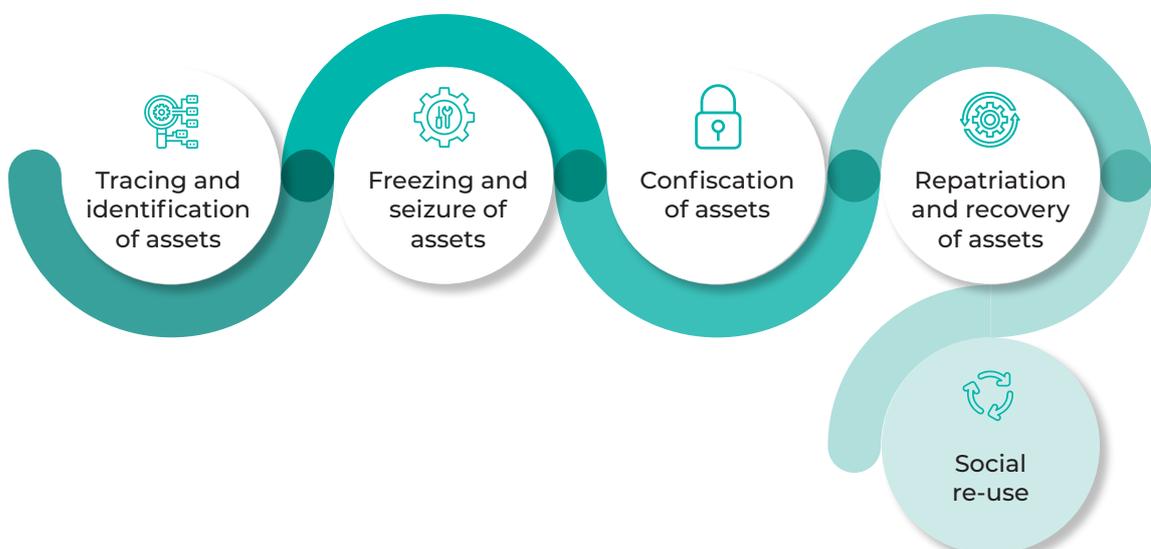
dedicate resources to seize, confiscate and return such assets.²⁷

Additionally, failure to consult regularly with civil society can lead to public perception that recovered assets are being misdirected, misused or are not being used at all.

The World Bank summarises challenges faced by law enforcement authorities into three categories:²⁸

- General/institutional barriers on issues related to the overall context in which asset recovery takes place;
- Legal barriers, including the lack of a clear and unambiguous legal framework, often making asset recovery impossible; and
- Operational barriers, including communication issues.

The Asset Recovery Cycle



Chapter V of the United Nations Convention Against Corruption (UNCAC) provides a framework for the return of stolen assets, obliging State Parties to ensure the highest level of cooperation between one another.²⁹

Recommendations on how to remedy the challenges posed by asset recovery will be explored in more detail throughout the report, where available and improved means for cross-border cooperation will be presented.

1.2.4 Phase 1: Tracing and identification of assets

the first step of the asset recovery cycle is the investigation of a crime connected to stolen assets. This phase consists in the collection of evidence, intelligence and all useful information to trace and identify assets linked to criminality. This may include assets which are the product of criminality (such as proceeds from drug trafficking) as well as assets which are used as instruments in the commission of a crime (such as a vehicle, bought with legally-acquired funds, used to transport drugs in drug trafficking operations, or perhaps a legally-acquired hotel used by human traffickers for sexual exploitation).³⁰ This includes all relevant data regarding the suspect, as well as his or her associates, which can be both physical persons and businesses. Investigators may face multiple challenges. This can include difficulties in investigating certain types of crime that are very technical in nature and may require financial expertise.

Investigators must also determine the true beneficial ownership of assets that may be held by businesses or other third parties who may not be the principal suspect. Given that the beneficial owner may hide himself, for instance behind a shell company, the investigator must unveil who is actually benefitting from funds injected into a particular business.³¹ In order to help investigations to address this challenge, the European Union as well as other countries (e.g., Ukraine) have adopted policies to set up public beneficial ownership registries, requiring, for example, banks and other entities to fully identify their clients.³² Such registries play an important role in assisting in the detection and prosecution of money laundering cases,³³ as they facilitate timely access to more qualitative information on beneficial ownership.³⁴ The most significant step forward in this sense is represented by the Fifth EU Directive on Anti-Money Laundering and Counter-Terrorist Financing, which requires the adoption of beneficial ownership and central bank account registers.³⁵ Effective implementation and concrete results will be visible in due time, considering that some of those involved in illicit financial activity may move to other jurisdictions which do not have stringent beneficial ownership registry systems.³⁶

Other issues that national authorities face while tracing assets include poor communication and cooperation, especially with regards, for example, to appropriate channels to be used for information sharing. National authorities may also face difficulties in engaging with law enforcement

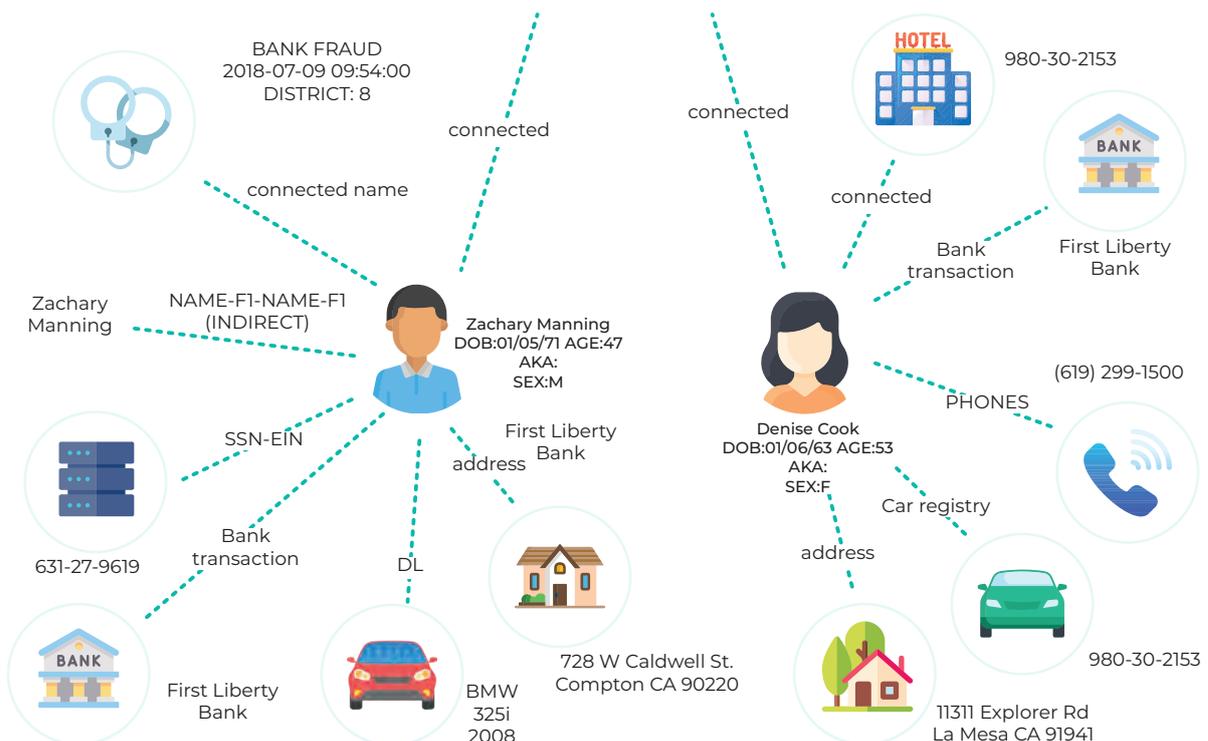
agencies from other countries, to conduct comprehensive investigations, which could be further exacerbated by insufficient awareness of the existence and role of Asset Recovery Offices (AROs).³⁷ Lastly, more practical challenges exist as a result of poor translation of court decisions, or unclear wording of Mutual Legal Assistance requests, often the result of simply failing to informally consult with counterparts in foreign jurisdictions before drafting the request.

Tracing and identification are also inhibited by limited, or in some cases non-existent, coordination between law enforcement agencies and Financial Intelligence Units (FIUs). FIUs are often underutilised and quite often underfunded.³⁸ Additionally,

reports generated by FIUs may not be structured in a way that is “actionable” or well understood by law enforcement agencies – this again is often the result of a lack of qualitative dialogue between Law Enforcement Agencies (LEAs) and FIUs. FIUs need to understand just what is needed, and not needed, by police and prosecutors (and ultimately judges) in order to ensure that their outputs are as actionable as possible; equally, police and prosecutorial services need to better communicate to FIUs the type of actionable information they need to advance financial crime investigations, and to obtain orders for the seizure and confiscation of assets.

An additional, but no less important, aspect of tracing and identification

Linking suspects and their assets through the use of relational database software



is the adoption and effective use of relational database software. Such software (e.g., Analyst's Notebook and many others), and training on it, produce more successful outcomes in analysing hundreds or thousands of financial or related transactions, as well as producing visualised graphics showing transactions between bank accounts – this in turn leads to comprehensive tracing of assets, as well as the possible identification of other suspects involved in criminal operations. Modern practice clearly shows that for police, prosecutors and judges to understand a case – and its nefarious financial transactions – by reviewing a visual graphic showing connections and transactions. It is easier to review and understand a graphic than to read a 200-page case file. In this context, the use of graphic visualisation software (by FIUs and by LEAs) clearly aids in the tracing and identification process.

1.2.5 Phase 2: Freezing and seizure of assets

The second step concerns the freezing and seizure of assets.³⁹ Freezing and seizure are defined as “temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority”.⁴⁰ While obtaining a court order might take some time and the illicitly-obtained assets may vanish, some States have ensured that emergency freezing / seizure can be allowed; in Ukraine,

for example, the head of the National Anti-Corruption Bureau (NABU) and prosecutors can carry out emergency seizures (valid for 48 hours), after which a court order is needed. Whether through freezing or seizure, the owner cannot dispose of their assets before the case is closed; timely seizure of assets is often critical, as recovery of such assets can be rendered significantly more difficult if the defendant is allowed the opportunity to move or convert such assets.

During this phase, a number of practical inhibitors exist. Eurojust identifies a series of challenges that national authorities face during this stage of the asset recovery cycle.⁴¹ First, differences in national implementation procedures or interpretation of legislation may provoke uncertainties with regards to the requirements for issuing an order to freeze or seize assets. This can lead to delays, during which the defendant or his/her associates can transfer, convert, move or dispose of suspect assets. Confusion may also arise from identifying the relevant counterparts or competent national authorities outside of one's jurisdiction,⁴² but also from issues linked to grounds for refusing the execution of freezing orders, which may vary.

With regard to the latter point, a ground for non-execution could be that, in the foreign jurisdiction, a different level of evidence needs to be demonstrated that the asset is linked to criminality, or that the order for freezing or seizure handed down in the Requesting State (from which the assets have been stolen) may

have been taken in an *in absentia* case, where the defendant may not have received notice that there was a pending criminal case against him or her.⁴³

1.2.6 Phase 3: Asset confiscation

In criminal cases, once a decision to convict a defendant is entered, courts may issue relevant orders for confiscation,⁴⁴ permanently transferring ownership of seized assets to the State.⁴⁵ Confiscation is defined as “the permanent deprivation of property by order of a court or other competent authority”.⁴⁶ Confiscation is one of the most effective tools in the fight against organised crime, as well as high-level corruption. Nevertheless, confiscation is not, and should not be, limited to the criminal justice sphere.

States which have more success in capturing the assets of those involved in criminal activities are those that also allow for non-conviction-based forfeiture;⁴⁷ this includes processes for civil confiscation and administrative confiscation (such as proceedings by tax authorities to seize assets equivalent to the value of unpaid taxes). In many jurisdictions, such proceedings do not require a parallel criminal proceeding and, contrary to some criticisms, more often than not do not reverse any burden of proof. Additional non-penal proceedings to confiscate assets may include those in which State authorities can demonstrate that the assets held by an individual (public official or private citizen) far exceed his or her stated wealth – e.g., through annual public declarations of public officials, or annual tax statements of private citizens.⁴⁸

Bulgaria and Italy – Some European Examples

In Bulgaria, property can be confiscated in civil proceedings, and there are provisions which allow for the seizure of unexplained wealth. Given that the standard of proof required in civil proceedings, in many jurisdictions, is lower than in criminal cases, where the State demonstrates that it is more probable than not that the assets are linked to some form of criminality, and where any titleholder cannot rebut this, orders for confiscation can be more easily obtained.⁴⁹ Through the anti-mafia provisions, the Italian legal system allows for “preventive” confiscation, particularly for individuals who are “habitually” involved in criminal activities.⁵⁰

Ukraine’s First Civil Confiscation Case⁵¹

In 2019, Ukraine implemented Law № 263-IX on Amendments to Certain Legislative Acts of Ukraine Concerning Confiscation of Illegal Assets, introducing civil confiscation as a mechanism for asset recovery in the country. The goal of civil confiscation is to reduce the lengthy process of confiscation from a period of several years to a period of months, while still guaranteeing due process. Civil confiscation increases public trust in the efficiency of the justice system, and can facilitate the funding of high priority development needs.

In August 2021, the High Anti-Corruption Court of Ukraine handed down its first civil confiscation decision. The case was investigated by the Specialised Anti-Corruption Prosecutor's Office (SAPO) in cooperation with the National Agency for Prevention of Corruption (NAPC) and the National Anti-Corruption Bureau of Ukraine (NABU). The investigation showed evidence of unjustified enrichment by a Member of Parliament (MP) of over UAH 1.2 million. The ruling ordered the confiscation of UAH 1.2 million from the MP.

In addition to the important technical assistance programmes provided by the international community, Ukraine also has a valuable civil society structure to enable Civil Society Organisations (CSOs) to play a key role in the fight against corruption. The Anti-Corruption Action Center (AntAC) has dedicated significant efforts to revealing acts of corruption and money laundering in Ukraine, and to raising awareness of the value of civil confiscation. As of the date of drafting of this report, AntAC had provided information to authorities to facilitate the confiscation of a significant amount of assets linked to acts of corruption. AntAC has also advocated for a number of key laws to be adopted.⁵²

Criminal Confiscation

- ▶ Requires a criminal conviction or guilty plea
- ▶ Can be property-based (specific asset) or value-based (amount of money owned by a specific person)
- ▶ Standards of proof may vary from jurisdiction to jurisdiction
- ▶ May not be possible if defendant dies or flees from justice, although some jurisdictions have modified their legislation to allow criminal proceedings to continue in such cases to determine whether an order for confiscation should be entered
- ▶ In some jurisdictions, courts may enter orders for “**extended confiscation**” – if the court convicts a defendant of a serious income-generating crime, it may then enter an order indicating that there is now a legal presumption that ALL of the defendant’s assets acquired over, for example, the previous five to ten years, are now presumed to have been illicitly-obtained and subject to confiscation, which the defendant can rebut with evidence.⁵³
- ▶ In some jurisdictions, courts may issue orders for confiscation of “**equivalent value**”, allowing authorities to confiscate legally-acquired assets of a defendant, as long as that State can show that it has done everything reasonably possible to locate the illegally-acquired assets, but was unable to do so.⁵⁴
- ▶ Some jurisdictions allow for *in rem* confiscation in criminal proceedings regardless of whether a criminal conviction is obtained.

Non-Conviction-Based (NCB) Forfeiture/Confiscation

- ▶ Allows courts to enter orders for confiscation without a criminal conviction
- ▶ Often takes place through a separate proceeding independent of any criminal proceeding
- ▶ Often governed by civil procedure, where, in many jurisdictions, the burden of proof is lower
- ▶ In such proceedings, the court is limited to determining whether assets are linked to criminality; the court does not have authority to deprive anyone of their liberty (further justifying a lower burden of proof)
- ▶ In most jurisdictions, burden of proof is not reversed – State must still demonstrate first that assets are linked to criminal activity
- ▶ In jurisdictions where a lower burden of proof is applied, this means that civil confiscation orders may still be obtained, even if a criminal proceeding has declared a defendant not guilty of a crime
- ▶ Unlike many criminal proceedings, civil confiscation may be used where the title holder of the property has died or has evaded justice – the assets are the defendant, not the individual.

Administrative Confiscation

- ▶ Typically occurs without the need for a judicial decision
- ▶ Often associated with the enforcement of customs laws (seizure and confiscation of undeclared or prohibited items, including drugs or undeclared cash) or unpaid taxes
- ▶ Speedy and economical

In terms of inhibitors to cross-border confiscation, in real-life cases, common issues include:

1. prior to making any formal Mutual Legal Assistance request, failure of authorities in the Requesting State to simply make informal contact with asset recovery focal points in the Requested State to explain the case and ask foreign jurisdiction officials what information they may need to secure an order for confiscation in that foreign jurisdiction;
2. low priority given by Requested State officials to Mutual Legal Assistance requests – budget may be limited, or they may need clarity with respect to a certain request, but they are not pro-active in contacting Requesting State officials to obtain such clarity;
3. low incentive by Requested State officials to actually cooperate (perception is that there will be no sharing of confiscated assets and/or costs covered for resources expended by the Requested State);
4. terminology used in one jurisdiction, and which is used by a judge to enter an order for confiscation in the Requesting State, may be different from terminology typically used by a judge in the Requested State, and may provide for hesitation by

the Requested State judge to enter a similar order in the jurisdiction in which the assets are located;

5. evidence which supported an order for confiscation in the Requesting State may not be satisfactory to a judge in the Requested State;
6. failure of the Requesting State to adequately show that the defendant is the true beneficial owner of property in the possession of a different person or entity (e.g., a shell company or trust) and failure of Requested State official to seek clarity on this issue; and
7. refusal by the Requested State to issue an order for confiscation of assets, where the conviction in the Requesting State was the result of an *in absentia* proceeding, regardless of whether the Requesting State demonstrates that it took every reasonable measure to inform the defendant of criminal proceedings against him or her – e.g., proof that notice was sent to last known address and/or to defendant's lawyer.⁵⁵

Other time-consuming aspects may include, for example, requests by the Requested State for additional documentation, although this is closely tied to item (1) above, or issues of delays related to translation of key documents.⁵⁶

1.2.7 Phase 4: Repatriation and recovery of assets

Phase 4 relates to assets which are the product of criminal activity and which are located in foreign jurisdictions. In such cases, the Requesting State (from which the assets were taken) needs to coordinate with the Requested State (in which the assets are located) to ensure their return. The most commonly used method for asset return is through bilateral and multilateral treaties and agreements. Most often, MLA requests are sent to the foreign jurisdiction, using as a legal justification reference to key provisions within the United Nations Convention against Corruption (UNCAC) or the United Nations Convention against Transnational Organised Crime (UNTOC). Bilateral law enforcement cooperation agreements, where they exist between the two States, may also be used, and are encouraged by both the UNTOC and UNCAC.⁵⁷ Both conventions allow the Requested State to deduct costs related to executing an MLA request only if they are substantial and extraordinary in nature, and only after consultation with the Requesting State,⁵⁸ although the UNTOC also indicates that the Requested State may deduct “reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property”.⁵⁹

The UNCAC allows the Requesting and Requested States to enter into “agreements or mutually acceptable arrangements, on a case-by-case basis, for the final disposal of confiscated property” (e.g., sharing of recovered assets).⁶⁰ Such *ad hoc* agreements are encouraged, as a means to incentivise cross-border cooperation. Asset sharing

agreements can be used, as in the case of the United States, to encourage joint investigations, often in cases involving drug trafficking and money laundering.⁶¹

Nevertheless, cross-border recovery remains among the main delays or inhibitors in the overall asset recovery process. To bring true efficiency to the spirit and intention of the UNTOC and UNCAC in the asset recovery process, all States need to consider a number of practical issues not directly mentioned (or adequately covered) in the conventions. A sampling of these issues would include:

- Pre-MLA request informal contact and coordination – this is perhaps by far the issue ignored by many jurisdictions. Many, if not most, MLA requests for seizure, confiscation and repatriation of assets fail, or are significantly delayed, as a result of a lack of cross-border pre-MLA discussions among counterparts about the case and what may be needed in any MLA request;
- Knowing who one’s asset recovery counterpart is in a foreign jurisdiction – many countries do not make full use (or even know) of Asset Recovery Interagency Network (ARIN) contact focal points in foreign jurisdictions – this often results in contacting the wrong person and pursuing legal and operational channels that waste time and result in little success in the seizure, confiscation or return of assets. In some cases, this has also resulted in the transmission of whole case files, rather than summaries, to foreign jurisdictions;

- Lack of dedicated budgets to facilitate quick and efficient translation of documents (e.g., orders entered by the judiciary in the Requesting State);
- Lack of dedicated budgets that would allow prosecutors (or other key officials) from the Requesting State to travel to Requested States to hold face-to-face discussions on pending cases – experience has shown that these direct discussions advance cases much faster and with more efficiency than reliance simply on MLA requests;
- Lack of preparedness to discuss the possible sharing of assets; and
- Lack of preparedness to discuss what is to be done with any recovered assets upon their return to the Requested State – although this runs counter to the issue of sovereignty, it is nevertheless an issue of concern in actual practice for many Requested States, who do not want to be politically embarrassed for having returned assets to a State, only to see the assets corruptly used again.⁶²

1.2.8 Phase 5: Social re-use

the ultimate, and still far underemphasised, goal of the asset recovery cycle is to ensure that recovered assets are liquidated and productively used, either to assist victims (say, of corruption or human trafficking) or to direct such liquidated assets to high-priority development needs, such as the health care, education and employment sectors.⁶³

UNICRI's ongoing series of reports on Illicit Financial Flows (IFFs) and Asset Recovery discuss the harms caused by illicit financial flows and their devastating consequences on countries, especially developing ones, and the priority (and value) that needs to be placed on recovery of assets linked to illicit financial flows.⁶⁴ These reports also highlighted how engagement with civil society can facilitate good and optimised use of recovered assets – civil society organisations can contribute significantly to the identification of projects for social re-use.

The aim of social re-use is to give real value to the asset recovery process, directing liquidated assets to affected

communities, an end that also leads to restored confidence in the rule of law.⁶⁵ This end also shows the centrality of asset recovery in the achievement of United Nations Sustainable Development Goals.⁶⁶ Recovered and liquidated assets can also be used by

governments to strengthen national asset recovery initiatives or community projects, such as has been done in Nigeria.⁶⁷ Good examples of social re-use can be found in the experience of, for example, Belgium, Honduras, Italy and the United Kingdom.⁶⁸

Successes in Social Re-Use of Confiscated Assets⁶⁹

In **Italy**, houses and goods that are confiscated from the Mafia are often transferred to individuals and families who have lost their homes due to, for instance, environmental catastrophes or host women in distress, refugees, and homeless people, as well as to victims of organised crime.

This happens with the support of CSOs as well. Italy has a strong history of effective collaboration between governments and CSOs to manage recovered assets in social sectors, while promoting sustainable economies.⁷⁰

Similarly, the government of **Honduras** temporarily loans seized or confiscated buildings to people in need and to families that are the targets of organised crime groups.

In the **United Kingdom**, some recovered assets have been invested in facilities for young people who are at risk of engaging in anti-social behaviour, under the “Cashback for Communities” programme.⁷¹

Still, broader transparency is needed in many States with respect to how recovered assets are liquidated and used. Cases now exist in which the Requested State may return assets only if they are used to certain ends – this issue has arisen mainly as a result of concern that such recovered assets might be corruptly misused again. When strong evidence shows that assets could be corruptly reused by the

requesting jurisdiction, it is not illogical that a Requested State may hesitate in returning such assets, regardless of any legal case already proven. It is difficult to decide what, if any, threshold should be used for this decision. In this regard, it would be highly beneficial for countries to initiate discussion on how to ensure that recovery produces a “win-win” result.

Memorandum of Understanding (MoU) between the United Kingdom and Nigeria on the modalities for return of stolen assets confiscated by the United Kingdom

In 2016, the United Kingdom and the Government of Nigeria signed a MoU which outlined the provisions for the return of stolen assets from the people of Nigeria and recovered by the United Kingdom.

In 2021, the Government drafted Annex I, which sets out the specific arrangements for the assets that were previously stolen by the Governor of Delta State James Ibori and his associates (over GBP four million). The Annex also includes provisions for the return, monitoring and management of these assets.⁷² Having specific arrangements in place adds credibility and transparency to the asset management phase, thus leading to the maximum possible optimisation of the returned assets, benefitting the largest amount of people, and increasing public trust in the work of the Government.

In addition, the Annex outlined information about the management of returned assets that would be made available to the Nigerian public and how accountability reports would be published every year.⁷³

According to the provisions set out in Annex I, the returned funds were to be directed to finance specific infrastructure projects approved by the Nigerian National Assembly under the 2020 Appropriation Act (the Lagos to Ibadan Expressway, the Abuja to Kano Road and the Second Niger Bridge). The supervision and monitoring of the management of returned assets are in the hands of the Nigeria Sovereign Investment Authority and are independently audited. The Monitoring Team of the Federal Republic of Nigeria was placed in charge of overseeing the correct implementation of projects and reporting regularly on progress.⁷⁴ A principal goal of the MoU was to ensure that recovered assets did not fall back into the hands of criminals but would be directed to projects that benefit the poorest members of society and improve access to justice for the people of Nigeria.⁷⁵

Having such MoUs in place enhances cross-border cooperation and adds credibility to the Requesting State, as they lay out the exact and transparent procedures and rules on how recovered assets will be utilised and managed. This is done by transparently outlining which entity is responsible for specific tasks, as well as by providing the details of which projects should be funded. While sovereignty is an important principle, such MoUs indicate that, at least in actual practice in the field of asset recovery, the principle may

be reasonably questioned in certain circumstances.

Regardless of the above, actual practice and the spirit of relevant international conventions demonstrate that more needs to be done by Requesting States to show transparency in the management and “optimisation” of recovered assets (e.g., allowing the public to easily access information on how such assets are being liquidated and distributed).⁷⁶

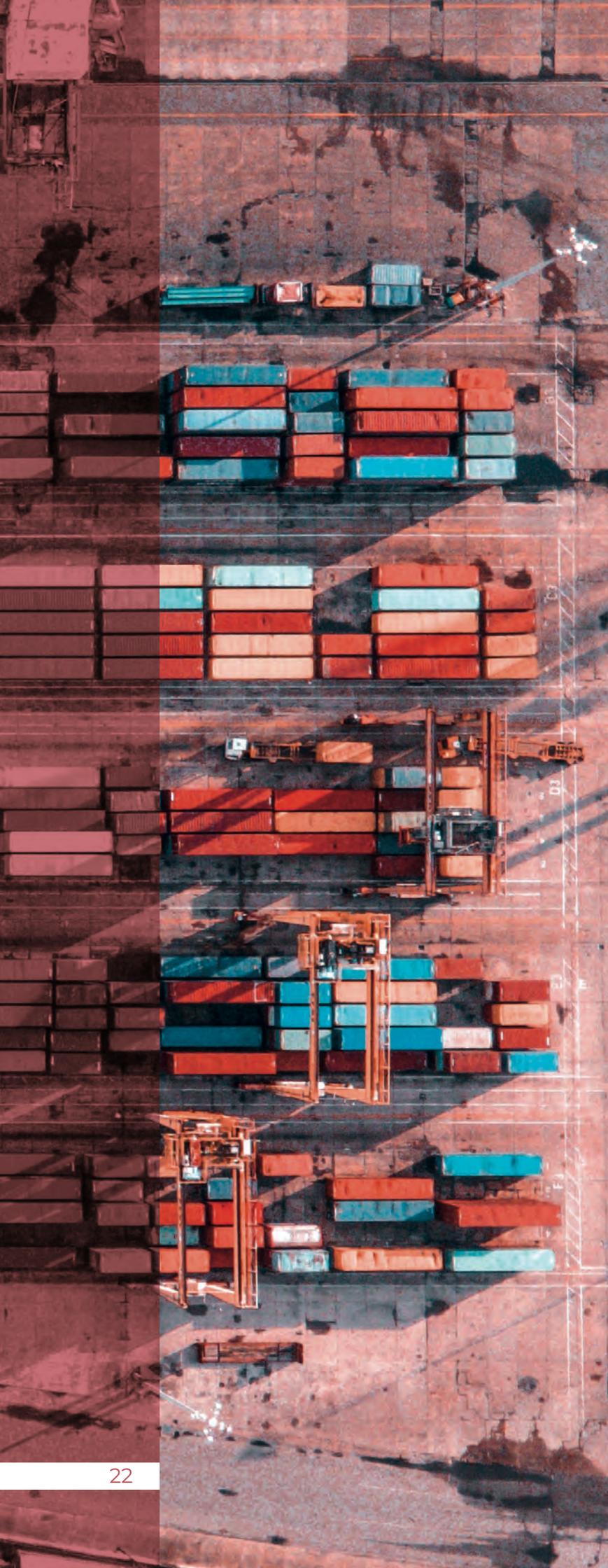
Equally, actual practice shows that Requested States need to be more proactive in engaging with Requesting States to quickly and efficiently resolve cases to return assets – in a number of cases, some States have been quick to announce that they have frozen or seized assets (producing good publicity), but little is done thereafter to work closely with officials from Requesting States to actually return such assets.⁷⁷

Optimisation of assets has been considered in multilateral forums, including, for example, the open-ended Intergovernmental Working Group on Asset Recovery, in which UNICRI participates. This working group has produced useful guidelines on effective and efficient management of seized and confiscated assets,⁷⁸ and these guidelines should be referred to by all States.

The Global Forum on Asset Recovery (GFAR) also has laid down ten principles

for the disposition and transfer of confiscated stolen assets in corruption cases.⁷⁹ Principle five provides a clear starting point for social re-use as it states that the beneficiaries of recovered assets (without prejudice to identified victims) should be the citizens of the nation that was harmed. Principle four, on transparency and accountability, highlights that communities and the general public should have access to all information regarding returned assets and how they will be reinvested.

In order to further enhance transparency and accountability in the return phase of recovered assets and their reinvestment into society, principle ten calls for increased cooperation between national authorities, civil society, community-based organisations and other relevant Non-Governmental Organisations (NGOs).



02.

Overview of Serious Income- Generating Crime and Asset Recovery in the EaP Region

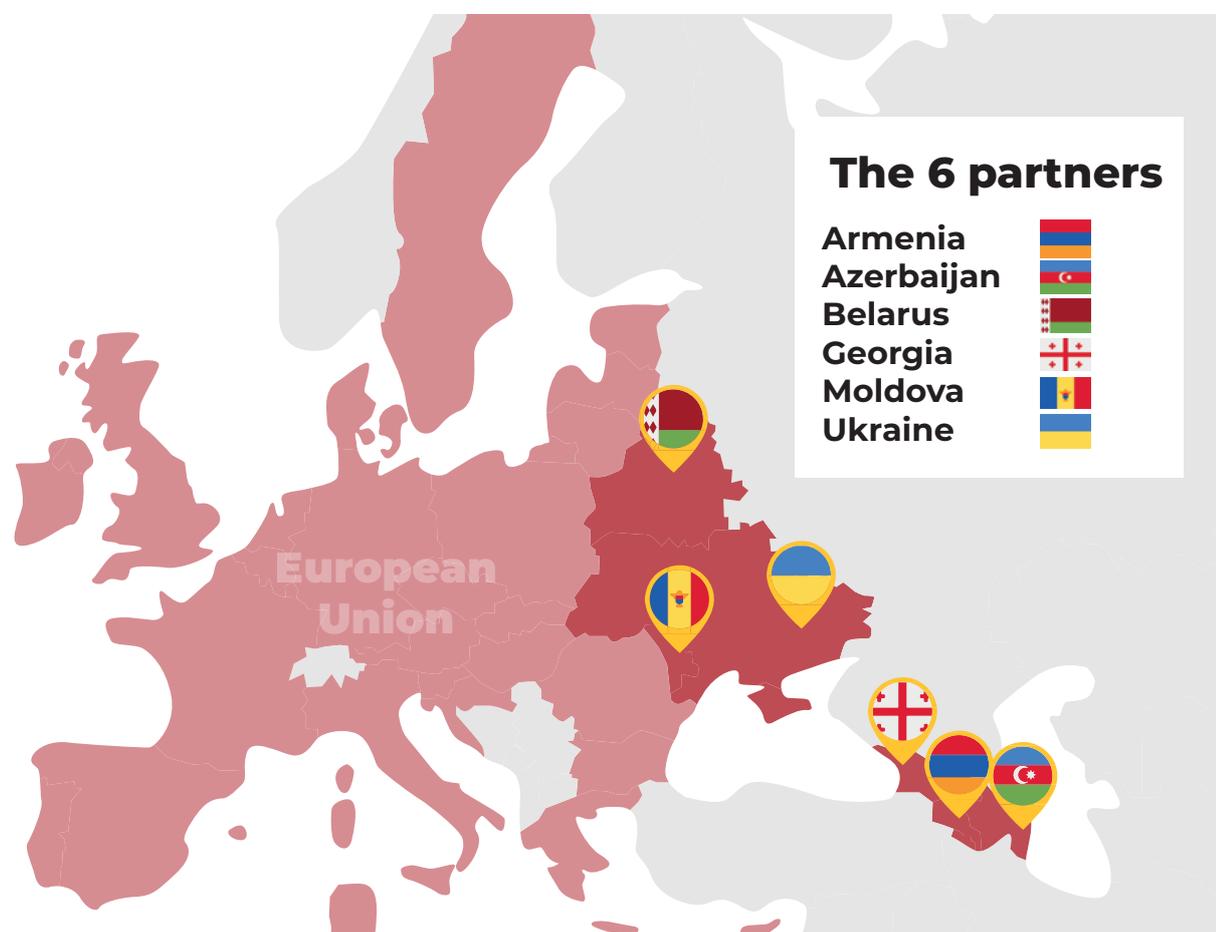
2.1 The Eastern Partnership

The Eastern Partnership (EaP) is a joint policy initiative which aims to deepen and strengthen relations between the Member States of the European Union and six Eastern European Partners, namely Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine.⁸⁰

The Organisation for Economic Cooperation and Development (OECD) has stated that the aforementioned countries' strengths include a "highly educated workforce, a strategic geographic position and recognition of the importance of improving the business environment".⁸¹

In the framework of the "EU4Business: From Policies to Action" project, the OECD supports the six eastern partners that are increasingly developing competitiveness, diversifying their economies, and becoming more resilient. The EU has also been trying to engage these countries with initiatives that would give them access to European markets, for instance through association agreements or free trade agreements.⁸²

The EaP strategic partnership began in 2009, following the creation in 2004 of the European Neighbourhood Policy



(ENP) initiative, of which the EaP is an example. In general terms, the ENP's goal is to "support and foster stability, security and prosperity in the EU's neighbourhood".⁸³ Thus, the EaP is founded on a set of common values and rules, mutual political and economic interests and commitments, shared responsibility and ownership.⁸⁴

To further reinforce strong commitments from both sides, at the 2017 EaP Summit, the EU Member States and EaP partner countries adopted a "20 Deliverables for 2020" Agenda, with the aim of strengthening economy, governance, connectivity and society.⁸⁵

The power vacuum left by the collapse of the Soviet Union contributed to strong political and economic instability in the region, which, together with

weak rule of law and the collapse of institutions, created opportunities for wealth capture by elites,⁸⁶ as well as for organised crime to continue to flourish. The fall of the Soviet Union also left a series of territorial disputes that continue to this day⁸⁷ and that contribute to an ongoing situation of general instability. In addition, it is believed that persistent conflict, such as the Russian-initiated conflict in Ukraine, may foster organised criminal activity in Ukraine, with an estimated daily cost of around USD five million.⁸⁸ Similar dynamics linked to general recent instability might be the basis for organised criminal activity (and illicit financial flows) in Moldovan Transnistria, the Georgian regions of Abkhazia and Tskhinvali region/South Ossetia and others in the EaP region which have seen recent conflict.

2.2 Serious Income-Generating Crime in the EaP Region and Key Region-Wide Initiatives Aimed at Limiting Such Crime

Illicit financial flows in the EaP region can be estimated at almost EUR 29 billion annually.⁸⁹ The ongoing regional instability generated from post-conflict situations in developing countries, undermines socio-economic development and creates the ideal environment for organised crime to flourish.

Serious income-generating crime in the EaP region mainly involves trafficking in human beings, mainly for forced labour and sex, money laundering,⁹⁰ smuggling of illicit goods and drug trafficking, as well as bribery and other forms of corruption.

Among some region-wide initiatives to curb serious income-generating crime, the European Commission has funded a Europol-led project that aims at improving the capacities of EaP countries to combat such crime.⁹¹ The project is set to last for four years and sees Europol supporting the cooperation between law enforcement authorities from the EaP countries both on a strategic and operational level. The wider aim of this cooperation is to create a safer environment in the EaP region, based on rule of law and cooperation.⁹² Through the project, the European Union Agency for Law Enforcement Training (CEPOL) oversees a dedicated section which focuses on law enforcement training and threat assessments.⁹³

Project TOPCOP (Training and Operational Partnership Against Organised Crime)⁹⁴ aims at improving cooperation within the EaP region and with the EU in the fight against organised crime. The project is carried out with the support of other EU agencies such as Europol, Frontex and Eurojust. In addition, the six EaP countries are members of INTERPOL and can therefore benefit from its strong support and expertise, especially through National Bureau Centres (NBCs) that ensure smooth cooperation during investigations.



Cybercrime

Region-wide initiatives to fight cybercrime include training and meetings that aim at enhancing knowledge and improve practices against cyber crimes, including discussions on crypto and electronic currencies and the Darknet.

In October 2021, a meeting was organised by the European Union and the Council of Europe on cooperation between cybercrime investigations and financial investigations/intelligence from the Eastern Partnership region. The online event focused on certain types of IT-facilitated fraud, virtual currencies and on the Darknet.⁹⁵

There is a general consensus that EaP countries need to develop precise legal guidelines to regulate as much as possible the illicit use of cryptocurrencies.



Trafficking in Human Beings (THB)

Profits generated annually from human trafficking are estimated to be around EUR 30 billion globally.⁹⁶ The EaP region is an important origin,

transit and destination for victims of THB. Victims are trafficked for two main purposes: sexual and labour exploitation. The former mainly involves women and children, while the latter may include coerced criminality.⁹⁷ Victims can be mainly identified as coming from rural areas with poor education and few economic or educational opportunities throughout the EaP region. This highlights the need to reinvest successfully recovered assets into high-priority development needs, which include the education, employment and health care sectors.

Belarus - From Tier 3 to Tier 2 Watch List (WL)⁹⁸

According to a 2021 U.S. report, the Government of Belarus had made achievements with regard to combating THB and was therefore upgraded from Tier 3 (2019-2020) to Tier 2 WL (2020-2021). Key achievements between 2020 and 2021 included the amendment of the National Referral Mechanism (NRM), improving victim identification and assistance, by increasing the amount of time for the identification process (from 30 to 90 days if needed) and requiring the recording of child victim and witness testimony during pre-trial investigation. This is a useful step towards reducing the risk of re-traumatisation, as victims will not have to testify again in the courtroom. Victims purportedly could also benefit from free legal assistance and can request additional protection measures, such as testifying remotely.

Armenia – From Tier 2 WL to Tier 2

Among other achievements, the Armenian Government, with the support of the OSCE, developed a manual for law enforcement, labour inspectors and the judiciary on monitoring businesses that could be used for trafficking, as well as other forms of exploitation. This is an important step towards developing effective and improved techniques of THB prevention and victim protection. In addition, the Health and Labour Inspection Body conducted labour inspections for the first time since 2015, demonstrating political and operational will to combat human trafficking.

Georgia - Example of good practices

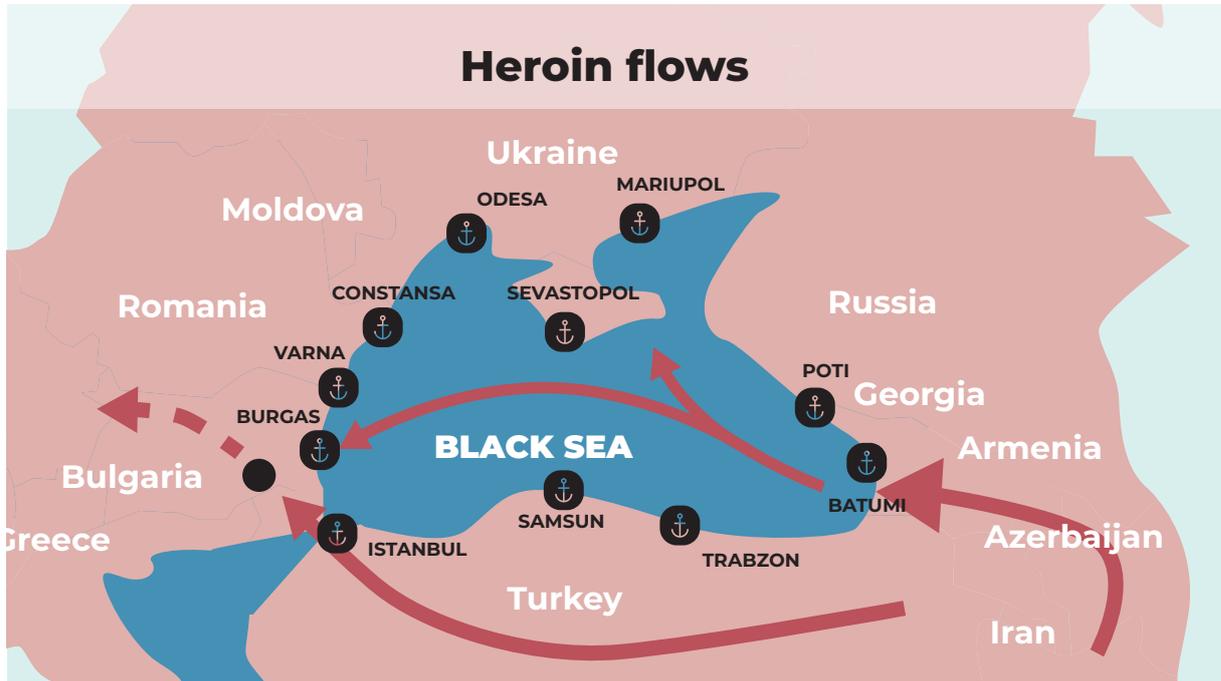
Georgia's Government fully meets the US Trafficking Victims Protection Act (TVPA)'s minimum standards for the elimination of human trafficking, setting a strong example for its neighbours in the EaP region. Overall, the government of Georgia increased its prosecution of traffickers and assistance to victims, providing adequate assistance to government-run shelters during the COVID-19 pandemic. Among other key achievements, Georgia established the Labour Inspection Service, with a dedicated unit for forced labour, which ensures compliance with labour regulations and norms.⁹⁹



Drug Trafficking

The illicit drugs market generates over USD 30 billion of illicit gains annually in the world, making it among the most lucrative of all crime areas.¹⁰⁰ According to the Serious and Organised Crime Threat Assessment (SOCTA) 2021, the drug trade dominates serious and organised crime in the EU, in terms of both people involved and profits generated; a significant amount of organised crime violence is associated with the drug trade.¹⁰¹ Drug trafficking, like illicit financial flows, represents a key area of concern for the six EaP countries, constituting a driver of harm at economic, societal and community levels. The impact of drug use can put considerable pressure on the health care system of the EaP countries, also from an economic point of view, with additional costs related to drug rehabilitation programmes. This hampers the achievement of Goal 3 of the United Nations SDGs, which is to “ensure healthy lives and promote well-being for all at all ages”.

The geographic location of the six EaP countries is a strategic transit point for transnational crime involving trafficking and smuggling. Given their proximity to the Middle East and Turkey, Georgia, Armenia and Azerbaijan are attractive countries for drug trafficking, especially for heroin from Iran and Afghanistan to Ukraine, Moldova and other European countries.¹⁰² The so-called “Caucasus Route” represents a strong source of illicit income for organised crime groups. Heroin is trafficked through Armenia, Azerbaijan and Georgia to the EU - Romania and Bulgaria - via the Black Sea route or by land.¹⁰³ Cargo shipments and sea containers are at high risk of being targeted for the shipment of illicit drugs, mainly heroin and cocaine. The process breeds profits for local organised crime groups and for corrupt officials, while increasing the threat and reality of drug consumption and addiction. Belarus' no-visa policy with Russia¹⁰⁴ makes it an ideal country for transiting illicit drugs.¹⁰⁵



EU4MonitoringDrugs (EU4MD)

EU4MD is an EU-funded project that is managed by the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). The goal of the project is to strengthen cooperation with and within countries in the EaP region, by supporting national authorities in their responses to drug-related issues.¹⁰⁶ Beneficiary countries receive tailored training and capacity building, as well as detailed information and threat assessments on, for instance, the environmental effects of drug production, identification of hot spots, technological innovation and forensic analyses or trafficking maps.¹⁰⁷ Clear and straightforward communication between both national authorities and relevant counterparts in other countries, is essential towards more precisely visualising drug routes and all connected phenomena, which can facilitate faster identification of hot spots and suspects.



Money Laundering

Money laundering allows criminals to expand their operations, taking economic power away from national and local economies, as well as from citizens. Money launderers are increasingly making use of more sophisticated techniques, through

financial transactions and shell corporations, producing greater complexity in unravelling financial transactions and their link to criminality.¹⁰⁸

The extent of money laundering activities is extremely difficult to assess, which is why it has been referred to as

the “shadow economy” or a “nation’s unrecorded financial activity”.¹⁰⁹ While no national or international entity can identify with specificity the amount of money laundering taking place at a global scale (indeed, the amount changes on a daily basis), risks related to money laundering exist within the EaP region. While all six EaP countries share some common vulnerabilities, such as the extensive use of cash and the ease of doing business, countries within the region are indeed implementing counter measures to mitigate these risks. Georgia has proven to be a good example; the National Bank of Georgia and the Insurance State Supervision Service apply robust entry examinations and regularly review licensing policies.¹¹⁰

Still, such counter measures can be further bolstered through the adoption of region-based approaches to mitigate risks; these could include region-wide agreements to render more agile cross-border drug-trafficking investigations (particularly the tracing, seizure and confiscation of assets – as well as agreements to share such assets – linked to drug trafficking in the region).

With regard to region-wide initiatives to curb money laundering, Moneyval is the Council of Europe’s Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism. The permanent monitoring body assesses compliance with international standards, while providing national authorities with recommendations on necessary improvements of their systems. In this context, EaP countries are benefitting from the expertise of Moneyval experts.

Armenia, Azerbaijan, Georgia, Moldova and Ukraine are members of Moneyval,¹¹¹ while Belarus is a member of the Eurasian Group on Combating Money Laundering and the Financing of Terrorism (EAG).¹¹²



Bribery and Corruption

The COVID-19 pandemic brought about additional challenges for EaP countries, with a higher risk of abuse of power by some public officials.¹¹³ As in many countries, some political leaders used the crisis in their favour by, for example, adding restrictions to already limited access to information¹¹⁴ or by eliminating transparency requirements from public procurement rules.¹¹⁵

Still, there are positive signs that EaP countries are taking significant measures to tackle corruption, especially following recent public mobilisation efforts against corruption in some countries.¹¹⁶ For example, Ukraine has promulgated and commenced implementation of a new law on civil confiscation. Similarly, Armenia’s law on civil confiscation has been in place since 2020 with some 300 cases currently being investigated. Additionally, the Moldovan Criminal Asset Recovery Agency (CARA) is actively working to trace and identify assets linked to corruption. Georgia’s civil procedure code allows prosecutors up to ten years to trace and identify assets of those convicted of certain crimes¹¹⁷ and Azerbaijan has recently established the Department for Coordination of Special Confiscation Issues.¹¹⁸



Organised Property Crime

Through its 2018-2021 Policy Cycle, the EU identified organised property crime as one of the most prevalent crimes in the EaP region.¹¹⁹ Organised property crime can be carried out by means of theft or burglary; diaspora communities of some EaP countries' citizens in Europe are often used to conduct such crimes.¹²⁰ This phenomenon entails negative consequences for countries in the EaP region, even when organised property crime takes place outside of it, as the criminal revenues obtained abroad can be used for financing crime domestically. According to Europol, organised property crime, which often relies on buying and selling stolen goods (fencing), is largely under-investigated and represents an intelligence gap for law enforcement authorities.¹²¹ Nonetheless, it is probably the most visible form of organised crime, with a direct impact on both the public and private sector, with more than one million cases related to burglary reported in the EU every year.¹²²



Smuggling of Goods

Smuggling of illicit goods is also a prevalent crime in the EaP region, as criminals benefit from both the price difference and the proximity of European markets. Cigarette smuggling from the EaP region mainly takes place through "illicit whites"; these are cigarettes produced legally in countries such as Belarus, Moldova and Ukraine, and which are then illegally smuggled into the EU, without paying

excise duties and VAT.¹²³ More than 20% of illicit cigarettes consumed in the EU originate from eastern European countries and travel through the so-called Northeastern Route, with more than ten billion cigarettes being trafficked every year.¹²⁴ The European Anti-Fraud Office has estimated that tobacco smuggling costs the EU EUR 10 billion every year.¹²⁵

The Belarusian cigarette market is a major supplier for the EU, representing profitable opportunities for organised crime groups, costing around EUR one billion every year.¹²⁶ In May 2021, the Lithuanian Customs Criminal Service seized more than three million cigarette packs with an estimated value of almost EUR 12 billion. Law enforcement authorities also seized some 46.5 tons of tobacco, drugs and contraband cash.¹²⁷

Russian Federation armed aggression against Ukraine may also produce illicit financial flows that have a negative impact on the economy and stability of Ukraine and the region. The main illicit financial flows in the country often concern the smuggling of small arms,¹²⁸ as well as human trafficking¹²⁹ and the financing of terrorism.¹³⁰ Once in circulation, illegal firearms can pose a long-term risk, as they can be used in other crime areas because of their multidimensional nature. According to Frontex, information exchange with eastern European countries shows that national border control authorities regularly detect illicit weapons, explosives and ammunitions.¹³¹ Arms smuggling is reported to be of real concern in Transnistria¹³² at the Moldova-Ukraine border.¹³³

Frontex also identifies the illicit market of stolen vehicles as a lucrative source of income for organised crime groups in the Eastern Land Borders route.¹³⁴

Over 57% of cases of stolen vehicles in Frontex Joint Operations in 2019 were detected on this route, with 39% being recorded in the Balkans.

Use of Duty Free Shops to Smuggle Cigarettes

Without robust controls, duty free shops can potentially be used to smuggle cigarettes. Between December 2015 and November 2016, duty free shops in Transnistria introduced 1.32 billion cigarettes, with around 640 million of these actually sold. This phenomenon creates concerns that the surplus is traded on the black market and smuggled into the EU.¹³⁵

Joint Action Day Arktos 2¹³⁶ – EU's Eastern Land Borders

This operation was coordinated by Frontex, Finland and Latvia and was supported by INTERPOL, Eurojust, Europol, Poland, Estonia, Lithuania and Slovakia, in 2020. Some 37 million illegal cigarettes, over 1.8 tons of tobacco and more than 3 500 litres of illegal fuel were seized. This operation demonstrates that successful cross-border exchange of information between relevant counterparts is essential towards fighting organised crime.

Key Initiatives Aimed at Reducing Drug Trafficking, Human Trafficking and other Forms of Smuggling

According to Frontex, the biggest challenge with regard to customs in the Eastern Land Borders route is the smuggling of excise goods, such as cigarettes, fuel, alcohol, and stolen cars.¹³⁷ Cross-border cooperation between the EU and its neighbouring eastern partners is essential for effective border management, to develop an increasingly connected global border management community and to address irregular migration and cross-border crime.¹³⁸ Frontex cooperates with countries in the EaP region through its Eastern Partnership Risk Analysis Network (EaP-RAN), which is a regional intelligence sharing network that facilitates information sharing and joint analyses, and through the deployment of a Frontex Liaison Officer in the region.¹³⁹ The EaP-RAN operates under the EU-funded Eastern Partnership Integrated Border Management Capacity Building Project and includes all six EaP countries. The monthly exchange of information between Frontex and EaP countries aims to identify emerging trends to support strategic and operational decision making.

EaP regional stability can also be strengthened by increasing cross-border cooperation between neighbouring countries within the region. For example, the EU aims at improving the Integrated Border Management (IBM) between Moldova and Ukraine, with the wider purpose of enhancing economic security and sustainable development in the EaP region, by combating smuggling and other cross-border crimes.¹⁴⁰

The European Union Border Assistance Mission to Moldova and Ukraine (EUBAM) facilitates Moldova-Ukraine border cooperation, promotes and harmonises border control and customs and enhances regional security.¹⁴¹ The project has been a strong example of successful cross-border cooperation in the fight against tobacco and drugs smuggling, THB and customs fraud.

JAD Finestra – Taking Down Smugglers in the Eastern Partnership Region¹⁴²

In September – October 2021, Frontex and Romania led a cross-border operation to counter crime on the Eastern Land Borders,¹⁴³ as part of EMPACT. The operation was carried out in cooperation with several EU Member States, Moldova, Ukraine, Europol, Eurojust, the European Anti-Fraud Office (OLAF), INTERPOL, WCO and the EUBAM MD/UA (European Border Assistance Mission to Moldova and Ukraine). As a result, 36 million illegal cigarettes, 2 360 kg of tobacco, 160 000 litres of illegal alcohol, 44 fraudulent documents and 6 000 litres of mineral oil were detected. At the same time, the operation led to the identification of 32 smugglers, seizure of six stolen vehicles and detections of over 170 irregular migrants and almost 190 refusals of entry. This successful operation allowed law enforcement officials to share information, strengthen cooperation between EU Member States and other participating countries (Moldova and Ukraine), as well as share best practices.

Azerbaijani Success against Smugglers¹⁴⁴

In September 2021, Azerbaijan customs prevented an attempt to smuggle more than 660 kg of mainly heroin and opium. The heroin was being smuggled into Azerbaijan on an Iranian cargo vehicle that was travelling to Latvia. The investigation revealed that Europe was the destination region for these cargos, and demonstrated Azerbaijan's political and operational will to confront organised criminal activity.

Civil Confiscation in Armenia

On 16 April 2020, Armenia adopted a law on Civil Forfeiture of Illegal Assets for specific types of crime, including organised crime, drugs and weapons trafficking and corruption. The law tasks a competent body within the Prosecutor General's Office with ensuring that assets under investigation were lawfully acquired. The specialised office can submit a claim for obtaining the civil forfeiture of assets, when these exceed the threshold value of AMD 50 million (USD 100 000). As of the drafting of this report, a Court of First Instance was adjudicating a case involving an Armenian former high-ranking public official who was charged with bribery and money laundering. The overall value of the assets subject to confiscation was estimated to be USD 30 million (including movable and immovable properties and company shares); provisional measures to ensure confiscation of the assets were successfully put in place by the Court, resulting in several assets currently in State's custody.

2.3 Asset Recovery in the EaP Region

EaP countries are making progress in recovering illicitly-obtained assets. In April 2020, the National Assembly of Armenia adopted a law on Civil Forfeiture of Illegal Assets.¹⁴⁵ Ukraine introduced civil confiscation in 2019,¹⁴⁶ and handed down its first judicial decision on civil confiscation case in August 2021.¹⁴⁷ Georgia now implements a law which allows prosecutors up to ten years to trace and identify assets of those convicted of certain crimes.

Still, officials in all EaP countries acknowledge that there is much room for improvement, and much more needs to be done to mainstream asset recovery. Implementing a common strategy and operational response between the EU and EaP countries, would be beneficial towards successful tracing, freezing, confiscation and return of illicitly-obtained assets.

Many measures that are already in place in some EaP countries are useful domestically and would be even more beneficial if implemented in all EaP countries. For example, the core ethos of dedicated Asset Recovery Offices (AROs), such as the ones in Moldova and Ukraine, is to ensure that there exists under one roof access to multiple databases (tax information, vehicle and land registry information, banking information) in order to allow such AROs to easily develop singular (cross-institutional) reports on the assets held by those suspected of criminal activity.

The region is slowly, but steadily adopting civil confiscation measures, as well as databases and systematic analyses or risk assessments to understand financial transactions linked to criminality.¹⁴⁸

At the 2017 EaP Summit, the partner countries committed to a Joint Declaration on asset recovery, among other key deliverables.¹⁴⁹ The key priorities for asset recovery were identified as the establishment of “effective systems of declaration of assets and of conflict of interest with easily searchable databases” and the “development of a legal framework and mechanisms for the recovery and management of assets and effective tools for financial investigations”.¹⁵⁰ Timely sharing of information is of the essence during serious income-generating crime investigations, thus having a robust database in place becomes crucial towards strategic and operational planning.

As Moneyval has outlined, there is a need to make sure that asset recovery offices or any other relevant body are aware of the latest technological developments in the field of asset recovery and financial crime, that all staff are properly trained and that there is adequate access to relevant databases.¹⁵¹

Another key underlying issue with regard to asset recovery is the lack of inter-institutional cooperation. This happens when there are no clear and

well-defined institutional structures or objectives. In some cases, this can be ameliorated by establishing a permanent inter-institutional committee on asset recovery or by setting up *ad hoc* task forces.¹⁵² The lack of inter-institutional cooperation leads to confused or overlapping roles, and to competition among institutions with regard to their mandate.

Additionally, a lack of statistics on confiscated assets in EaP countries may also represent an issue. For example, statistics in many countries often reveal just how little is being ordered to be confiscated versus how much has been ordered to be seized. Understanding this gap alone could lead to more targeted policies as well as to useful operational restructuring.

Criminal Asset Recovery Agency (CARA) - Moldova¹⁵³

Recently, the CARA transferred LEI 11 million in stolen assets, that were previously seized, into State custody. By doing so, it ensured transparent management of stolen assets. Tracing and seizing the money stolen required special investigative and operational techniques and analyses, both in Moldova and abroad. While CARA is responsible for tracing and seizing criminal assets, the judicial system oversees confiscation and recovery of stolen assets.¹⁵⁴

Some EaP countries have set a regional example, by taking positive steps with regard to encouraging individuals accused of certain crimes, to return assets. This can occur by means of exemption (amnesty) or a reduced sentence if the defendant agrees to return assets and, in some cases, if victims are compensated.

Efforts by some EaP countries to recover assets may be compromised by internal corruption and exposure to political influence that weaken the independence of certain bodies.

Still, progress with regard to asset recovery is taking place, but reforms need time to be implemented and to demonstrate their efficacy.

Successful Investigations and Seizures in Georgia¹⁵⁵

In April 2021, the Prosecutor's Office of Georgia successfully initiated legal proceedings against two individuals for fraudulent appropriation of USD 450 000. Two members of the criminal organisation were charged according to Article 180 of the Criminal Code of Georgia, which envisages six to nine years of imprisonment. Georgian authorities managed to successfully seize USD 420 000 which were to be returned to the company affected by the fraud.

In November 2021, the Prosecutor's Office of Georgia investigated a criminal group, comprised of both national and foreign citizens, and arrested an individual for the embezzlement of large sums of money. The case involved a fake website where the owners claimed to be authorised and licensed to trade in the cryptocurrency market. Victims, who were lured into believing that they were making profitable investments, lost large sums of money.

In November 2021, the same office initiated a criminal prosecution *in absentia*. The case involved the head of the procurement department and a consultant of the United Water Supply Company, which is a public company. The individuals created a non-competitive bid environment, and a principal of the declared winner company was a close friend of both. In exchange for winning the tenders, the individuals involved received a total of GEL 215 000 in bribes. Part of the money was then laundered by purchasing a luxury car, which was seized during the investigation. The identified individuals could face criminal charges of money laundering and bribery.

State Litigation Funds - Ukraine¹⁵⁷

In a 2020 report, the Asset Recovery and Management Agency (ARMA) of Ukraine identified the need to establish Litigation Funds to enable Ukraine to employ foreign law firms to initiate civil litigation in foreign jurisdictions. The mechanism, however, was criticised because legitimate questions were raised with respect to how much the foreign law firm(s) were to be paid (in some cases, a large percentage of the recovered assets), as well as with regards to potential rise of conflicts of interests due to the lack of safeguards in the selection process. The process also led to criticism that the State was somehow delegating the entirety of its asset recovery duties to private law firms and led to a generalised rejection of employment of foreign law firms to initiate and carry out civil litigation in foreign jurisdictions.

Ensuring that reputable law firms are identified and that fair price scales are set, given that recovered assets can often amount to billions of Euros, is an essential part of the role of the State. In practice, there is as of yet no proven single methodology for employment of law firms to conduct foreign jurisdiction litigation; nevertheless, this dynamic demonstrates that some pre-employment assessment of the probability of success in foreign jurisdiction litigation cases is needed, and that such agreements should involve limited cost for Requesting States if the law firm is not successful, while also ensuring that such law firms can reasonably, though not disproportionately, benefit from successful litigation.¹⁵⁸

It should be noted that initiating civil litigation in foreign jurisdictions, through foreign law firms familiar with the law in such jurisdictions, is a fairly common practice, and civil litigation (as opposed to criminal cases) can often be faster and more efficient in obtaining judicial orders for the confiscation of assets located in such jurisdictions.¹⁵⁹

UNICRI and Asset Recovery

The EU has funded a project with expertise from the United Nations Interregional Crime and Justice Research Institute (UNICRI), which is bolstering the capacity of EaP countries to trace and confiscate assets linked to criminal activity, as well as to channel recovered funds to high-priority development needs.

UNICRI is providing technical support in the form of mentoring on specific cases, as well as facilitating peer-to-peer missions with counterparts in foreign jurisdictions in which assets stolen from EaP countries have been located.¹⁵⁶



03.

The Need for Social Re-Use Policies and Practices in the EaP Region¹⁶⁰

Countries in the EaP region are estimated to lose a total of EUR 29.9 billion¹⁶¹ every year due to illicit financial flows linked to corruption and organised crime. Illicit Financial Flows (IFFs) harm societies on several levels, hampering a country's economic growth and forcing governments to divert investments away from much-needed reforms.

These losses mean fewer schools and hospitals and other key pieces of infrastructure that contribute to quality of life. Such losses may also mean fewer teachers, nurses and doctors.

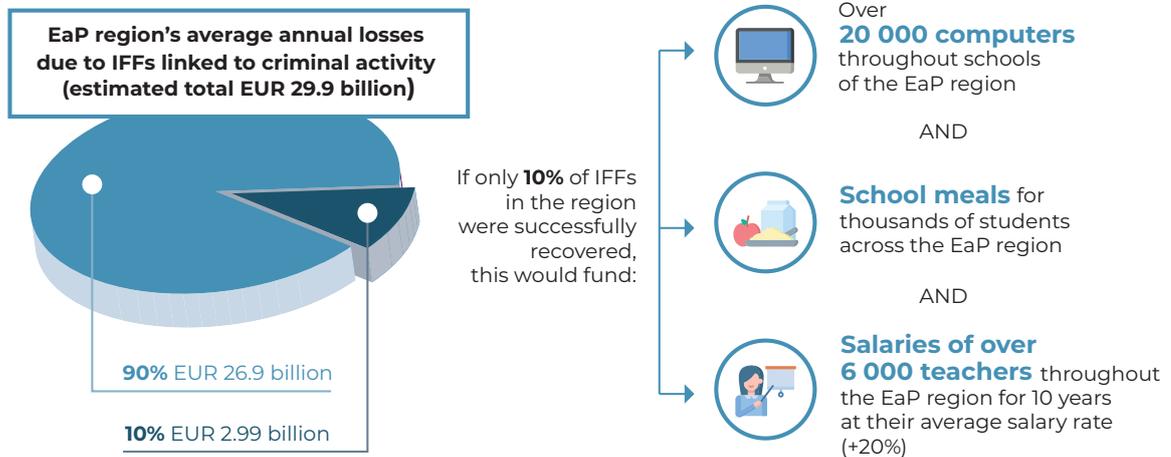
Illicit financial flows undermine public trust in governmental institutions

and the rule of law, creating an environment where organised crime can more easily flourish, and thus inhibit the achievement of Goal 16 of the United Nations 2030 Agenda (promoting peace, justice and strong institutions).

Failing to prioritise the capture of IFFs means that countries are weakening their own hand at achieving, for their citizens, the Sustainable Development Goals (SDGs), of the UN 2030 Agenda. The SDGs encompass numerous spheres such as poverty reduction, education, gender equality, peace, justice, strong institutions and the rule of law.



How Recovered Assets Can Support the Education Sectors in the EaP Region



Education Sector

High-quality education is key to a country's development, with a positive effect on economic growth. Government investments in human capital are therefore essential to ensure "healthy lives and promote well-being for all at all ages" (Goal 3 of the 2030 Agenda).

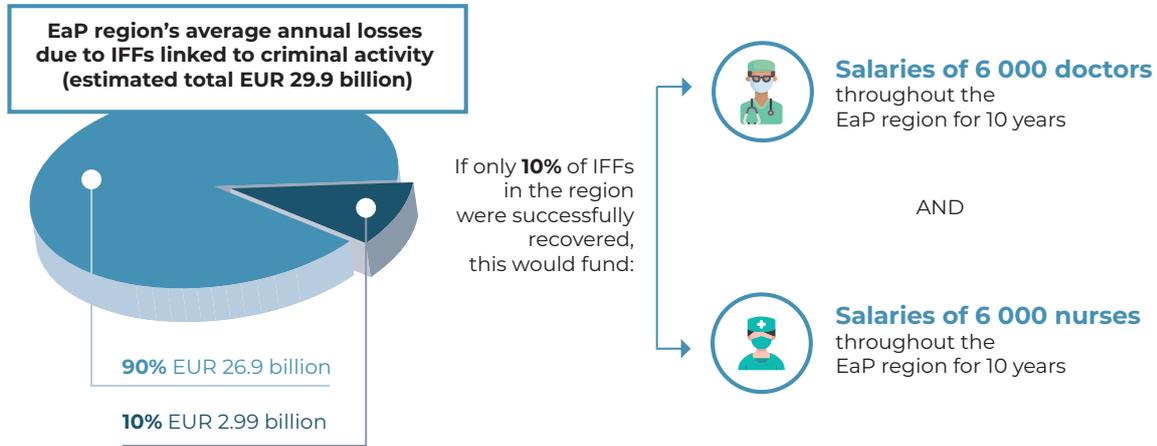
While the education sector has been given more attention and funding by Governments in the EaP region, it still is in general significantly hindered.

The education sectors in some EaP countries may be jeopardised by an insufficient level of digitalisation (for example, the lack of computers that are accessible to teachers), together with school programmes that do not meet the skills required by employers in the 21st century, as well as low salaries

of teachers. This last phenomenon can lead to teachers becoming more susceptible to, for example, accepting a bribe in exchange for a good grade (facilitating socio-economic inequality among students)¹⁶² and can disincentivise young professionals from starting a career in education.

The successful recovery of EUR 2.99 billion (10% of estimated IFFs in the EaP region) could cover the salary costs of over 6 000 teachers throughout the region for ten years at their average national salary, with a 20% increase.¹⁶³ In addition, such recovered assets would finance thousands of school items, such as books, pens, pencils, desks and laptop computers,¹⁶⁴ as well as school lunches - many families depend on this last item.

How Recovered Assets Can Support the Healthcare Sectors in the EaP Region



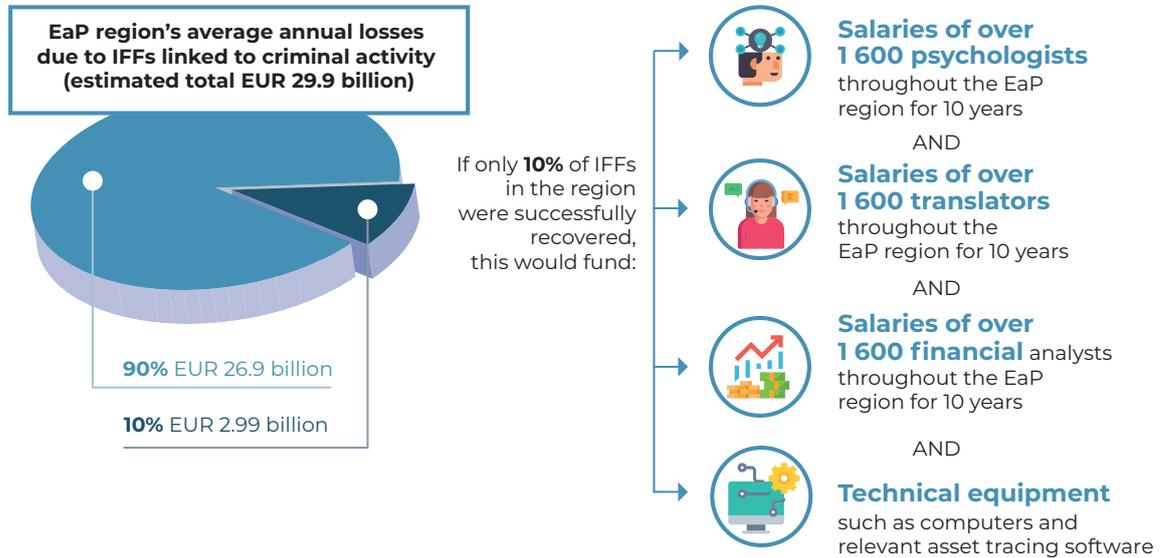
Healthcare Sector

Similarly, an efficient and accessible healthcare sector strongly provides for the well-being of the population by, for example, reducing infant and maternal mortality rates. According to a World Economic Forum report, investing in the healthcare system increases productivity, by reducing ill-health that hinders job prospects and human development.¹⁶⁵ Among the issues concerning the healthcare sector in some EaP countries are long queues, low salaries for doctors and nurses, and corruption. This has been further exacerbated by the COVID-19 pandemic, where the health systems of

almost all countries in Europe and the world were put under significant stress.

If the EaP countries were to successfully recover only 10% of what is lost each year to illicit financial flows, this would cover the salary costs of over 6 000 doctors and 6 000 nurses throughout the region for ten years.¹⁶⁶ When accompanied with the right training and technical materials and tools, such human capital would bolster the healthcare sectors in the EaP region, leading to healthier families and healthier communities.

How Recovered Assets Can Support the Criminal Justice Systems and Investigations in the EaP Region



Support to Personnel that Facilitate Criminal Justice Investigations

With adequate training, psychologists would become an essential instrument for the criminal justice systems of each EaP country, contributing to the well-being of victims, particularly women and children who may be victims of rape, domestic violence and human trafficking.

Similarly, translators and interpreters would help speed up cross-border investigations and asset recovery processes; translators could quickly advance the timely and accurate submission of MLA requests to foreign jurisdictions, while interpreters could render more agile cross-border interactions with counterparts in foreign jurisdictions.

Despite the fact that nearly all organised crime groups are profit-oriented, all countries within the EaP region have yet to mainstream parallel financial investigations as standard practice in cases involving serious income-generating crime. To do so, they will need to incorporate financial analysts into prosecutors' and law enforcement agency offices.

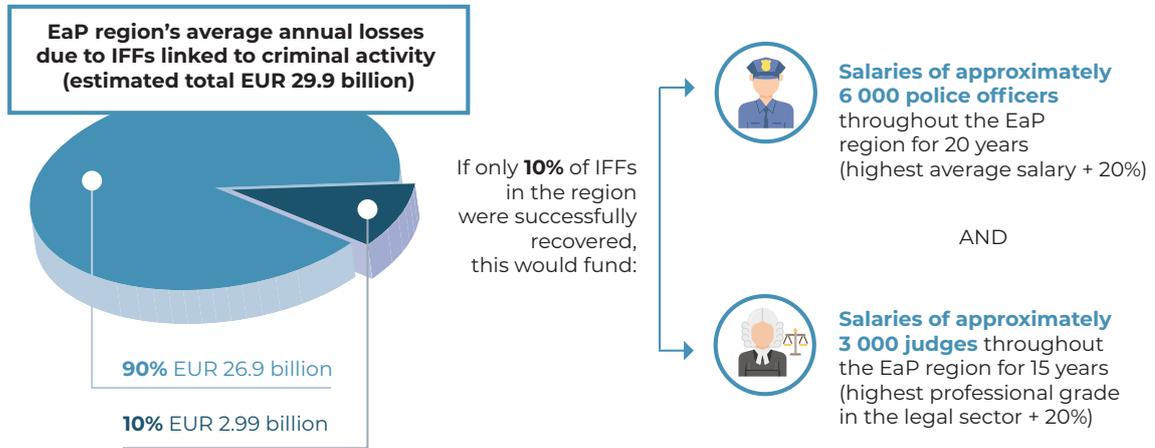
Notably, the Prosecutor's Office of Georgia and the Anti-Corruption Agency of the State Security Service of Georgia employ two and four financial analysts respectively, who are assisting investigators and prosecutors in parallel financial investigations. Most prosecutors and police are not financial

experts. Banking and other financial transactions need to be analysed on a more technical level, to identify money laundering and other illicit financial flows (including tax evasion), and to be able to translate and convey this information to prosecutors and to judges (or to tax authorities).

If EaP countries were to successfully recover only 10% of what it is estimated to be lost annually in the EaP region,

and if these were invested in enhancing law enforcement capacity, this would cover a wide range of costs. For example, this would cover the salary costs of over 1 600 psychologists, translators and interpreters and financial analysts for 10 years.¹⁶⁷ The total would still allow for investment into technical equipment such as computers and relevant asset tracing software.

How Recovered Assets Can Support the Law Enforcement Sectors in the EaP Region



Support to Judiciaries and the Police in the EaP Region

This study has examined some of the needs and weaknesses of the law enforcement sector in the EaP countries. One major problem that seems to emerge is the very low salary of those involved in the law enforcement sector throughout all six EaP countries. As with the education sector, this phenomenon can lead to fewer young, motivated individuals willing to undertake a career in this field and it can also facilitate an environment where it might become convenient to accept a bribe. This dynamic can hamper citizen's trust in justice sector institutions, increasingly encouraging an environment where corruption and organised crime mutually reinforce each other at the expense of society and the State.

Employing motivated judges and police officers at the already existing highest average salary for this category of workers, with an additional 20% increase, potentially leads to reduced

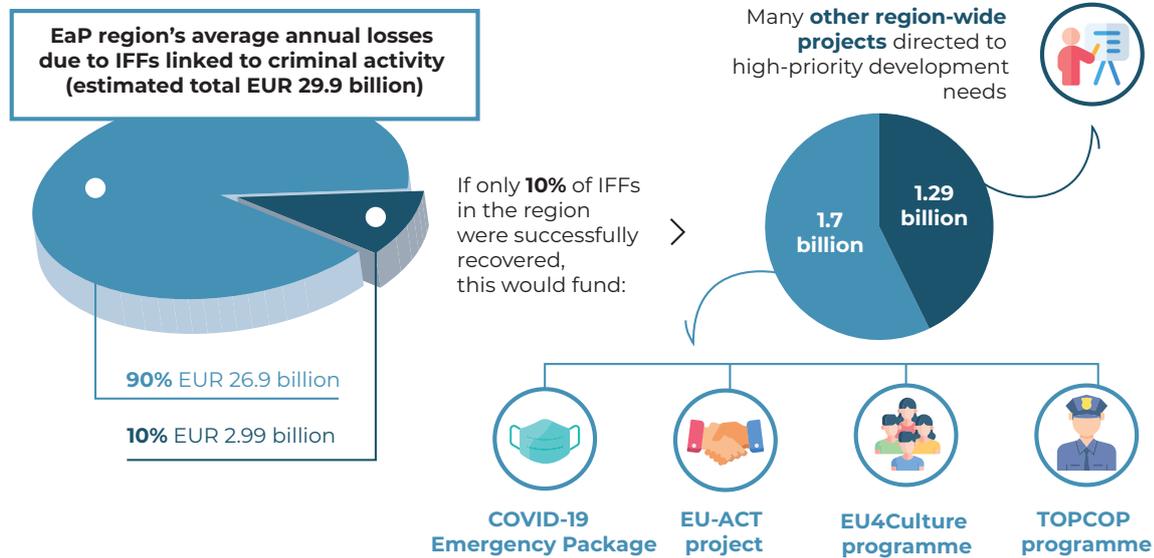
vulnerability to bribes, as low salaries are often cited as an increased risk to susceptibility to corruption.¹⁶⁸

Still, raising salaries is not sufficient for reducing corruption, in the absence of effective management and control of abuse, resources and staff.¹⁶⁹

Successful recovery of only 10% of the estimated illicit financial flows in EaP countries every year would cover the salary costs of 6 000 police officers (1 000 per country) for 20 years considering the average highest salary for this category of workers in each EaP country and adding a 20% increase to such salaries.¹⁷⁰

Similarly, EaP countries could each employ 500 additional judges, for a total of 3 000 judges, at the national average salary of the highest professional grade in the legal sector plus 20% for 15 years.¹⁷¹

How Recovered Assets Could Finance Critical Projects



Financing of Critical Projects

The Eastern Partnership benefits from numerous projects both from the European Union and other international organisations such as the World Bank, the OSCE and the OECD. Through the EU4Business, Small and Medium-Sized Enterprises (SMEs) in EaP countries were supported with a budget of approximately EUR 790 million in 2019. Some 116 projects helped SMEs by improving access to finance, promoting better regulations, and taking advantage of trade opportunities. The EU4Business initiative in the EaP region has helped generate EUR 1.3 billion in income and almost 120 000 new jobs, while also increasing exports by 5.9%.¹⁷²

Amid the COVID-19 pandemic, in June 2020 the European Commission provided EaP countries with an

emergency package for immediate needs and for medium-term social and economic regional recovery (up to EUR 900 million).¹⁷³

Among other EU-funded projects are:¹⁷⁴

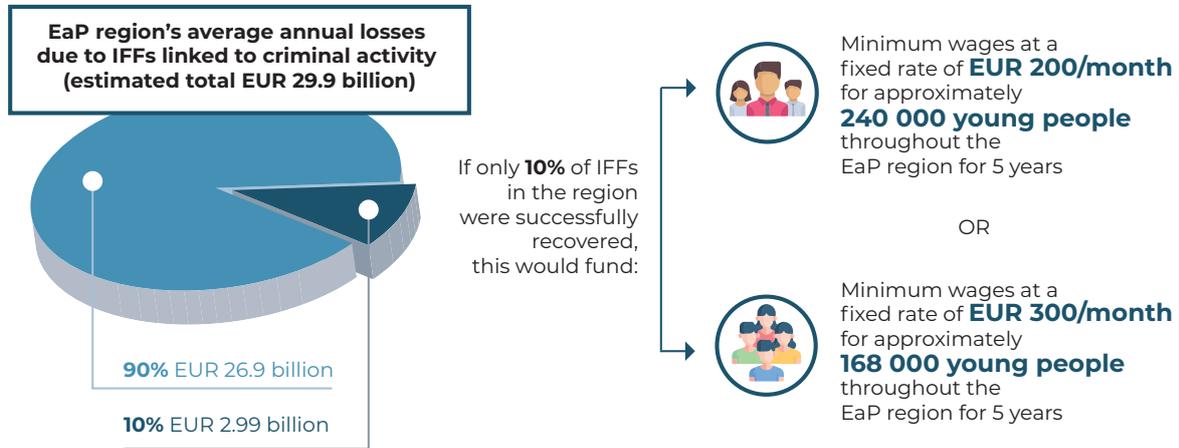
- The EU4Culture programme, with a budget of EUR 7.8 million, aimed at bolstering social development in the region;
- The EU-ACT project, with a budget of EUR 14.5 million, aimed at building capacities to increase regional and cross-border cooperation in the fight against organised crime and drug trafficking; and
- The TOPCOP programme, with a budget of EUR 6 million, aimed at

strengthening law enforcement cooperation against organised crime.

When considered together, the budgets of these projects still amount to less than the 10% of what the EaP region loses every year due to illicit

financial flows. Recovering 10% of illicit financial flows in the EaP region (EUR 2.99 billion)¹⁷⁵ would cover the budgets of these aforementioned initiatives (EUR 1.7 billion) and could allow international support to be directed to other, high-priority needs.

How Recovered Assets Could Fund Minimum Wage Costs in the EaP Region



Minimum Wages Throughout the EaP Region

If the Eastern Partnership region successfully recovered only 10% of what is estimated to be lost every year due to illicit financial flows, this would cover minimum wage costs for over 240 000 people throughout the region for five years (around 40 000 per country).¹⁷⁶

Alternatively, prioritising the recovery of at least 10% of IFFs in the region could

fund minimum wage costs set at, say, EUR 300 per month, for around 168 000 young people throughout the EaP region (around 28 000 per country) for five years.

The sum should give an idea of the potential benefit and use if the EaP region were to successfully recover only a small portion (10%) of money that is lost to illicit financial flows.



04.

Recommendations

Key Recommendations

1. Create Regional Agreements and Standards to Incentivise the Recovery of Assets Linked to Organised Crime (and High-Level Corruption)

In parallel to MOUs and bilateral agreements, EaP countries may wish to consider establishing a regional agreement aimed at optimising seizures and confiscations of illicitly-obtained assets, as well as sharing in the recovery of such assets. Such an agreement could set out specific standards to be adopted and guidelines to be followed (in accordance with national legal frameworks and existing good practices) with regard to identifying focal points to facilitate asset recovery, recognition of penal and non-penal decisions to seize and confiscate assets and, where possible, recognition of *in absentia* rulings, where the Requesting State can demonstrate it has done everything reasonably possible to inform the defendant of criminal proceedings against him or her, and has provided the defendant with every reasonable opportunity to defend him/herself in court.

Such an agreement could also set out modalities for information sharing, including, for example, information regarding vehicle registration, tax information, land registry and banking information, and information on known associates and related business entities, as long as these

are used strictly for investigation purposes. Such an agreement could also outline streamlined protocols to expedite cross-border cooperation and could emphasise the importance of conducting parallel financial investigations in all income-generating crime cases.

Establishing a clear framework for the return and sharing of illicitly-obtained assets could incentivise assistance between countries, speeding up procedures and setting a strong example of cooperation for countries outside of the EaP region. Such a regional agreement might also encourage the adoption and implementation throughout the region of civil confiscation mechanisms and/or agreement to accept civil confiscation decisions made in the EaP region.

2. Ensure that Parallel Financial Investigations are Always Conducted in Cases Involving Organised Crime

EaP countries should strongly consider the adoption, in every investigation involving serious income-generating crime, of parallel financial investigations. “Going after the money” should be considered by EaP countries as standard law enforcement and prosecutorial practice in nearly all cases involving serious income-generating crime.

3. Bolster Domestic and International Cooperation

EaP countries may wish to consider stronger mechanisms to streamline inter-institutional cooperation in the asset recovery process (tracing, freezing, seizure, confiscation, recovery, management) at the national level. Such mechanisms should include modalities for the timely sharing of information. Roles should be clearly defined in the financial investigation and asset recovery processes. Clearly identified roles will also contribute to more efficient and effective regional and international cooperation.

4. Invest in Region-Based Training, Study Visits, Workshops and Knowledge-Sharing Activities

In addition to or in concert with existing training provided through EU technical assistance programmes, EaP countries should consider investing in regional highly-specialised and technical training for law enforcement and judicial officers as well as for financial analysts who should be supporting such officials and customs officials. This can be achieved by organising study visits, meetings, workshops and conferences where high-level experts in the field of asset recovery and illicit financial flows could highlight best practices. This would provide the opportunity for law enforcement and relevant stakeholders to meet more often, strengthening cross-border working relationships.

Training and other capacity-building events should target the personnel involved in the law enforcement

sector (such as financial analysts) to inform them on, for example, new and effective financial investigation techniques, such as unravelling virtual currency and blockchain transactions.

5. Conduct Regional Organised Crime Threat Assessments

To better identify and map organised crime trends and *modi operandi* in the EaP region, EaP countries should consider developing their own Regional Organised Crime Threat Assessments. This will help drive region-specific guidelines and recommendations, as well as inform policy making. Conducting such assessments would also demonstrate a regional will to shut down many threats posed by organised crime in EaP countries. Based on such assessments and information exchange, customs and other law enforcement officials would be able to identify more targeted training needed to counter ongoing and emerging threats, and to understand the value of seizures and confiscations.

6. Face-to-Face Cross-Border Dialogue to Address and Resolve Pending Cases

Good practices have demonstrated the value of face-to-face dialogue with cross-border counterparts, a modality that has proven to be more effective and results-oriented than virtual meetings, or solely through the exchange of written documents. EaP countries should strongly consider enhancing regular face-to-face dialogue with police and prosecutorial focal points within the

region and with their counterparts in other jurisdictions. EaP countries should consider engaging more with relevant international organisations and European Union agencies and bodies to facilitate (e.g., covering, where possible, the cost of) such results-oriented dialogue.

7. Strengthen Dialogue with Civil Society and Ensure Transparent Management of Recovered Assets

EaP countries should consider strengthening mechanisms for regular dialogue and feedback from civil society and citizens particularly with respect to where successfully recovered assets should be distributed. Having a transparent feedback system in place will increase a sense of public participation into government decisions, as well as facilitate more agile responses to identified needs, especially with respect to isolated communities. Forming new partnerships with civil society organisations can provide innovative approaches to asset recovery and can tap into systems for the monitoring and investigation of IFFs. Consideration should also be given to improving the efficacy and transparency of the distribution of recovered assets and to identifying community-supported programmes to which recovered and liquidated assets should be distributed, using, for example, policies similar to those adopted in Italy, Honduras and the United Kingdom. This phase of the asset recovery cycle could be facilitated, where needed, by an external third party such as the UN or the World Bank.

8. Establish the Use of Civil Confiscation of Illicitly-Obtained Assets as a Rule and Not the Exception Within the Region's Criminal Justice Systems

EaP countries should consider adopting or bolstering civil confiscation and other non-penal mechanisms for the seizure and confiscation of assets. Money laundering cases are often very lengthy, and it can take years to produce a final order for confiscation. Among other aspects, this produces an often justified perception by the public that the criminal justice system is too slow in the recovery of assets. For these reasons, EaP countries should consider the establishment and/or strengthening of non-penal mechanisms for asset seizure and confiscation, without the requirement of any pending parallel criminal investigation. With civil confiscation being implemented (*in rem* proceedings, still with due process for any individual seeking to claim title over such assets), this can reduce the time to confiscate assets from a period of years to a period of several months, as has already been shown by Ukraine in its nascent use of civil confiscation. This enhances public confidence in the judicial system (and can produce funding for law enforcement authorities tasked with fighting organised crime and corruption).

9. Loosen the Degree to which Illicitly-Obtained Assets Must be Connected to a Specific Crime

EaP countries that do not already adopt this approach should consider loosening the degree to which courts

must determine whether assets are linked to criminal activity, especially for money laundering cases (e.g., determining that assets are, more likely than not, linked to criminal activity, rather than to a specific crime on a specific date). Without such, the spirit and intent of laws that allow courts to make such determinations may continue to be rendered hollow and useless.¹⁷⁷ This can be bolstered, for instance, by means of a regional agreement that clearly defines standards to be met by EaP countries in this direction, so to ensure a degree of harmonisation.

10. Ensure that, Throughout the Region, the Criminal Justice Systems Continue Proceedings Against the Assets of Individuals Charged with Serious Income-Generating Crimes Under All Circumstances

In the EaP countries that do not already adopt this approach, proceedings should be allowed against illicitly-obtained assets even if the defendant's whereabouts are unknown because he or she is a fugitive (provided that the State shows that it has done everything reasonable to provide notice to the defendant). Additionally, proceedings against illicitly-obtained assets should continue even if the defendant dies before the criminal case ends or if he or she is considered mentally or physically unfit to participate in the case.

This is consistent with the principle that crime should not pay, even if the criminal assets are found to be in the name or possession of others, except

for those who acquired the assets in good faith and without knowledge of their illicit origin.

Defining clear objectives and standards to be met at the regional level, by means of regional cooperation agreements, would further bolster EaP national governments draft policies in this direction.

11. Publish Clear and Unambiguous Policy Statements on IFFs/ML and Asset Recovery

EaP countries should publish clear and unambiguous statements and policies with respect to IFFs/ML and the priority to maximise cross-border cooperation in the seizure and confiscation of assets linked to organised criminal activity (as well as corruption). Making such policies known can serve to motivate law enforcement, customs and tax authorities to improve outputs with respect to seizures and confiscations.

12. Tighten Controls on Financial Institutions

Consideration should be given to tightening controls on financial institutions to report suspicious transactions and successfully identify beneficial owners of bank accounts, companies, and trusts. The financial sector may often be lax in such reporting unless meaningful sanctions are parsed out, such as orders for suspension of banking activities, or orders for permanent closure of particular entities who fail to adequately report suspicious activity.

Good practices in other regions have shown that reporting entities (including banks) quickly improve the quality and timeliness of their reporting when faced with the real threat of suspension or closure.

13. Implement Sustained Region-Wide Awareness Campaigns and Advocacy Actions against Fraudulent Activities

Given that fraud (and increasingly online fraud) is a prevalent crime throughout the EaP region (as well as other regions), raising citizen awareness on identifying the red flags of fraud would be highly beneficial for EaP countries. Strengthened outreach towards vulnerable and marginalised groups in societies could increase their resiliency to modalities employed by organised criminal groups and others engaged in fraud, thus limiting the opportunity for crime to flourish. This can be bolstered by establishing modalities to share among EaP countries good practices on the development and implementation of such public awareness campaigns, and would set a strong example of regional cooperation at the global level.

14. Tighten Regulations on Cash Use

EaP countries may be at relatively high risk of money laundering due to relaxed rules and practices with respect to cash use. This could be improved by, for instance, eliminating high-denomination banknotes, imposing thresholds for cash payments and by, where not already employed,

promoting electronic alternatives, including e-payment of all salaries and wages. Ensuring a certain level of consistency among cash-use rules in the EaP countries will lead to a stronger EaP region in which countries are, as much as reasonably possible, aligned, with fewer loopholes to be exploited by criminals.

15. Introduce the Use of Extended Confiscation Throughout the Region

Where not already in place, EaP countries should consider adopting or strengthening legal frameworks that indicate that if a defendant is convicted of a serious income-generating offence, the court may, at its discretion, issue an order for extended confiscation – e.g., an order that there is now a legal presumption that all income and assets of the defendant acquired over, for example, the past five to ten years, shall be considered illicitly acquired, unless the defendant can rebut this presumption. Extended confiscation has proven to be a highly useful tool in combatting the illicit acquisition of assets and ensuring their recovery.

16. Establish the Use of Unjustified Enrichment Proceedings as a Norm Within Criminal Justice Systems in the Region

EaP countries should consider adopting, where not already in place, agile mechanisms such as Unjustified Enrichment or Unexplained Wealth. With these, the State must still demonstrate to the Court that an

individual's assets significantly exceed his or her reported income – e.g., through reference to an individual's tax returns or perhaps reference to a public official's annual declaration of assets. Once such a burden is met by the State, the defendant may rebut this with evidence showing how such assets were legally acquired. Failure to provide adequate evidence would result in an order for confiscation of such assets. Mechanisms for unjustified enrichment or unexplained wealth orders have been used with success in multiple countries, including, for example, the United Kingdom.

17. Increase the Use of Plea Bargaining and the Settlement of Criminal Cases throughout the EaP Region

EaP countries should consider adopting more agile mechanisms for the settlement of criminal cases. This can be done by allowing the defendant to return illicitly-obtained assets in return for a lighter sentence. In light of heavy caseloads of prosecutors and judges, the use of plea bargaining can significantly speed up proceedings, reduce these caseloads and increase positive public perception with regard to the efficient administration of justice.

18. Implement Policy to Identify and Mitigate Virtual Asset Risks

Consideration should be given to regularly reviewing policies, and to ensure that regular updated training is provided to relevant officials, to identify and mitigate risks deriving from the

misuse of cryptocurrency. No region in the world has yet monopolised expertise in this area; investing in emerging technologies (including improved algorithms) used to identify suspicious transactions and misuse of cryptocurrencies, or to “unblock” blockchains used for criminal purposes, will prove to be beneficial for EaP countries and presents an opportunity for the EaP region to be a leader in this field.

19. Ensure that Dedicated Asset Recovery Offices (or Similar Mechanisms) Exist in each EaP Country in Order to Streamline Cross-Border Cooperation

Having a singular focal point office to facilitate the tracing, freezing, seizure, confiscation and recovery of illicitly-obtained assets has been proven to be the most efficient mechanism in asset recovery. This is why, for example, dedicated AROs exist throughout the European Union. AROs typically, at the request of law enforcement authorities, conduct the tracing of assets of individuals suspected of illicit income-generating activity, and manage such assets once they are seized or confiscated. By contrast, law enforcement authorities (e.g., police and prosecutors) have the role of effecting the actual seizure of such assets. Placing such AROs within, for example, the office of a Prosecutor General or within a Ministry of Interior (police) runs the risk of a conflict of interest; an entity in charge of seizing assets should not be the same entity in charge of managing such seized assets, as this could incentivise unjustified

seizures. Thus, separate AROs are needed. Such AROs need to be staffed with individuals who have, under one roof, access to multiple databases (e.g., land registry, vehicle registry, tax database, business registry and bank records) in order to assist police and prosecutors in providing singular cross-institutional reports on the assets held by an individual suspected of criminal activity (or held by family members or known associates, given that many who launder assets often do not launder them in their own name). EaP countries need to ensure that such AROs are staffed with qualified and trained personnel, with competitive salaries, in order to ensure their retention, and to ensure that such staff are kept up to date on the latest asset tracing and management practices.

20. Establishment of Specialised Prosecutors and Courts to Deal with Organised Crime and High-Level Corruption

Where not already adopted, consideration should be given by EaP countries to creating specialised prosecutorial offices and specialised judges to facilitate the adjudication of cases involving organised criminal activity (or other serious income-generating crime, such as corruption), with powers to more efficiently order the seizure and confiscation of assets linked to such criminality. Such powers should include the ability to order the confiscation of assets if shown to be linked to criminality in general, and not necessarily to a specific crime on a specific date. Exceptions should be made for third-party good-faith beneficiaries who have received or purchased property without reasonable knowledge that such assets were the product of criminality.

Related Publications

Illicit Financial Flows and Asset Recovery in The Republic of Armenia

<http://www.unicri.it/Publication/Illicit-Financial-Flows-Asset-Recovery-Armenia>

Illicit Financial Flows and Asset Recovery in The Republic of Azerbaijan

<http://www.unicri.it/News/Illicit-Financial-Flow-Asset-Recovery-Republic-Azerbaijan>

Illicit Financial Flows and Asset Recovery in Georgia

<http://www.unicri.it/Publications/Illicit-Financial-Flows-and-Asset-Recovery-in-Georgia>

Illicit Financial Flows and Asset Recovery in Libya

<http://www.unicri.it/sites/default/files/2021-05/Libya%20EN.pdf>

Illicit Financial Flows and Asset Recovery in The Republic of Moldova

<http://www.unicri.it/Publications/Illicit-Financial-Flows-Asset-Recovery-Moldova>

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The United Nations Interregional Crime and Justice Research Institute (UNICRI) was established in 1968 pursuant to Economic and Social Council Resolution 1086 B (XXXIX) of 1965, which urged an expansion of United Nations activities in crime prevention and criminal justice. The Institute is an autonomous institution and is governed by a Board of Trustees. Working within the broad scope of its mandate to design and implement improved policies and actions in the field of crime prevention and control, the mission of UNICRI is to advance justice, crime prevention, security and the rule of law in support of peace, human rights and sustainable development.

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- Environmental crimes;
- Tourism and major event security;
- Violent extremism (including rehabilitation and reintegration of violent extremist offenders);
- Protection of vulnerable population and victims;
- Juvenile justice; and
- Strengthening international criminal law.

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Illicit Financial Flows and Asset Recovery in the Republic of Armenia (2021) – pp. 23-26, available at: <http://www.unicri.it/Publication/Illicit-Financial-Flows-Asset-Recovery-Armenia>; Illicit Financial Flows and Asset Recovery in the Republic of Azerbaijan (2021) – pp. 27-29, available at: <http://www.unicri.it/Publication/Illicit-Financial-Flows-Asset-Recovery-in-Azerbaijan>; Illicit Financial Flows and Asset Recovery in Georgia (2021) – pp. 29-33, available at: <http://www.unicri.it/Publications/Illicit-Financial-Flows-and-Asset-Recovery-in-Georgia>; Illicit Financial Flows and Asset Recovery in the Republic of Moldova (2021) – pp. 27-30, available at: <http://www.unicri.it/Publications/Illicit-Financial-Flows-Asset-Recovery-Moldova>; Illicit Financial Flows and Asset Recovery in Ukraine (2021) – pp. 23-35, available at: <http://www.unicri.it/Publications/Illicit-Financial-Flows-and-Asset-Recovery-in-Ukraine>
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- 23** See the series of IFFs reports, available at: <http://www.unicri.it/publications>
- 24** Some jurisdictions, despite heavy caseloads and backed up processing of criminal cases, still do not have such mechanisms in place. Other jurisdictions have non-gradated mechanisms – e.g., if assets are returned, there is no such thing as a reduction in sentence; criminal charges are dropped entirely.
- 25** Extended confiscation may allow a court, only after an individual has been convicted of a serious income-generating crime, to enter an order indicating that ALL assets acquired by the convicted individual, say, over the past five to ten years (depending on the legislation) are presumed to have been illicitly-obtained and are therefore subject to seizure and confiscation; the convicted individual, however, does have the right to rebut this presumption by showing that such assets were indeed legally acquired. Extended confiscation has become a particularly useful tool in a number of jurisdictions. Through Council of the European Union Framework Decision 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instruments and Property (art. 3), Member States of the EU are urged to introduce mechanisms for extended confiscation (Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005F0212\(2005\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005F0212(2005))). Implementation and harmonisation vary between Member States, with Ireland, Bulgaria and Italy making heavy use of extended confiscation (European Commission. (2016). Commission Staff Working Document Impact Assessment. Among non-EU jurisdictions are, for example: the United Kingdom, Bosnia and Herzegovina, Moldova, Serbia and Montenegro (OECD - Anti-Corruption Network for Eastern Europe and Central Asia. (2018). Confiscation of instrumentalities and proceeds of corruption crimes in Eastern Europe and Central Asia).
- 26** Among the countries with mechanisms for confiscation of equivalent value are Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Georgia, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, the Former Yugoslav Republic of Macedonia, Moldova, Montenegro, Romania, the Russian Federation, Serbia, Tajikistan, Ukraine and Uzbekistan and nearly all EU countries, with the exception of Cyprus and Malta (OECD - Anti-Corruption Network for Eastern Europe and Central Asia. (2018). Confiscation of instrumentalities and proceeds of corruption crimes in Eastern Europe and Central Asia).
- 27** The principle of sovereignty also suggests that a country which has recovered assets should have the full discretion to decide what to do with such assets. While this has traditionally been a valid argument, actual practice in the return of assets – including addressing concerns that a foreign jurisdiction may not want to be embarrassed by returning assets only to see them corruptly used again – demonstrates that the “sovereignty” argument might be unnecessarily emphasized by Requesting States. In modern asset recovery practice, there is increased use of modality agreements, which helps to ensure that the recovered assets, once returned, are indeed directed to productive uses. See, for example: UK Government. (n.d.). *Policy paper MoU between UK and Nigeria on the modalities for return of stolen assets confiscated by the UK: annex 1*. <https://www.gov.uk/government/publications/return-of-stolen-assets-confiscated-by-the-uk-agreement-between-the-uk-and-nigeria/mou-between-uk-and-nigeria-on-the-modalities-for-return-of-stolen-assets-confiscated-by-the-uk-annex-1>
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- 30** Unfortunately, far too few States have specific legislation, or use such legislation, to seize and confiscate assets which are instrumentalities to commit crimes. In a number of cases, a defendant's lawyer will argue that such instrumentalities, given that they were acquired with legally-obtained money, are protected under Constitutions by one's right to property. Many judges still accept this argument, even though Constitutions should never be abused to allow one to misuse his or her property to commit crimes.
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- of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU. (2018). <https://eur-lex.europa.eu/legal-content/en/txt/pdf/?uri=CELEX:32018L0843&from=EN>; see also: Anti-Corruption Resource Centre. (2020). *Beneficial Ownership Registers: Progress to Date*. <https://www.u4.no/publications/beneficial-ownership-registers-progress-to-date>
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- 38** This is particularly true for IT software and hardware needed to review suspicious financial transactions. The lack of such software, and training on it, is all the more poignant in analysing blockchain and related cryptocurrency transactions.
- 39** The terms 'freezing', 'seizing' and 'forfeiture' are used interchangeably.
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- 43** Defendants and their lawyers understand this and often exploit this dynamic by intentionally avoiding receiving official notice from prosecutors or the courts that a criminal case has been brought against the defendant, even though authorities may have done everything reasonably possible to provide such notice, forcing the case to be carried out *in absentia*.
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- 54** Among the countries with mechanisms for confiscation of equivalent value are Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Georgia, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, the Former Yugoslav Republic of Macedonia, Moldova, Montenegro, Romania, the Russian Federation, Serbia, Tajikistan, Ukraine and Uzbekistan and all EU countries, with the exception of Cyprus and Malta (OECD - Anti-Corruption Network for

- Eastern Europe and Central Asia. (2018). *Confiscation of instrumentalities and proceeds of corruption crimes in Eastern Europe and Central Asia*.
- 55** While it raises justifiable human rights and due process concerns to conduct *in absentia* trials, and these clearly can be subject to abuse by States, the mere fact of an *in absentia* trial may not mean that due process was not provided; Requesting States need to show that officials made every reasonable effort to provide notice to the defendant and/or his lawyer that criminal proceedings were initiated against the defendant, and that the defendant was provided every reasonable opportunity to prepare and present a defence; equally, Requested States should take into account whether the defendant has purposely tried to evade receiving notice of criminal proceedings against him or her, and may be counting on the foreign jurisdiction to not issue an order for confiscation of assets, thus allowing the defendant to keep his illicitly-obtained assets.
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- 58** Please see: Article 18, section 28, UNTOC, and Article 48, section 28, UNCAC.
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- 173** European Commission. (2020). *The EU's response to the coronavirus pandemic in the Eastern Partnership*. https://Eeas.europa.eu/sites/default/files/coronavirus_support_for_eap_en_june.pdf
- 174** EU Neighbours. *Projects*. <https://www.euneighbours.eu/en/region/25/eu-in-action/projects/ongoing?f%5B0%5D=country%3A82&f%5B1%5D=country%3A83&f%5B2%5D=country%3A84&f%5B3%5D=country%3A85&f%5B4%5D=country%3A86&f%5B5%5D=country%3A88&page=2>
- 175** See the series of IFFs reports, available at: <http://www.unicri.it/publications>. Currency Conversion based on Google Finance (23 December 2021).
- 176** This is calculated at a fixed rate of EUR 200 per month
- 177** One good example of this is the approach taken in Ireland. Please see: Criminal Assets Bureau. *Welcome to the Criminal Assets Bureau*. <https://www.cab.ie>

