



THE AIRE CENTRE
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**REGIONAL
ANTI-CORRUPTION
INITIATIVE**

Social reuse of confiscated assets

Strengthening resilience to organised
crime and restoring public trust



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crime and restoring public trust

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Foreword

Mirjana Lazarova Trajkovska, Judge of the Supreme Court of the Republic of North Macedonia

Radmila Dragičević-Dičić, Judge of the Supreme Court of Cassation of Republic of Serbia

With this study, the AIRE Centre reaffirms its leading role in the ongoing national and international efforts to develop effective asset recovery policies. The recent shift towards placing victims' rights at the centre of criminal proceedings and the fight against organized crime makes this study timely and necessary. With its focus on the social reuse of confiscated assets as a tool for strengthening community resilience and reinforcing public trust, the study takes one step ahead of existing individual and organizational accomplishments in the ongoing fight against organized crime and corruption.

The study is of particular importance for the region of Western Balkans. Countries of the region lack normative frameworks as well as practical resources for promoting the social reuse of confiscated assets at the final stage of the asset recovery process. In this regard the study recommends that states from the region take initiative in recognizing the potential of social reuse – in its direct and indirect forms – as a feasible means of securing funds to support victims of serious organized crime and corruption.

Social reuse of confiscated assets is presented as a distinct stage in the asset recovery process which contributes to empowering citizens and communities as a counteract to the power of criminals. It extends the fight against organized crime and corruption beyond the state and involves society, directly or indirectly. As has been already proven in the case of Italy, no matter how strong the mafia and organized crime circles are, there are parts of society who find such practices unacceptable, but they feel that without public support they cannot do anything safely. The social reuse of confiscated assets is a tool for sending a strong signal to society to mobilize against organized crime because to do so makes sense and pays back. The message is that confiscation is not just an instrument for taking from organized crime to build the budgets of public authorities, it is also a socially useful and transparent mechanism, which makes confiscated goods directly or indirectly available to citizens. In doing so, confiscation is reshaped from a purely repressive tool into a redistributive one.

This approach highlights a very important aspect of restorative justice, where the offender can take responsibility to repair harm from their offence and where the victim can gain more trust in society as a whole. Criminal justice is increasingly turning towards the rights of victims, where the issue of compensation is a very important one. States are increasingly required to take responsibility to ensure protection of those rights, including through the establishment of state funds for the compensation of victims. Such funds can, in part, be supported by confiscated assets, or the proceeds of their sale.

As a policy paper, this study provides an informative review of the most relevant international instruments and guidelines for formulating asset disposal policies with a strong social reuse component. This includes the international conventions and standards that jurisdictions in the region are required to implement within their domestic legislation and policies. What is important here is that the study does not promote any universally applicable model of social reuse of confiscated assets. On the contrary, the authors emphasize the importance of the local traditions and contexts for effective social reuse measures. Societies of the Western Balkan region are similar in many aspects and share a number of the same challenges. Yet, the study shows that local socio-political



context plays an important role and must be taken into account when designing a comprehensive normative framework and introducing institutional mechanisms for the reuse of confiscated assets for social purposes. In this regard, the document rightly recommends a strong involvement of civil society actors in this process.

The study therefore provides an excellent overview of the most relevant good practices and lessons learned from social reuse legislation and practices implemented to date in different countries in Europe and globally. These are practices to make justice more visible, restore the trust of our citizens in the judiciary and help regain the trust of victims in the support of the judicial and prosecutorial system as a whole. More safe houses for victims, enough funds for psychological, medical and legal support and an increase in funds for the prevention of crime will lead to a more productive fight against serious crime, where victims, especially those of human trafficking, domestic violence and organized crime will be strengthened and supported to testify and enhance the fight against crime.

List of acronyms

AAPSK	Agency of Administration of Seized and Confiscated Assets (Albania)
AGRASC	<i>Agence de gestion et de recouvrement des avoirs saisis et confisqués</i> (Agency for the Management and Recovery of Seized and Confiscated Assets) (France)
ANABI	Agency for the Management of Seized Assets (Romania)
ANBSC	<i>Agenzia Nazionale Beni Sequestrati Confiscati</i> (Agency for the Administration and Destination of Seized and Confiscated Assets from Organized Crime) (Italy)
ATTF	Tunisian Association for Financial Transparency
CAUSE	Confiscated Assets Used for Social Experimentation (EU funded project)
CoE	Council of Europe
COPFS	Crown Office and Procurator Fiscal Service (Scotland)
CRU	Civil Recovery Unit (Scotland)
CSO	Civil society organisation
ECCD	Council of Europe Economic Crime and Cooperation Division
EEA	European Economic Area
EU	European Union
FUNAD	National Anti-Drug Fund (Brazil)
GRETA	Council of Europe Group of Experts on Action against Trafficking in Human Beings
GREVIO	Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence
MILDECA	<i>Mission interministérielle de lutte contre les drogues et les conduites addictives</i> (Inter-Governmental Mission for the Fight against Drugs and Addictive Behaviours) (France)
NCBC	Non-conviction based confiscation
NGO	Non-governmental organisation
OSA	Disposal Service Order (Brazil)
OSCE	Organization for Security and Co-operation in Europe
SEA	Sexual Exploitation and Abuse
SENAD	<i>Secretaria Nacional de Políticas sobre Drogas</i> (National Secretariat for Drug Policy) (Brazil)
TASCO	Technical Assistance to Civil Society Organisations in the Western Balkans and Türkiye
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UN	United Nations

Table of Legal Instruments

The table below provides detail on the legal instruments which are referenced in this study.

International instruments
<p>United Nations ('UN')</p> <p>International Convention on the Elimination of All Forms of Racial Discrimination 1965</p> <p>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984</p> <p>Convention on the Rights of the Child 1989</p> <p>International Covenant on Civil and Political Rights 1966</p> <p>Convention Against Corruption 2003</p> <p>Convention against Transnational Organised Crime and the Protocols Thereto 2000</p> <p>Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985</p> <p>Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005</p>
Regional instruments
<p>Council of Europe ('CoE')</p> <p>Convention on Action against Trafficking in Human Beings 2005 ('Human Trafficking Convention')</p> <p>Convention on preventing and combating violence against women and domestic violence 2017 ('Istanbul Convention')</p>
<p>European Union ('EU')</p> <p>Asset Recovery Offices Council Decision 2007</p> <p>Confiscation Directive 2014</p> <p>Framework decision on confiscation 2005</p> <p>Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation</p> <p>Victims' Rights Directive 2012</p>

National instruments
Italy Rognoni—La Torre Law, 1982 Legislative Decree 159/2011 (Anti-mafia Code)
Albania Law of 13 September 1982 no. 646
United Kingdom ('UK') Proceeds of Crime Act, 2002
Belgium Flemish Housing Code, 15 July 1997
France Law no. 768 of 9 July 2010 Decree 322/1995
Brazil Law No 13,840, 5 June 2019 Law No 7,560, 19 December 1986
Hungary Act XIII of 2000 Government Decree 65/2000
Spain Law 17 of 29 May 2003
Luxembourg Law 17 of March 1992 Law of 27 October 2010

Executive Summary

This study aims to respond to the key questions: what can and should be done with confiscated assets at the final, disposal, stage of the asset recovery process. In particular, the study analyses the growing practice of social reuse of confiscated assets and highlights some of the benefits of social reuse as a means of asset disposal, both for the victims of serious and organised crime, and for society more generally. In doing so, the study reinforces the importance of effective asset confiscation as a necessary pre-condition to achieving the benefits of social reuse of such assets. It also encourages the wider implementation of social reuse systems and legislation in the region, informed by the examples of good practice discussed in the study.

This study is informed by a review of relevant international and domestic legal instruments, policies and guidance, as well as relevant academic literature, studies and reports on social reuse. It begins by providing some background on the historical development of social reuse, its potential social, economic and symbolic benefits and its importance in ensuring the effectiveness of the asset recovery process as a whole. It then analyses key international instruments and guidance regarding asset disposal, victims' rights and social reuse, before providing an overview of some of the key asset disposal and social reuse measures implemented domestically, in jurisdictions across Europe. The study concludes with key recommendations and conclusions regarding best practice on implementing social reuse systems and legislation.

Certain key themes became apparent from the analysis in this study. First, there is clearly an increasing recognition amongst international and regional bodies, as well as domestic jurisdictions, of the need to protect the rights of victims of crime (including the right to compensation). However, certain factors limit the extent to which this theoretical recognition translates into a practical reality for the victims of serious and organised crime. The international instruments discussed in this study stress the importance of the right to compensation, but the rules governing the enforcement of such compensation, the form it should take, where it should be directed and how such schemes should be funded are left to the discretion of implementing states.

Additionally, there exists ample, distinct, international, regional and domestic legislation relating to victims' rights and, separately, relating to asset recovery. However, very few instruments or systems connect the two, or acknowledge the potential to use confiscated assets, either directly or indirectly to fund victim compensation and social reuse schemes. Where such practices exist, they have more often been the product of an ad hoc project (particularly in the Western Balkans), rather than resulting from the existence of comprehensive national legislation and mechanisms. Across Europe, such projects take a variety of forms and serve a diverse range of purposes. Where comprehensive legislation and mechanisms have been introduced to support the reuse of confiscated assets for social purposes, taking account of the local socio-political context, these schemes can lead to numerous positive outcomes and provide an innovative source of funding to support otherwise underfunded institutions, projects, and communities. The time is now, therefore, ripe to introduce more comprehensive policies and create specific institutions in the region to support the social reuse of confiscated assets, taking account of the good practice and lessons learned from social reuse legislation and practices implemented to date.

1. Introduction

Effective recovery of assets obtained through illegal activity is a key tool in the fight against organised crime and corruption.^[1] Asset recovery measures deter illicit activities and undermine criminal incentives by removing the profits or material benefits which would otherwise be gained through crime. Asset-recovery is a comprehensive and often complex procedure, constituted of numerous phases. This generally includes: an investigative stage (which may result in the temporary seizure of assets); asset management (i.e. the temporary management of seized assets pending the outcome of subsequent stages), the judicial phase (where the accused person(s) is/are convicted or acquitted and a confiscation order might be made), and finally the 'disposal stage' (where the relevant property is confiscated and disposed of by the state). It is this final 'disposal' phase which forms the focus of this study.

The question of how confiscated assets can and should be disposed of is an essential one. However, it is not a question which gives rise to one, straightforward answer or consistent approach. The reuse of confiscated assets for social purposes constitutes one key manner through which confiscated assets can be managed and disposed of. However, it is a practice that has, arguably, traditionally been overlooked. To date, relevant academic literature, legislation and asset recovery measures across Europe remain more focused on the investigative and judicial phases of asset recovery, affording less attention to the destination of confiscated assets.^[2] Further, there is considerable diversity across jurisdictions in terms of the extent (or indeed existence) of social reuse schemes, the definition and scope of 'social purposes' served by social reuse measures, and the mechanisms used to implement social reuse schemes. In some jurisdictions there are no mechanisms for social reuse. In others, examples range from the conversion of confiscated properties into treatment centres for cancer patients^[3] to contributing the sale value of confiscated assets to victim compensation funds.

The aim of this study is, therefore, to provide further clarity in response to this key question of how to dispose of confiscated assets. In particular, it seeks to spotlight the growing practice of social reuse of confiscated assets, to explain how confiscated assets can be used for social purposes, and to highlight some of the benefits of social reuse as a means of asset disposal, both for the victims of serious and organised crime, and for society more generally. This issue is of particular importance in the region where a lack of systems and legislation focused specifically on the management and disposal of assets, as well as concerns about corruption, mean confiscated assets often sit unused and lose value, with such mismanagement of confiscated assets undermining trust in the asset recovery process more widely.

The past two decades have seen an increasing recognition of the importance of implementing

[1] The confiscation of criminal proceeds is an 'essential component' of the fight against serious and organised crime, since it deprives criminals of their financial gains and ensures that crime does not pay. See European Commission, 'Report from the Commission to the European Parliament and the Council: Asset recovery and confiscation: Ensuring that crime does not pay' (COM[2020] 217 2 June 2020), 2.

[2] At the time of writing, the authors are aware of only one report commissioned in respect of social reuse in the Western Balkans: Saša Đorđević, 'Resilient Balkans: Social Reuse of Confiscated Assets' (Global Initiative Against Transnational Organized Crime 2022).

[3] In Serbia, the National Association of Parents of Children with Cancer (NURDOR) obtained a confiscated house, previously owned by a convicted drug smuggler, which was converted into a cancer treatment centre in Novi Sad. See Đorđević, (n 2) 18.

effective mechanisms to dispose of confiscated assets. An increasing number of international instruments include provisions requiring compensation and redress for victims of serious and organised crime^[4] and various examples of successful social reuse projects have arisen across Europe.^[5] This recent shift in focus towards the implementation of social reuse of confiscated assets can be mapped onto a more general shift in approach towards placing victims' rights more central to criminal proceedings, facilitating the right of access to compensation for victims of crime and elevating their voices and concerns throughout, and beyond the conclusion of, criminal proceedings. The social reuse of confiscated assets is one key means by which to compensate and restore assets to the victims of serious and organised crime, bringing the rights of those impacted by such serious and organised crime, more central to the asset recovery process. What is particularly interesting about social reuse schemes, is their recognition that serious and organised crime might not be connected to one identifiable victim. As such, social reuse projects can be distinguished from other victim compensation schemes as they do not, generally, require an individual or community to be directly impacted by the specific crime which results in the illegal acquisition of an asset, in order for them to benefit from the use or proceeds of sale of that asset, once confiscated. Social reuse schemes can instead be used to compensate a wider notion of 'victim' including communities at large, and even state organs.

This study forms part of the AIRE Centre and Regional Anti-Corruption Initiative's (RAI's) wider project aimed at ensuring the effective implementation of asset recovery measures amongst key institutions across Southeast Europe and encouraging cross-jurisdictional cooperation in this context.^[6] The project recognises and seeks to reinforce the importance of effective asset recovery as a means to deter serious and organised crime (by removing the profit incentives for crime), to encourage transparency, increase public trust in government institutions and to compensate victims. Social reuse of confiscated assets can play an indispensable role in achieving each of these aims. This study represents, therefore, a natural and essential next step to build on the project's existing publications which have, so far, predominantly focused on the effective implementation of investigative and confiscation measures. It forms part of a wider recognition that any individual phase of the asset recovery process will only be as successful as the phases which come before and after it. To achieve the goals of the project, and of asset recovery more widely, careful consideration must be afforded to each distinct phase, including disposal.

It is hoped that, by highlighting the importance and benefits of social reuse of confiscated assets, this study will:

- » Reinforce the importance of effective asset confiscation, as a necessary pre-condition to achieving the benefits of social reuse of such assets; and
- » Encourage the wider implementation of social-reuse schemes in the region, informed by examples of good practice from across the continent to help shape and inspire legislation and policies in this context.

[4] For example, the Istanbul Convention entered into force on 1 August 2014, the Council of Europe Convention on Action against Trafficking in Human Beings, which came into force in most countries (including some Western Balkans jurisdictions) in 2008, and the other international instruments discussed in part 3 of this study.

[5] In Italy, for example, the idea of social reuse of confiscated assets emerged in the mid-90's, when legislation was introduced to enable the use for social purposes of assets confiscated from mafia in civil and preventative proceedings, as well as in certain criminal proceedings. Further examples from across Europe are discussed in part 4 of this study.

[6] For more information on the project, see the Regional Asset Recovery Platform here: <https://arrplatform.org/>

The analysis in the study is the product of a desk-based review of relevant international, regional and domestic legislation, policies, guidance, papers and reports, domestic social reuse projects, and academic literature. The international instruments included represent a mixture of those which are directly applicable to the region and which should, therefore, be taken into account when formulating policy or practice on social reuse, and those such as EU directives which do not apply directly to Western Balkan jurisdictions, but nonetheless provide helpful guidance and examples of good practice in this context. The range of domestic examples included were selected to demonstrate the many and varied manners through which social reuse schemes can be implemented and to provide examples of how such schemes can most effectively achieve their aims.

The structure of the study reflects this described methodology. First the study provides some background on the historical development of social reuse, its potential social, economic and symbolic benefits and its considerable importance in ensuring the effectiveness of the asset recovery process as a whole. Then, the study analyses some of the key international instruments and guidance regarding asset disposal, victims' rights and social reuse. Next, the study provides an overview of some of the key asset disposal and social reuse measures implemented domestically, in jurisdictions across Europe. The study concludes with key recommendations and conclusions regarding best practice on implementing social reuse systems and legislation.

2. Aims and importance of social reuse to the asset recovery process

Asset recovery is a multi-dimensional process, composed of numerous distinct phases, and requiring the involvement of multiple parties.^[7] These different phases in the asset recovery cycle are conceived of differently by different institutions and authors. For example, in the European context, the asset recovery process has traditionally been deemed to consist of the following four-phases: the pre-investigative or intelligence gathering phase; the investigative phase, the judicial phase, and the disposal phase.^[8] This final, disposal phase thus encompasses the confiscation of property, the decision-making procedure to determine the destination of the asset and / or the proceeds of its sale, and the disposal of the asset by the state.

However, acknowledging the importance and multifaceted nature of this final 'disposal stage' the phases of asset recovery are sometimes also split into the following categories: the (financial) investigative stage, the court stage, the enforcement stage and the asset management stage.^[9] This distinction between the latter two categories recognises that the confiscation procedure, the subsequent management of a confiscated asset and the choice of how to dispose of it, each merit distinct attention. Indeed, in certain jurisdictions, asset management bodies exist specifically to maintain and dispose of confiscated assets. For example, in Italy, the ANBSC (Agenzia Nazionale Beni Sequestrati Confiscati), supervised by the Minister of the Interior, plans and implements the disposal of confiscated assets both in criminal and civil (preventative) proceedings, and can adopt urgent acts to assign confiscated assets rapidly.^[10] This stage of management and disposal of confiscated assets could involve any form of disposition of confiscated assets by state authorities, such as prohibition of transfer or conversion of such property, its safekeeping, storage, use, lease, rent, sale, donation, destruction and restitution.

The social reuse of confiscated assets constitutes one key manner through which assets might be managed and disposed of at this final stage of the asset recovery procedure. Traditionally, it has been viewed as one component of the management and disposal stage of the asset recovery cycle. However, 'asset reuse' is, increasingly, also perceived as its own, distinct stage in the asset recovery cycle.^[11] This reflects a wider trend whereby the importance of social reuse is increasingly recognised within relevant international instruments, with an increasing number of social reuse measures implemented at a national level. The perception of social reuse as a distinct stage in the asset recovery cycle also, arguably, more accurately reflects the comprehensive scope and

[7] Eldan Mujanović and Darko Datzer (eds), 'Handbook on Effective Asset Recovery in Compliance with European and International Standards' (The Advice on Individual Rights in Europe [AIRE] Centre and Regional Anti-Corruption Initiative [RAI] 2020).

[8] Basel Institute on Governance, 'The need for new EU legislation allowing the assets confiscated from criminal organisations to be used for civil society and in particular for social purposes' (European Parliament 2012).

[9] Mujanović and Datzer (eds) (n 7) 14. Eldan Mujanović, 'Algoritmi za prikaz postupaka za oduzimanje imovinske koristi pribavljene krivičnim djelom' in Eldan Mujanović, *Smjernice za postupanje nadležnih institucija u postupku za oduzimanje imovinske koristi pribavljene krivičnim djelom* (Sarajevo: Criminal Policy Research Center 2017) 112-130.

[10] Salvatore Costantino, 'The importance of reuse of confiscated assets for social purposes in fighting the illegal economy: some case studies' (Libera 2018) 14. See further the discussion in part 4 of this study, under the section 'Asset management agencies'.

[11] Organization for Security and Co-Operation in Europe (OSCE), 'The Social Reuse of Assets Confiscated from Organized Crime' (9 July 2021) <<https://bit.ly/3Y16G1Q>> accessed 23 February 2023.

duration of social reuse measures, which extend beyond the realm of 'disposal'. For example, if a state asset management agency disposes of a confiscated building for use as the premises of a social enterprise, the social reuse of this asset would extend far beyond its disposal by the state, involving engagement with the asset for social purposes for months or years after its disposal, and requiring input and engagement from a broad range of individuals and organisations who use and benefit from it.

Just as there is no uniform definition of the different phases of the asset recovery cycle, nor is there a uniform definition of what constitutes 'social reuse' of confiscated assets under relevant regional instruments or international standards. As discussed in the following chapters of this study, the practice of social reuse is interpreted and implemented differently across Europe and globally. The basic premise refers to the use of confiscated assets for a 'social purpose' and examples of social reuse are generally divided into two categories: direct and indirect reuse of assets. Direct social reuse entails the direct provision and use of confiscated assets for a social purpose. For example, the reuse of a confiscated property as a safehouse for victims of human trafficking.^[12] By contrast, indirect social reuse contributes the proceeds of crime or the sale value of confiscated assets to a specific fund which is used for social purposes, such as the payment of financial compensation to victims of crimes, funding law enforcement mechanisms or to fund other community projects.^[13]

Further, the international standards and the examples of social reuse described in this study reveal that there is no common definition of what constitutes a 'social purpose' for which confiscated assets might be reused. Indeed, the purpose and implementation of social reuse will in part depend on the type of confiscated asset in question, for example, the use for a confiscated house or business premises would be very different to those of perishable goods like food, which are more likely to need to be donated to charities or communities and which would need to be dealt with more quickly.^[14] A social purpose might include measures offering support to those who have been victims of crime or who are seeking to rehabilitate from their criminal past. Examples range from schemes specifically targeting drug trafficking, people smuggling and other forms of organised crime, to helping to establish social enterprises, nurseries, care homes, drug rehabilitation clinics, sports centres or play areas. In some jurisdictions 'social purposes' also includes the investigation and enforcement of laws combatting serious and organised crime, for example using funds to strengthen the judicial and prosecutorial systems and infrastructure.^[15]

In light of this broad definition of 'social purpose' the beneficiaries of social reuse also vary significantly across different schemes. Funds and assets might be used to support victims of specific crimes, deprived communities, or vulnerable individuals more generally, or to fund organs and activities of the state. The broad scope of beneficiaries of social reuse reflects the fact that, in the context of serious and organised crime, the definition of victim can be perceived more broadly than in the context of other offences. Serious and organised crime may not be connected to one identifiable victim or, when it is, the effects of such modalities of crime can also affect local communities. The social damage incurred by communities, as well as the economic damage incurred by the state and its residents, mean the impact of serious and organised crime spreads

[12] Dorđević (n 2) 3.

[13] See the examples of both direct and indirect social reuse discussed in part 4 of this study.

[14] Jean-Pierre Brun, Larissa Gray, Clive Scott and Kevin M. Stephenson, 'Asset Recovery Handbook: A Guide for Practitioners' (Stolen Asset Recovery Initiative: The World Bank, UNODC 2011) 98-99.

[15] For example, in the UK, the Home Office's Asset Recovery Incentive Scheme announced in 2004 directed that 50 per cent of the money recovered as part of the asset recovery process be repaid to agencies including the police, courts, Crown Prosecution Service, Serious Organised Crime Agency and Her Majesty's Revenue and Customs, in an attempt to reward past performance and drive up future asset recovery activity.

uniquely far and indiscriminately. In the context of organised crime, conversations which focus on the need to protect victims' rights and welfare, including but not limited to the right to compensation, naturally therefore lead to an increased emphasis on the importance of social reuse of confiscated assets, as a means to compensate and give effect to the rights of this wider notion of 'victim' – encompassing communities at large, and even state organs.

This approach is enforced by the Committee of the Regions to the EU Internal Security Strategy which recommended that a legislative proposal should specify, 'the municipality in which the confiscated property is located as the natural recipient of the right of ownership thereof. [...]The Committee recommends that this should be done for a socially useful purpose, such as giving it to charities and cooperatives, not least because local communities bear the highest cost of the activities of organised criminals and the social reuse of confiscated property has a high value in terms of compensating communities affected by this serious issue'.^[16]

Whilst there may not exist a uniform definition of or approach to social reuse within the examples discussed in this study, what is clear is that there is an increasing recognition of the importance and advantages of social reuse. This trend can be observed, for example, in the EU context. Part 3 of this study discusses the recent proposal for a new Directive on Asset Recovery and Confiscation which specifically provides that Member States should 'consider' taking measures to allow confiscated assets to be used for public interests or social purposes. This follows EU action plans, reports and strategies which have for the past two decades stressed the need to introduce regulation pertaining to the social reuse of confiscated assets as a priority. For example, the 2009 Stockholm programme identified the return of confiscated assets as compensation to identifiable victims or for social purposes as a priority.^[17] Further, the Alfano report adopted by the European Parliament in 2011 states that: 'the reuse of confiscated assets for social purposes fosters a positive attitude to strategies aimed at tackling organised crime, since confiscating an asset is no longer regarded solely as a means of depriving a criminal organisation of resources but is doubly constructive in that it both helps to prevent organised crime and has an effect of boosting economic and social development'.^[18] The report Calls on the Commission to accept and support the urgent need for European legislation on the reuse of crime proceeds for social purposes, including court witness protection, so that the capital of criminal organisations or their associates can be reinjected into legal, clean, transparent and virtuous economic circuits.

This recent shift in focus towards encouraging social reuse of confiscated assets can be mapped onto a more general shift in approach placing victims' rights more central to criminal proceedings, facilitating the right of access to compensation for victims of crime and elevating their voices and concerns throughout, and beyond the conclusion of, criminal proceedings, as demonstrated by the introduction and implementation of the international instruments discussed in part 3 of this study. For example, the EU Victims' Rights Directive was adopted in 2012 and a new Victims rights strategy adopted between 2020-2025, with the key aim of facilitating victims' access to compensation.^[19]

[16] European Union Committee of the Regions, 'Opinion of the Committee of the Regions on the EU Internal Security Strategy' 91st plenary session (CIVEX-V-018 2011) para 28.

[17] Council of the European Union, 'The Stockholm Programme – An Open and Secure Europe Serving and Protecting the Citizens' (European Union 17024/09 2009) 4.4.5.

[18] Committee on Civil Liberties, Justice and Home Affairs, 'Report on Organised Crime in the European Union [2010/2309(INI)]' (European Union A7-0333/2011 2011).

[19] European Commission – Questions and answers, 'Victims' Rights: New Strategy to Empower Victims' (European Commission 2020) <<http://bit.ly/3Z8G1Bq>> accessed 23 February 2023.

One of the central aims of social reuse, is to recognise the harm caused by serious and organised crime and provide some form of compensation or reparation for that harm, bringing the rights of victims more central to the asset recovery process. The aims and advantages of social reuse are not, however, confined to the provision of compensation. If the underlying purpose of asset recovery is seen to be restoring the situation that had existed before the crime was committed,^[20] it is clear that social reuse, as well as the confiscation of assets, has a key role to play in achieving this aim. Confiscation is only the first step in the process of redistributing goods to reflect the position prior to the committal of a crime.

Social reuse has, therefore a vital role to play in upholding and furthering the aims of the asset recovery procedure as a whole. For example, one fundamental goal of the implementation of effective asset recovery measures is to increase transparency and public trust in government. To properly achieve this goal, it is vital that confiscated assets are disposed of and used in a manner which also serves this aim. Clarity regarding where and how assets are disposed of, leading to a tangible benefit to the community will further such aims. Social reuse can boost public confidence in criminal justice services and demonstrate that justice is being done by making sure that people can see it being done in their area. Conversely, a lack of transparency regarding the eventual destination of such assets could undermine the trust potentially gained through an otherwise effective confiscation procedure.^[21]

Boucht sets out several theoretical justifications for the existence and application of asset seizure measures.^[22] The analysis in the following parts of this study reveals that social reuse has a role to play in furthering each of these aims. The first aim is restorative and concerns the fact that no-one may acquire or retain the benefits of any form of 'wrong', i.e. violation of the law. Instead, things must be restored to how they were before the crime was committed. Central to social reuse is the aim to restore assets (or the proceeds of their sale) to the communities, government and individuals from which they were taken. The second and third reasons concern the prevention of crime. This includes the idea that a potential perpetrator will refrain from committing a crime if the potential benefits of his criminal conduct are outweighed by the risks and discomfort such conduct may entail, i.e. the probability illicit proceeds will be confiscated, strongly deters future criminal conduct. It also encompasses the idea that property, once confiscated, cannot be used to commit future crimes, which is an extremely important factor in combatting organised crime. Social reuse of assets has a vital role to play in ensuring that confiscated assets do not fall back into the hands of criminals, or their associates, who procured them illegally in the first place. Where confiscated assets are simply sold, without a focus on the social purpose for which they might be used, there is a risk that the ex-owners (involved in criminal activity) or their familiars, buy the asset and the asset returns to the persons or groups involved with criminal activity.^[23] Social reuse helps ensure the return of these assets to the community from which they were stolen. Further, social reuse projects might also be used to specifically fund or house projects countering and investigating organised crime. Indeed, one potential cause of the recent rise in social reuse projects because of a traditional lack of funding for such projects.^[24]

[20] Ljubo Bavcon and Alenka Šelih, *Kazensko pravo: Splošni del*, (3rd edn, Uradni list Republike Slovenije 1996). Berislav Pavišić, Velinka Grozdanić, Petar Veić, Ranko Marijan, *Komentar Kaznenog zakona* (3rd edn, Narodne novine 2007).

[21] Đorđević (n 2) 12 cites the example of damage to judicial integrity caused by a lack of transparency in Palermo, Italy, where investigations revealed corruption within the judiciary related to the management of seized assets.

[22] Johan Boucht, *The Limits of Asset Confiscation: On the Legitimacy of Extended Appropriation of Criminal Proceeds* (Hart Publishing 2017).

[23] Đorđević (n 2) 9.

[24] Đorđević (n 2) 5.

A final justification for asset recovery measures provided by Boucht is compensatory. Again, social reuse is directly relevant to this, either in cases where the confiscated proceeds of crime correspond to the property claims of the injured parties or where established funds constituted of the proceeds of crime are used to provide compensation to the victims of crime or the wider community indirectly.

In addition, social reuse can serve other symbolic, economic and social benefits which stretch beyond those envisaged by Boucht. This includes the creation of job and volunteering opportunities, creating a feeling of empowerment amongst local communities who are given more of a say in how assets are disposed of or used in their area, improvement of welfare provisions, and raising the profile of asset recovery and the engagement of communities in such processes, where social reuse projects involve training on such matters.^[25]

Clearly, social reuse forms an essential element of the asset recovery cycle. Effective, transparent and well-supported social reuse schemes have the potential to greatly further the aims served by asset recovery as a whole, including increasing transparency and trust in government, preventing the commission of further crimes, restoration of assets and victim compensation. Social reuse can also bring about additional social and economic benefits, beyond those advanced by the preceding stages of asset recovery. The following chapters in this study provide examples of relevant international standards and domestic practice, as guidance and analysis on how social reuse can be implemented in practice, to ensure its potential to achieve these benefits, is realised in reality.

[25] Technical Assistance to Civil Society Organisations in the Western Balkans and Türkiye (TASCO), 'Using Confiscated Assets for Good Causes' (22 November 2021) <<https://bit.ly/41jiXSb>> accessed 23 February 2023.

3. Relevant International Instruments

The EU identifies organised crime as one of its most significant security threats. A 2021 report by Europol found that almost 70% of criminal groups operating in the EU were active in at least three countries.^[26] There is therefore a clear cross-border element to organised crime, evidencing the need for international legal instruments as a means of tackling it.

The perpetrators of corruption or serious crimes and resulting human rights violations profit from these activities and are therefore incentivised to continue. Further, by using these proceeds to purchase assets such as real estate or luxury goods, they are able to launder their illicit gains through the global financial system while victims suffer the consequences. Robust asset recovery regimes are therefore essential to disincentivise such activity in the first place and bring the additional benefit of providing a means to directly compensate victims and wider society.^[27]

There is, however, no one comprehensive international instrument which deals with the asset-recovery process from start to finish. Most international instruments focus on the judicial phase, by establishing offences related to a particular harm^[28] and by establishing a right to compensation for the victims of those offences.^[29] Generally, although many of the instruments establish a *right* to be compensated, they do not specify a *means* by which it should be done, leaving this to the discretion of individual jurisdictions. However, there are some instruments which focus on the disposal stage,^[30] by setting out principles and guidance regarding how victims should be compensated where a right to a remedy exists. Therefore, international instruments should not be considered in isolation, but considered in the round to see how they combine to form a framework by which offences are recognised, victims are compensated, and prevention measures are implemented.

United Nations

The United Nations ('UN'), has several conventions that address various harms and crimes that occur at an international level. Many of these contain a right to compensation for the victims of these crimes and are ratified by jurisdictions around the globe, including those in the Western Balkans.

One example is the International Convention on the Elimination of All Forms of Racial Discrimination, adopted by the UN in 1965, and entering into force in 1969.^[31] Article 6 of this convention provides that parties should assure access to adequate protection and reparation to victims of racial discrimination.

[26] European Union serious and organised crime threat assessment, 'A Corrupting Influence: The Infiltration and Undermining of Europe's Economy and Society by Organised Crime' (Europol 2021) 19.

[27] Redress, 'Policy Briefing: Financial Accountability for Perpetrators of Torture and Other Serious Human Rights Abuses' (2020) 4.

[28] For example, Article 4 of the UN International Convention on the Elimination of All Forms of Racial Discrimination 1965 and Article 18 of the Council of Europe Convention on Action against Trafficking in Human Beings.

[29] For example, Article 6 of the UN International Convention on the Elimination of All Forms of Racial Discrimination and Article 15 of the Council of Europe Convention on Action against Trafficking in Human Beings.

[30] For example, the UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

[31] UN International Convention on the Elimination of All Forms of Racial Discrimination 1965.

Similar rights to compensation can be found in Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;^[32] Article 39 of the Convention on the Rights of the Child;^[33] and Article 2 of the International Covenant on Civil and Political Rights.^[34]

While each of these conventions confers the right to compensation on victims of different crimes, they are all similar in their operation. That is, the conventions establish a *right* to compensation via the appropriate state institutions, such as by judicial or legislative authorities. Therefore, common with other international instruments, they leave a significant degree of discretion to the national level as to how this right to compensation should be applied in practice.

Complementing these various rights to compensation is the UN Convention Against Corruption.^[35] Adopted in 2003 and entering into force in 2005, the convention is legally binding and the majority of the UN Member States are parties to it, including all of Europe.^[36] Chapter V of this Convention contains a range of provisions relating to asset recovery. Significant in this context is Article 57 on the return and disposal of assets. Article 57(3) provides that, save for two specific circumstances, parties should, 'give priority consideration to returning confiscated property to the requesting State Party, *returning such property to its prior legitimate owners or compensating the victims of the crime*'.^[37]

Similar provision is made in the UN Convention against Transnational Organised Crime,^[38] which came into effect in 2003 and is ratified in 190 countries, including the Western Balkans.^[39] It requires international cooperation to protect victims' rights. Article 14(2) provides that, where one state has requested that another state confiscate assets within its jurisdiction, the latter state should give 'priority consideration' to returning those confiscated assets so that victims in the requesting state can be compensated. Indeed, Article 25(2) of the convention requires states to 'establish appropriate procedures' by which compensation can be accessed by victims under the convention. In addition to these general provisions, the convention contains three protocols which target specific forms of organised crime:

1. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children;
2. The Protocol against the Smuggling of Migrants by Land, Sea and Air; and
3. The Protocol against the Illicit Manufacturing of and Trafficking in Firearms.

These protocols entered into force in 2003, 2004 and 2005 respectively.^[40] They created legally binding instruments by which parties developed and agreed a universal definition of the crimes addressed by each. In doing so, it exemplifies the need to address a 'global challenge with a global

[32] UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984.

[33] UN Convention on the Rights of the Child 1989.

[34] UN International Covenant on Civil and Political Rights 1966.

[35] UN Convention against Corruption 2003.

[36] UN Office on Drugs and Crime, 'Signature and Ratification Status' <<http://bit.ly/3Sncul>> accessed 17 February 2023.

[37] Emphasis added.

[38] UN Convention against Transnational Organized Crime and the Protocols Thereto 2000.

[39] Except Kosovo. United Nations Treaty Collection, 'Convention against Transnational Organized Crime' <<http://bit.ly/3YXW9po>> accessed 17 February 2023.

[40] UN Office on Drugs and Crime, 'United Nations Convention against Transnational Organized Crime and the Protocols Thereto' <<http://bit.ly/3KBF2FA>> accessed 17 February 2023.

response^[41] by ensuring that victims of international organised crime do not fall through the cracks of international borders and will be better protected regardless of their geographical situation.

The combined effect of these various UN instruments is that, in international law, there does exist a framework by which perpetrators of corruption and other serious crimes resulting in human rights infringements are liable to compensate society and direct victims for the harm they have inflicted. As noted above, the means by which society and victims are best compensated is often left to the discretion of individual jurisdictions. However, the UN also provides principles and guidelines for consideration by states which are party to the conventions.

Adopted in 1985, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power provides a set of general principles on the treatment of victims.^[42] Paragraph 8 provides that the party responsible for the harm should make 'fair restitution to their victims'. Further, under paragraph 12, compensation should be made available from the state where it cannot be obtained from the offender and the victims have suffered especially serious harm, such as impairment to health. These principles are seen reflected in the conventions mentioned above. However, paragraph 13 also encourages the establishment of national funds to provide a means by which victims can be compensated, thereby further protecting victims' rights even where the state is unable to provide compensation.

In 2005, the UN adopted the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the 'Basic Principles and Guidelines').^[43]

The aim of the Basic Principles and Guidelines is to promote the compensation of victims of violations of human rights and humanitarian law. It forms the principles and guidelines which states should adhere to when obliged to compensate victims of human rights violations under international human rights law, thereby focusing on the disposal stage of the process in considering how victims should be compensated. The preamble expressly provides that this includes the right to a remedy, such as those mentioned in the conventions above.

The Basic Principles and Guidelines provide a more expansive concept than typically would be associated with compensation (i.e. reimbursement for financial losses). Section IX provides that states should ensure that victims are entitled to *reparation* for the harm suffered. Reparation has various elements, including:

- » Restitution – restoring the victim to their original position as before the human rights violation was suffered, e.g. restoration of liberty or employment, enjoyment of all human rights etc.
- » Compensation – compensating the victim for economically assessable damage, e.g. legal or medical costs, physical or mental harm, lost opportunities.
- » Rehabilitation – including medical, psychological, social, and legal assistance.

[41] UN Foreword to the Convention against Transnational Organized Crime and the Protocols Thereto iii.

[42] UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985.

[43] UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law 2005.

- » Satisfaction – being any or all of the following:
 - › Effective measures aimed at the cessation of continuing violations
 - › Verification of facts and full disclosure of the truth
 - › An official judicial declaration of the restoration of the rights of the victim.

The Basic Principles and Guidelines are therefore comprehensive in informing the way in which victims should be compensated. They are similarly comprehensive regarding the means by which to do so. Paragraph 15 provides that, in cases where a legal person or entity is found liable for the human rights violation(s), such party should be liable for providing the reparation to the victim. Where the state has already provided such reparation, the liable party should recompense the state for the same. Paragraph 15 also provides that the state should compensate victims where any of the harm suffered is attributable to the state (i.e. failure to prevent violations of human rights law). Further, the preamble to the Basic Principles and Guidelines reaffirms that states should establish and expand national funds for victim compensation, as set out Basic Principles of Justice for Victims of Crime and Abuse of Power.

As well as taking a broad approach to the form in which victims should be compensated, it also takes a broad approach to those that are owed compensation. Paragraph 8 provides that 'victims' are not only those who directly suffered from the human rights violations – those who have had to intervene to assist victims, such as family members, are also victims entitled to proportionate reparations.

Therefore, while the Basic Principles and Guidelines are not offence-specific, they make clear that the perpetrator of any offence (including the state) should be the one to compensate the victims, thereby removing any incentive, financial or otherwise, to do so in the first place. Furthermore, the expansion of compensation to the concept of reparation allows scope for ensuring that further such violations do not take place in the future.

Given that the Basic Principles and Guidelines are, as the name suggests, guidance, they do not mandate how exactly preventative action should be taken, but allow individual states to develop such practices as they see fit and in accordance with the instruments from which the right to a remedy derives. Nonetheless, such a framework that focuses on the disposal stage of the asset recovery cycle (i.e. the victim compensation / reuse stages) is valuable given that other international instruments focus more on the judicial stage, such as establishing offences, consequential asset confiscation, or a basic right to a remedy.

Council of Europe

The Council of Europe has introduced various instruments designed to combat specific types of organised crime. In doing so, it has addressed the needs of victims of organised crime and social injustice, which, as noted, often span national borders and require international instruments to effectively tackle the issues they cause.

In 2005, the Council of Europe adopted the Convention on Action against Trafficking in Human Beings ('Human Trafficking Convention'),^[44] which is binding on all Council of Europe Member States

[44] Council of Europe, Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) 2005.

including the Western Balkans jurisdictions.^[45] The Human Trafficking Convention has a particular focus on victim protection and strengthens the standards in this area compared to instruments predating it.

Chapter III of the Human Trafficking Convention contains the articles relating to the rights of victims, with Article 15 providing for the ‘Compensation and legal redress’ of victims. This is dealt with in two paragraphs. The first, Article 15(3), provides that each party to the convention shall provide a right of victims to compensation from the perpetrators *in its internal law*. Therefore, similar to other international instruments, it allows for discretion at domestic level when it comes to the way in which victims should be compensated. Secondly, Article 15(4) provides that parties to the convention shall ensure that compensation is *available* to the victim. It goes on to provide examples of how this can be achieved, such as by a dedicated fund for victim compensation and reparation funded by confiscated assets of perpetrators. This is complemented by Article 23(3) of the convention which requires parties to adopt measures that enable it to confiscate proceeds (or property deriving from proceeds) of crime.

The Human Trafficking Convention therefore goes beyond simply requiring parties to provide a *right* to compensation. It also requires parties to ensure that the *means* to compensate the victim will be available, and specifically suggests the asset recovery process as a way to facilitate this.

The thematic chapter to GRETA’s 8th General Report addresses ‘Assistance to victims of human trafficking’.^[46] A key finding of the report was that victims often lack knowledge of their own rights. They are therefore not aware of the options available to them, including the ability to seek compensation. This is exacerbated by the fact that legal assistance to such victims is often provided by NGOs which are themselves dependent on donations and pro bono work and thus have limited capacity to assist when needed.^[47]

The report identified Ireland as an example of a possible solution to this problem. In Ireland, potential victims of trafficking are provided with free legal advice by the Legal Aid Board, which also issued a leaflet containing information regarding victims’ rights, including the right to compensation.^[48] However, Ireland’s country report notes that this is only available once a person has been identified as a potential victim and referred by the Gardaí. NGOs in Ireland have reported delays of over six months in getting an identification decision from the Gardaí, meaning some victims remain unable to access assistance due to the constraints on an ‘already busy police force.’^[49]

GRETA’s findings therefore reveal that victims’ ability to obtain compensation is closely related with the wider issue of access to justice for the most vulnerable in society. Even where the right to compensation exists, it can only be exercised if the victim is aware it exists. Therefore, for the asset recovery process to work as intended, states should ensure that victims are informed of their legal rights – be it by NGOs, state authorities or otherwise.

[45] Council of Europe Treaty Office, ‘Chart of signatures and ratifications of Treaty 197’ <<http://bit.ly/3Srgolz>> accessed 17 February 2023.

[46] GRETA (Group of Experts on Action Against Trafficking in Human Beings), ‘Assistance to victims of human trafficking: Thematic chapter to the 8th General Report on GRETA’s activities’ (Council of Europe 2019).

[47] *ibid* 28-29.

[48] *ibid* 30.

[49] GRETA, ‘Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Ireland’, GRETA(2017)28 (Council of Europe 2017) 30.

In 2011, the Council of Europe adopted the Convention on preventing and combating violence against women and domestic violence ('Istanbul Convention').^[50] The Istanbul Convention entered into force on 1 August 2014 with the aim of harmonising European legal standards in the prevention of violence against women.

The Istanbul Convention provides two avenues by which victims of the offences set out in the Convention are able to seek a remedy. The first is in Article 29 which relates to civil lawsuits and remedies. It provides that states must enact measures to ensure that victims have access to adequate civil remedies against both the offender and the state, where the state has failed to take sufficient protective or preventative measures against such an offence taking place. The second is in Article 30, which is made up of two paragraphs. Article 30(1) provides that parties to the Istanbul Convention should take measures that allow victims the right to claim compensation after suffering harm from any of the offences set out in the Convention. Further, Article 30(2) provides that where compensation is not available from the offender (or other sources, such as insurance), victims of serious harm should be able to claim compensation from the state in a reasonable time.

The Istanbul Convention does, therefore, make a direct link between the removal of assets from a perpetrator and the victim's right to compensation. However, true to its intended focus, it also aims to ensure that victims' rights are protected even where compensation cannot be obtained from the perpetrator.

While this would appear to be a positive step towards the protection of victims, it may not be so effective in reality. The first General Report on GREVIO's Activities found that 12 parties to the Istanbul Convention (as of 31 May 2019) had made reservations with respect to Article 30(2).^[51] That is, 12 states (including North Macedonia and Serbia) had reserved their right not to apply this provision, which allows victims of serious harm to claim compensation from the state. The result is that, in jurisdictions where such reservations have been made, some victims may find themselves with a *right* to compensation but no means of obtaining it where it is not available from the perpetrator.

Therefore, while reservations with respect to the Istanbul Convention are very limited, it can be seen that the effect of international instruments might be impeded if jurisdictions do not apply them in their entirety. Contracting jurisdictions should therefore give full effect to international instruments if they intend to ensure that victim's rights are protected.

[50] Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence 2017.

[51] GREVIO (Group of Experts on Action Against Violence Against Women and Domestic Violence), '1st General Report on GREVIO's Activities' (Council of Europe 2020) 21-22.

European Union

EU law currently has three main legislative instruments relating to asset confiscation and recovery. These are:

- » The 2007 Asset Recovery Offices Council Decision;^[52]
- » The 2014 Confiscation Directive;^[53] and
- » The 2005 Framework decision on confiscation.^[54]

The Confiscation Directive focuses mostly on the confiscation and freezing of assets to preserve their value, thus depriving criminals of the value and preventing their dissipation. It recognises that the main motive for cross-border organised crime (e.g. mafia) is financial gain and that obstructing these gains is crucial for preventing such crime in the first place.

In 2020, the European Commission published its report, 'Asset recovery and confiscation: Ensuring crime does not pay'.^[55] The report assessed the implementation of the Confiscation Directive across the EU and found that there had been improvements in member states' asset recovery frameworks. In particular, it found that all member states had enabled conviction-based confiscation and third-party confiscation of assets. Additionally, it found that most member states (19) had specific domestic legislation in place regarding the use of confiscated assets for public interest or social purposes, despite this being a voluntary provision.^[56] However, the report concluded that there is room for progress in the EU's current legislative framework and made some suggestions as to how this could be achieved. These include:^[57]

- » Introducing more effective rules regarding non-conviction based confiscation;
- » Better management of frozen assets;
- » Introducing stronger EU-level provisions regarding disposal and social reuse of confiscated assets; and
- » Introducing rules on compensating victims of crime.

In response to the report, on 25 May 2022, the Commission presented a proposal for a new directive on Asset Recovery and Confiscation.^[58] The aim of the proposed directive is to build on the current legislation by consolidating the main three existing instruments and enhancing their

[52] EU, Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.

[53] EU, Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

[54] Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.

[55] European Commission, Commission, 'Report from the Commission to the European Parliament and the Council: Asset recovery and confiscation: Ensuring that crime does not pay' (n 1), 2.

[56] *ibid* 6-13.

[57] *ibid* 17-18.

[58] EU, Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation, COM/2022/245 25 May 2022.

effectiveness.^[59] It will rebalance the EU legislation by addressing asset recovery from beginning to end, including the management, disposal and reuse of recovered assets.

The impact assessment of the proposed directive suggests that victim compensation and social reuse have been active considerations in the intended outcomes of the legislative reform. Indeed, the proposed directive's general objective is the deprivation of the property obtained illicitly by criminal organisations as well as 'compensating victims and repairing damage done to society.'^[60] In addition, it is noted that the benefits of the proposed directive would be not only a higher rate of confiscation, but, in turn, a positive social impact by showing that crime does not pay when victims and communities are compensated by the confiscated assets.

The proposed directive deals with victim compensation and social reuse separately:

- » Social reuse – Article 17 – provides that Member States should 'consider' taking measures to allow confiscated assets to be used for public interests or social purposes. Therefore, at least in the proposal, Member States appear to have discretion as to whether social reuse is appropriate.
- » Victim compensation – Article 18 – places Member States under an obligation to ensure that the confiscation of assets from a person does not deny compensation of the victim where the victim has claims against that individual, i.e. protects the victim's rights to be compensated.

In assessing the most effective areas for reform during the development of the proposed directive, the Commission decided not to change the social reuse and victim compensation clauses as they exist in the current Confiscation Directive. It was determined that the existing clauses posed no issues as they stood and that any substantial change to the current voluntary nature of the provisions would interfere with the budgetary autonomy of Member States.^[61] The clauses themselves therefore still allow for discretion at a national level and the objectives of compensating victims and wider society are achieved by improvements in other areas of the confiscation process.

One area in which improvements are to be made (which was specifically identified in the Commission's report) is that of non-conviction based confiscation ('NCBC'). NCBC allows authorities to confiscate assets even where there has been no criminal conviction. Article 15(1) of the proposed directive provides that member states shall take 'necessary measures' to confiscate property where criminal proceedings have been initiated but do not result in a conviction for reasons such as:

- » Illness or death of the accused person;
- » Absconding of the accused person;
- » Immunity or amnesty from prosecution of the accused person; or
- » Time limits on conviction are not sufficient to allow a full investigation of the accused offences.

[59] European Commission Migration and Home Affairs, 'Confiscation and asset recovery page' (European Commission) <<https://bit.ly/3SPZ5SV>> accessed 17 February 2023.

[60] European Commission, Impact Assessment Report accompanying the document Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation, SWD/2022/245 25 May 2022, s. 4.

[61] *ibid* s. 5.3.

NCBC is not without its drawbacks given its interference with the rights of the individual, i.e. potential confiscation of assets without a conviction of criminal wrongdoing. The proposed directive therefore protects the accused's rights in Article 15(2) and (3), such as by requiring member states to ensure the accused has 'the right to be heard on issues of law and fact' before a confiscation order is issued.

While the rights of the accused to a fair legal process are essential for the functioning of a just society, these can be at odds with ensuring the rights of the victim. Reform in this area is therefore an important means of addressing the imbalance between the rights of the accused and the rights of the victim, as well as tackling the intrinsically complex nature of organised crime. The Economic Crime and Cooperation Division (ECCD's) report on the use of non-conviction based confiscation noted that NCBC can allow authorities to target the property – not the individual.^[62] Jurisdictions such as the UK and Ireland allow proceedings to be brought *in rem* and thus remove the need for a conviction against any individual, with proceedings instead being brought against the property itself. This provides two key benefits to authorities by:

- 1) avoiding the need to contend with the opaque financial and legal structures used to conceal property ownership; and
- 2) enabling confiscation of assets of the individuals at the top of the chain who are removed from the 'coalface' of the criminal activity.^[63]

NCBC is therefore an effective way of reinforcing the victim's right to compensation by both facilitating asset recovery in the first place and by addressing the imbalance between the rights of the victim with the rights of the accused.

Additionally, the proposed directive seeks to make improvements to the various stages in the asset confiscation process. One of these is the tracing and identification stage. The explanatory memorandum to the proposed directive notes that current asset recovery systems in EU Member States are not able to effectively tackle the complex legal and financial structures utilised by criminal organisations to hold assets.^[64] This has recently been brought to light by the EU's sanctions in response to Russia's invasion of Ukraine, imposed under Article 29 TEU^[65] and Article 215 TFEU^[66]. Despite the EU's imposition of these sanctions, the intended targets have taken advantage of inconsistencies in the law across the EU in order to sidestep the impact of the sanctions.^[67] It can therefore be seen that harmonising the law in this area across the EU (and perhaps more broadly) leads to greater success in tracing ownership and subsequently confiscating illicit property.

Another stage of the process that the proposed directive aims to improve is the management of confiscated assets. This is a distinct stage of the confiscation process, which is receiving increasing focus. For example, Article 21 of the proposed directive will require EU Member States to establish an Asset Management Office to ensure assets are well managed. In doing so, it aims to preserve

[62] Council of Europe Economic Crime and Cooperation Division (ECCD), 'The Use of Non-Conviction Based Seizure and Confiscation' (Council of Europe 2021) 15-17.

[63] *ibid*

[64] EU, Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation, (n 58), Explanatory Memorandum s. 1.

[65] EU, Treaty on European Union 1992.

[66] EU, Treaty on the Functioning of the European Union 2007.

[67] European Commission, 'Ukraine: Commission proposes to criminalise the violation of EU sanctions', press release (02 December 2022).

the value of any frozen assets (i.e. during proceedings and until a confiscation decision is made) and thus make the confiscation of the asset more effective in contributing to national budgets or for social reuse.

In summary, the social reuse and victim compensation provisions remain similar to those in the existing Confiscation Directive and allow for national level discretion. However, the proposed directive develops the earlier stages of the asset recovery process, such as identification and management of illicit assets. In doing so, it aims to reinforce the benefits brought about by social reuse and victim compensation – both, as worthy outcomes themselves and also as a means of ensuring that crime does not pay, thereby breaking the cycle.

A key finding from this legislative reform is that the disposal stage of the asset recovery process can only be as effective as the stages which come before it. Any commitment to compensating victims and wider society must be matched by robust mechanisms and means by which to identify and obtain the assets in the first place.

In addition to the above, the EU Victims' Rights Directive^[68] protects a broad range of rights that victims of crime are entitled to, such as access to information, an interpreter or support services. Notably, unlike other instruments, it does not make any provision for victim compensation by the state. However, it does provide for a right to the return of property and a right to compensation from the offender. Article 15 provides that any property seized in the course of criminal proceedings should be returned to the victim without delay. Article 16 provides that victims of crime should be entitled to a decision regarding compensation by the offender. While such provisions are important to establish victims' rights, an evaluation of the directive adopted in 2022 showed that the practical effect of the directive is impeded by similar issues to other instruments. The evaluation found that returning property to victims is obstructed by both the difficulty in tracing ownership of assets and the need to secure a criminal conviction before confiscation in some member states. Additionally, similar to GRETA's findings on the Human Trafficking Convention, the evaluation found that victims' lack of awareness of their rights is a significant obstacle to obtaining compensation from an offender.^[69] The further development of the law on NCBC as outlined above should assist in addressing these shortcomings. However, it is again apparent that for any victims' rights legislation to be effective, states must ensure that victims have sufficient access to justice to enforce these rights.

Overall, it can be seen that while international instruments tend to deal with individual crimes or elements of the process, they can combine to form a comprehensive framework by which injustice can be addressed and victims and society be compensated.

Key findings:

- » International instruments provide a broad basis upon which victims' rights to compensation are established. However, victims often lack knowledge of these rights and so boosting awareness and access to justice is key to ensuring that victims' rights are enforced.

[68] EU, Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

[69] EU, Evaluation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, [section 4.1.1].

- » The way in which society and victims should be compensated is generally an issue left to the discretion of individual jurisdictions. However, jurisdictions seeking to tackle crime and ensure victims' rights should concretise and apply the convention rights into their national law.
- » Organisations such as the UN provide useful guidance on best practices when considering how to compensate victims and wider society.
- » While many states are party to the various international instruments, it is important that these are fully observed and implemented, without reservations, to have maximum effect in compensating society and disincentivising nefarious activity.
- » Commitment to social reuse and victim compensation is only as effective as the asset recovery process that underpins it.
- » Development of rules around NCBC is a key way by which the asset recovery process can be made more effective.

4. Relevant National Legislation and Examples of Domestic Implementation of Social Reuse Practices

As shown in the previous section, international principles relating to social reuse are often broad and/or formulated as guidance. Consequently, they have been implemented in (and themselves informed by) a variety of practices across states. The picture is not uniform, but certain measures have proved successful. These 'marked differences' in national legislation and approaches make it useful to consider and compare multiple examples in different national contexts – especially since, even within the EU, Member States are unknowledgeable about best practices regarding the process of asset recovery.^[70] Therefore, this section reviews the main mechanisms in the investigative, enforcement, asset management, and disposal stages of asset recovery for social reuse, raises key issues in national provisions, and demonstrates how different states address these. It covers legal instruments for confiscation; asset management agencies and disposal mechanisms; considerations relating to the directing of proceeds to social reuse programmes; and examples of victims' support programmes. Brought together, the best practices from these states provide guidance for countries that are building or revising their social reuse systems.

Asset confiscation in selected national legal instruments

As a general trend, states are developing legal instruments that make the confiscation of assets begot by criminal means easier. This includes the reversal of the burden of proof, applied in most EU Member States.^[71] Following the example of the Italian Rognoni—La Torre Law (1982), this shifts the burden of proof from the prosecution to the defendant. National legislation in other countries, including notably in Albania, has been modelled on this best practice.^[72] Most EU Member States also apply third-party confiscation, which allows criminal assets to be confiscated from third parties not directly convicted through criminal proceedings, and envisage (though frequently do not apply) provisions for extended confiscation, the confiscation of proceeds from crimes other than the one to which the conviction refers.^[73]

The most interesting developments come in the realm of non-conviction based confiscation. As outlined in the previous section on international instruments, this allows authorities to confiscate assets without a criminal conviction, either due to unexplained wealth but insufficient evidence to secure a criminal conviction, or due to factors such as the death or immunity of the accused

[70] Costantino (n 10) 41, 5.

[71] Todor Kolarov, Atanas Rusev, Barbara Vettori, *Disposal of Confiscated Assets in the EU Member States: Laws and Practices* (The Center for the Study of Democracy 2014), 18. With the exceptions of Czechia, Finland, Germany, Lux, Romania, Slovenia, Spain, and Sweden.

[72] Saša Đorđević, 'Resilient Balkans: Social Reuse of Confiscated Assets' (Global Initiative Against Transnational Organised Crime 2022) (n 2), 7; Law of 13 September 1982 no. 646. In Italy, relevant regulations are now contained in Legislative Decree 159/2011 (Antimafia Code) and subsequent amendments. See United Nations Open-ended Intergovernmental Working Group on Asset Recovery, 'The Italian experience in the management, use and disposal of frozen, seized and confiscated assets', CAC/COSP/WG.2/2014/CRP.3 (2014).

[73] Kolarov et al (n 71) 18. With the exceptions of Ireland, Malta, Slovakia, and Spain.

party. It is thus an effective way of reinforcing victims' rights to compensation.^[74] Several states have developed mechanisms for the confiscation of criminal assets outside of criminal proceedings: including Bulgaria, Greece, Ireland, Italy, Romania, Slovakia, Slovenia, and the United Kingdom.^[75] This in turn means that a group of EU Member States are now regulating the confiscation and disposal of certain types of confiscated assets in special legislature acts, to allow more flexibility to introduce non-conviction-based confiscation.^[76] The civil confiscation regimes vary, but Italy and the United Kingdom are among those where these systems cover a variety of serious crimes, such as drug trafficking and other organised crime.^[77]

Provisions for non-conviction based confiscation in Italy have been commended by the UN Intergovernmental Working Group on Asset Recovery.^[78] The so-called Anti-Mafia code allows for the 'preventative' confiscation of assets through separate proceedings, where the 'danger to society' of a person is established (such as through previous convictions or if acquitted because not found guilty 'beyond any reasonable doubt'), if that person has died, or even in cases where criminal proceedings are ongoing.^[79] These assets can be repurposed as compensation for victims of the related crimes.^[80]

Similarly, the United Kingdom's Proceeds of Crime Act (2002) allows criminal confiscation of profits of crime from individuals which are suspected to be a product of crime. Confiscation can also be used to forfeit the assets of a suspect at the start of confiscation proceedings, with the aim of interrupting further criminal activities. The 'recoverable amount' corresponds to the amount of the accused's benefit from criminal conduct (but does not exceed the amount of attainable assets owned by the accused).^[81] Civil recovery can be pursued also in cases with no preceding criminal conviction, if prosecution is not possible or has failed.^[82]

The types of assets confiscated are numerous, and legislation can develop in an asset-specific manner. For example, in Belgium (Flemish region), the confiscation of real estate simply developed from an existing decree providing for the right of municipalities to temporarily manage unsuitable, uninhabitable or abandoned property of negligent owners on the condition that the property would be restored or renovated and used for social housing.^[83] As is seen below, assets confiscated that can be relevant for social reuse purposes include immovable assets such as real estate, movable assets even including electronic assets, and companies.

An alternative to direct confiscation is value confiscation, operated by most EU member states, which confiscates money in lieu of actual assets.^[84] This can be a useful means of avoiding

[74] See the previous section of this paper.

[75] Kolarov et al (n 71) 18.

[76] *ibid* 20. Such as Bulgaria, Italy, Ireland, and the United Kingdom.

[77] *ibid* 18.

[78] United Nations Open-ended Intergovernmental Working Group on Asset Recovery, 'The Italian experience in the management, use and disposal of frozen, seized and confiscated assets' (n 72).

[79] Italy, Legislative Decree 159/2011.

[80] Costantino (n 10) s. 4.1.

[81] United Kingdom, Proceeds of Crime Act 2002 (POCA), s. 93.

[82] Costantino (n 10) s. 4.1.

[83] Belgium, Flemish Housing Code of 15 July 1997, article 90. See Barabara Vettori, Boban Misoski, 'Social reuse of confiscated assets in the EU: current experiences and potential for its adoption by other EU and non-EU countries', in Taki Fiti, Goran Koevski (eds.), *Liber Amicorum: Studia in honorem academici Vlado Kambovski septuagesimo anno* (Skopje: Macedonian Academy of Sciences and Arts, 2019), 721-738, 701.

[84] Kolarov et al (n 71) 37-8, 49.

complications in the disposal process. However, the risk posed by criminals retaining possession of their property should be properly evaluated.^[85]

Asset management in selected national legal instruments

Assets, once confiscated, should be correctly managed. The management of assets is an important part of the process of social reuse, especially in reducing the deterioration of assets and swiftly moving to a method of disposal. Legal provisions on the management of seized assets should aim to protect the property, optimise its value, and minimise its deterioration.^[86]

This is an especially important consideration for Western Balkan countries, where it appears that, despite certain laws and institutions for social reuse being in place, the prevalence and process of confiscating and disposing of an asset is often not taken up or carried out painfully slowly, meaning criminals regain their assets after serving prison time, or assets 'depreciate in warehouses and are of little use to society after several years'.^[87]

Asset management agencies

National legal frameworks usually identify a body or bodies responsible for managing confiscated assets in the time between the confiscation and the disposal (through reuse, selling, or other means).^[88] Such a designation is important – the absence of any provisions regarding asset management poses a significant shortcoming to the possibility of implementing social reuse programmes.^[89] But the provisions that do exist vary depending on the country context or even, as in Belgium, within countries depending on the type of asset.^[90] This section, drawing on previous data and case studies, considers the best approach to establishing a specialised, centralised institution for the management of confiscated criminal assets.

A report by the Center for the Study of Democracy categorises the provisions adopted by states as follows: a centralised approach with specialised institutions; a centralised approach with non-specialised institutions; and a decentralised approach. Non-specialised institutions could denote the tax administration, agencies responsible for management of public property, or entities for the enforcement of criminal and administrative penalties. A decentralised system can mean engaging police districts, courts, or government offices at the local level, or mean splitting the responsibility across different institutions – as in the UK, where the Crown Prosecution Service is responsible for more serious cases, and HM Courts and Tribunals Service deals with lower-value cases.^[91] In a comparative study of these models, the Center for the Study of Democracy found that in non-specialised contexts, authorities are often unable to provide guidance and training or to improve the system, such as training on the particularities of disposing of property with previous ownership. Data from Bulgaria shows that a lack of specialised expertise by the disposal authority results in low disposal prices and a lack of information among potential beneficiaries about the possibility of being assigned confiscated assets. Furthermore, non-specialised institutions often do not distinguish

[85] *ibid* 38.

[86] *ibid* 19.

[87] Đorđević (n 2) 9.

[88] Some countries hold these provisions within criminal procedure codes; others, in criminal law instruments and supporting legal acts; or in general provisions on management of state property; specialised legislation on confiscation; or in regulation held in both criminal and civil law acts. Kolarov et al (n 71) 19.

[89] *ibid*. As reported by Denmark, Luxembourg, and Malta.

[90] *ibid*.

[91] *ibid* 30.

criminal assets from other property, as in the Czech Republic, hindering the keeping of accurate statistics on confiscated criminal assets.^[92]

In contrast, the Center for the Study of Democracy study uses case studies from France, Italy, and Cyprus to argue that a specialised single agency reduces the sale of assets at subprime prices and can contribute to the more effective disposal of these assets.^[93] In Italy, the *Agenzia Nazionale Beni Sequestrati e Confiscati* (ANBSC), supervised by the Minister of the Interior, plans the disposal of assets both in criminal proceedings and ‘preventative’ (non-conviction based confiscation) proceedings, disposes assets confiscated from organised crime, and adopts urgent acts to assign confiscated assets rapidly.^[94] In other words, this specialised agency deals with all disposal cases. It handles various legal actions including return to the state, maintenance of properties or transfer of those assets to regions, provinces, municipalities and third parties.^[95] The ANBSC however does self-report problems, such as being understaffed, receiving delayed notification about confiscation orders, a lack of cooperation between itself and state/local authorities, and uncertainties in the legislation in regards to certain competencies of the body.^[96] Furthermore, the Italian legislative framework does not clarify how assets other than real property can be used for social purposes; these assets go to the Single Justice Fund under the authority of the Ministry of Justice and Ministry of Interior, which has other regulations in place for allocating assets under its competence.^[97]

In France, the AGRASC is a specialised public administrative body to manage assets under the control of the Ministry of Justice and Ministry of Budget.^[98] It is responsible for the sale of certain assets, and transfers proceeds to relevant social reuse funds. AGRASC’s operation has been successful, with activity increasing 13% in 2020 and expanding to include digital assets. In an interesting case study, AGRASC has focussed on opening regional branches – in March 2021, it opened branches in Lyon and Marseille, intending to strengthen proximity with investigative and judicial services.^[99]

Scotland, already notable for its use of non-conviction based forfeiture, uses the Civil Recovery Unit (CRU), a multi-disciplinary unit which forms part of the National Federation of Crown Office and Procurator Fiscal Service (COPFS) and is made up of lawyers, financial investigators, forensic accountants, and support staff. All members of the CRU are specifically trained to minimise any risk of any officer being susceptible to corruption and bribery, and some officers operate under pseudonyms as they come into direct contact with major criminals.^[100]

An example of successful transitioning to a centralised specialised agency comes from Romania. Initially, the recovery and management of assets was the responsibility of different actors in Romania – recovery, by the police and then prosecution or the Ministry of Justice, and management, by solely the police. A 2015 law created the national Agency for the Management of Seized Assets (ANABI), operational since December 2016. Now, seized assets are distributed to the Agency by prosecutors

[92] *ibid* 28.

[93] *ibid* 8.

[94] Established by Italy, Law Decree no. 4 of 4 February 2010.

[95] Costantino (n 10) 14.

[96] *ibid*.

[97] *ibid*.

[98] Established by France, Law no. 768 of 9 July 2010.

[99] ‘Saisie, confiscation: l’AGRASC publie son rapport d’activité 2020’ (Ministère de la Justice 2021) <<http://bit.ly/3lqdf0X>> accessed 23 February 2023. ‘Présentation de l’AGRASC’ (Ministère de la Justice 2020) <<http://bit.ly/3lqdf0X>> accessed 23 February 2023.

[100] Costantino (n 10) 14.

and judges to be sold or managed, including by working with NGOs for direct social reuse and ensuring fifteen per cent of amounts confiscated from crime are invested in prevention, education and victims' assistance projects developed by NGOs.^[101]

These successful examples indicate that a variety of assets should be managed by a specialised institution, one suited to the particularities involved with the confiscation, management, and disposal of assets specifically begot and confiscated from criminal activity.

Disposal mechanisms

Sale

Sale is the main asset disposal method in all EU Member States, except for Italy where direct reuse is most prevalent, as discussed further below.^[102] This has a clear link with victim support: because victim compensation is done monetarily, it is often considered more practical to sell confiscated assets and provide funds for victim compensation than retain it for other social use.^[103] Asset management agencies have a key role to play in the swift action of selling assets. The three following trends are examples of mechanisms that countries have used to improve the procedure of selling confiscated assets.

- 1) Pre-sale – provisions providing for the preliminary sale of frozen or seized goods prior to the issuance of a confiscation order, with the proceeds kept in an interest-bearing account. For example, in France, judges and investigating magistrates can decide to entrust AGRASC with selling seized personal property before judgment if the assets no longer need to be kept in order to establish the truth and if maintenance of the seizure is likely to reduce their value.^[104] While almost all EU Member States have provisions for pre-sale, they are rarely applied.^[105] The practice is also used in Brazil, which since 2019 has been able to sell assets originating from drug trafficking (excepting weapons) before a final and unappealable court decision.^[106]
- 2) Time limits: to ensure that assets are confiscated and disposed of within a reasonable timespan, and do not depreciate and lose value, some states have legal provisions disciplining the extent of the disposal phase. In Greece, for example, assets must be disposed of within three months of their seizure; in Romania, the actual disposal must occur within 180 days of the disposal order.^[107]
- 3) Auction management: a recent study of Brazil demonstrated how the hiring of auctioneers brought advances in asset management, as did its Check In project. In the latter, SENAD - the body responsible for developing strategies to suppress drug trafficking, which manages confiscated assets begot from drug trafficking - works with state public security

[101] Anti-Fraud Knowledge Centre, 'National Agency for the Management of Seized Assets, European Commission Anti-Fraud Knowledge Centre' (European Commission) <<http://bit.ly/3lPgacc>> accessed 23 February 2023.

[102] Vettori, Misoski, 'Social reuse of confiscated assets in the EU' (n 83) 700; Kolarov et al (n 71) 8-9; Costantino (n 10) 40.

[103] Kolarov et al (n 71) 35.

[104] *ibid* 19.

[105] *ibid* 36-7.

[106] Brazil, Article 61 of Law No 13,840 of June 5, 2019. See Centre of Excellence for Illicit Drug Supply Reduction (CoE Brazil), 'Management of Assets from Drug Trafficking – Decapitalizing organized crime to strengthen public policies in Brazil', 1st Thematic Bulletin (2021) 20.

[107] Kolarov et al (n 71) 21.

agencies and the Federal Police as partners to ensure the registration of assets located in storages. This improves available information and streamlines auction processes. In return, between twenty and forty per cent of the collected amount is allocated to the police that seized the asset. As a result of the project, more assets were increased and thus more revenue generated.^[108] Similarly, SENAD's efforts to ensure that assets are classified in the Disposal Service Order (OSA) and given a number linked to the process in the Electronic Information System of Federal Government to allow them to go to auction resulted in a reduction of assets classified as lost and a smoother conduction of auctions.^[109]

There remain difficulties in selling assets, including resolving questions of mortgage liens, instalment sale agreements and shared ownership; the reputation of the previous owner putting off potential buyers; and potential challenges by legal entities affiliated with the natural persons criminally prosecuted who may appeal confiscation orders as a *bona fide* third party. Physical and value deterioration of assets and the cost of storage are also considerations exacerbated by prolonged judicial trials.

As a result of these difficulties, some states use renting as an interim measure in cases where a sale is not feasible, the property will be sold at a loss, or property cannot be conclusively assigned to a beneficiary.^[110] The renting of property in lieu of transferring ownership to third parties has been used to good effect in Belgium and Ireland, usually applied to expensive property such as real estate or businesses.^[111]

Reuse

Indirect reuse is the most common form of social reuse in the European context, and is closely linked with the sale of assets, as it involves the disposing of assets via sale and transferring the profit to state or local institutions or a civil society organisation (CSO) to directly compensate victims of crime and to invest in wider programs to benefit victims, potential victims, or affected communities. In other words, indirect reuse does not pass the asset straightforwardly on to society and uses proceeds for mediate rather than immediate interests.^[112]

In direct reuse, states reassign assets for public benefit through a change in their intended use. Properties can be transferred to state/local institutions, or to NGOs/CSOs.^[113] One example from Serbia is the Centre for the Protection of Victims of Trafficking receiving a confiscated facility to use as a safe house for victims of human trafficking.^[114] There are challenges to this approach, including navigating similar issues to selling: third-party claims, the rapid deterioration of assets, and possibly also low-quality or counterfeited goods.^[115] Furthermore, it often involves additional steps by the asset management institution; rather than simply preparing the asset for sale, the institution must

[108] CoE Brazil, 'Management of Assets from Drug Trafficking' (n 106), 21.

[109] *ibid* 23.

[110] See Bulgaria as an example. Kolarov (n 71) 43.

[111] *ibid* 39.

[112] *ibid*.

[113] In Italy, Real estate assigned to the law enforcement agencies represents only a small portion of the assets' final destination. The vast majority is assigned to municipalities, which, in turn, use these assets for different purposes or re-assigned them to third administrators. United Nations Open-ended Intergovernmental Working Group on Asset Recovery, 'The Italian experience in the management, use and disposal of frozen, seized and confiscated assets' (n 72).

[114] Dorđević (n 2) 3.

[115] Kolarov et al (n 71) 39.

identify a suitable means of direct reuse and an actor to undertake this change. State institutions often remain involved for longer, partnering with local organisations or at least monitoring the success of the reuse.

The process of distributing assets for direct reuse is eased by the use of publicly-accessible online databases. For example, an EEA-grant project in Romania funded developments in the Romanian legal framework for involving NGOs in direct social reuse, including by establishing a public website to detail publicly all properties confiscated by final court order.^[116] This allows NGOs and public authorities, who under legislation have a right to reuse confiscated properties, to view reclaimed assets from across the country.

While many states have provisions for the direct reuse and repurposing of assets, Italy stands out as one of the only contexts in which this option is the most frequently used.^[117] The reason for this prevalence in Italy comes partly from the fact that the disposing of Mafia-owned real estate is difficult; the previous owners' reputation can put off potential buyers, and there is furthermore a risk that the property could be sold to individuals or entities associated with the criminal enterprise from which the property was confiscated.^[118] Direct social reuse of assets in Italy is extensive, including not-for-profit social services such as libraries, and profit-bearing enterprises (including vineyards which now produce wine labelled in memory of anti-Mafia heroes).^[119]

Donation

Donating is a sensible option for low-value assets which can be directly repurposed. For example, in Hungary, personal assets, such as home, kitchen, and leisure equipment, appliances, tools, and toys, can be confiscated and offered for charity purposes, a scheme overseen by the Charities Council which enables civil society organisations to participate in determining the allocation of confiscated goods.^[120]

Destruction

Assets should be destroyed if they are banned, dangerous, legally unusable, such as perishable movable property that has expired, or if they are of low value with high storage costs.^[121] The latter point is particularly important for a management body to consider; it may not be worthwhile to confiscate assets that will not yield profit or be suitable for direct reuse. Existing trends suggest that miscellaneous and electronic assets, especially those with a low market value, are difficult to sell. However, partnerships can be developed for the offloading of certain assets to avoid the need for destruction. In Brazil, SENAD has established partnerships to resolve potential issues with the management of certain types of assets, such as a partnership with the National Supply Company (Conab) for biological assets.^[122]

[116] 'Social reuse of confiscated assets', EEA and Norway Grants <<http://bit.ly/3ZfNo9X>> accessed 23 February 2023.

[117] Kolarev et al (n 71) 20-1.

[118] *ibid* 41-2.

[119] United Nations Open-ended Intergovernmental Working Group on Asset Recovery, 'The Italian experience in the management, use and disposal of frozen, seized and confiscated assets', (n 72) 15.

[120] Hungary, Act XIII of 2000 and Government Decree 65/2000. See Vettori and Misoski (n 83) 702.

[121] Costantino (n 10) footnote 33.

[122] CoE Brazil, 'Management of Assets from Drug Trafficking' (n 106) 24.

Directing proceeds from disposal to social reuse programmes in selected national legal instruments

States that gain proceeds from the sale of a confiscated asset have varying provisions on how the monetary gain is routed towards indirect social reuse programmes. The following section outlines a number of considerations states have in designing the route along which direct or indirect reuse proceeds and suggests best practice from a selection of national legal instruments.

Earmarking funds

Some EU Member States route funds through a centralised budget before they are assigned to social programmes.^[123] However, the Center for the Study of Democracy argues that routing funds through a general budget compromises the ability of the general public (including victims) to clearly see how confiscated assets are used for social purposes, and therefore encourages a simplified path from profit to investment in social programmes.^[124] They suggest that best practice is states that channel funds received from the sale of confiscated assets directly to specific funds. In Albania, for example, a special fund for crime prevention has been established from which money from confiscated assets can be used for state and social community crime prevention and legal education projects.^[125]

Targeting specific communities

The destinations of funds received from the sale of confiscated criminal assets often intend to compensate victims of crime – whether identified individuals, or a general community. Social reuse programmes therefore tend to relate the source of profit to the targeted community. For example, in Spain, victims of drug-related crimes are compensated using funds confiscated from drug-related offences.^[126] Spain is one of the most active European states in asset recovery procedures, and the cycle of drug-related programmes funded by drug-related confiscations is evident.^[127] In 2003 it established a specialised fund (*Fondo de Bienes Decomisados*) financed out of assets confiscated in drug cases and drug contraband to be used to finance programmes for drug addiction prevention, assistance to drug addicts, and improving measures to prevent, investigate, prosecute, and repress drug-related crimes.^[128] The body managing the fund is the *Mesa de Coordinación de Adjudicaciones*, which belongs to the Ministry of Health. This body identifies assets to be allocated to the Fund and decisions regarding their destination and beneficiaries. Confiscated assets are only allocated to this fund if they are the result of drug trafficking. If they are the result of other serious organised crime, then the confiscated assets are used to compensate victims and are then directed to the State Budget. The fund's beneficiaries include law-enforcement agencies, NGOs working in substance abuse, regional and local authorities, and so on.^[129]

Similarly, in Brazil, the National Anti-Drug Fund (FUNAD) receives funds only specifically reclaimed from drug trafficking and the manufacture and distribution of illicit drugs.^[130] Funds are

[123] Kolarov et al (n 71) 9.

[124] *ibid* 40.

[125] Đorđević (n 2) 10.

[126] Kolarov et al (n 71) 40.

[127] Costantino (n 10) 31-32.

[128] Spain, Law 17 of 29 May 2003 (developing rules initially contained in Law 36 of 1995).

[129] Vettori and Misoski (n 83) 704. Further information can be found in the 2021 report by the Ministry of Health, available <https://bit.ly/41Nbo6v> (accessed 23 February 2023) (Spanish only).

[130] Established by Brazil, Law No 7,560 of December 19 1986.

mostly raised through the sale of confiscated assets, which is overseen by SENAD (the National Secretariat for Drug Policies, a body implementing public drug policies). Assets are seized, SENAD receives asset information, registers these details in GFUNAD (the system for data management of seized assets, which is filled in by SENAD employees and assigns a unique identification number to the asset), and prepares the asset for auction. After the auction, proceeds are incorporated into FUNAD.^[131] The number of assets incorporated into FUNAD rose from under 2,500 in 2003, to 20,000 in 2019.^[132] In 2020 alone, the Fund was successful in raising R\$ 134 million.^[133] SENAD then uses the fund for the implementation of drug supply and demand reduction projects.

In France, the MILDECA (*Mission interministérielle de lutte contre les drogues et les conduites addictives*) manages the *Fond de concours* to collect proceeds confiscated in connection with drug trafficking.^[134] Its specialised asset management office, AGRASC (introduced above), auctions assets and then transfers the proceeds back to the MILDECA.^[135] Ten per cent of revenue is used directly for social purposes, with the rest distributed to government agencies.^[136]

However, there are cases where a fund relating to a specific form of organised crime (drug abuse) expands and becomes a fund for all. Luxembourg's social reuse initially began only in the sphere of crimes related to drug abuse: its *Fonds de lutte contre le trafic de stupéfiants* (established in 1992) was made up of real and personal property confiscated under the law on the sale of medicinal substances and fight against drug abuse.^[137] In 2010, the fund was modified so as to cover other serious crimes, including money laundering, and appropriately renamed to the *Fonds de lutte contre certaines forms de criminalité*.^[138] This fund is the government institution that receives confiscated proceeds from drug trafficking, money laundering, and other serious crimes, and supports programmes in fighting 'certain forms of criminality'. Its beneficiaries include international organisations, national institutions and non-governmental organisations (NGOs).^[139]

Asset direction might also relate to territoriality. For example, the Italian legislative framework on social reuse of confiscated assets sets the priority for seized assets to be transferred to regional associations and thereby compensate local communities.^[140] The Anti-Mafia Code envisages the acquisition of the asset by the state; and the transfer for social reuse to public or private entities.^[141] This procedure involves the municipalities where the assets are located, or the province or region. Local bodies may decide to entrust assets for free to social communities or associations.^[142] In Scotland, criminal assets recovered are invested in the CashBack for Community programme, which focusses on facilities and activities for young people at risk of turning to crime. Since 2007, over £46m recovered from proceeds of crime has been invested in projects that have strong

[131] CoE Brazil, 'Management of Assets from Drug Trafficking' (n 106) 19.

[132] *ibid* 21.

[133] *ibid* 17-18.

[134] Established by France, Decree 322/1995.

[135] 'Guide for Asset Recovery in France' (World Bank, G8-Deauville partnership) <<https://bit.ly/3xS7LhG>> accessed 23 February 2023.

[136] Vettori and Misoski, (n 83) 701-2.

[137] Established by Luxembourg, Law 17 of March 1992 art. 5 to manage property confiscated under section 8-2 of the Act of 19 February 1973 on sale of medicinal substances and the right against drug abuse.

[138] Luxembourg, Law of 27 October 2010.

[139] Vettori and Misoski (n 83) 703.

[140] Costantino (n 10) 14.

[141] Italy, Legislative decree 159/2011.

[142] *ibid*.

relationships with local communities.^[143] However, no data was gathered concerning the impact on community and crime levels.^[144]

In cases regarding the funds of persons originating from abroad, France and Switzerland have developed frameworks governing the return of that sum to the country in which crime occurred, while earmarking it for social reuse. Switzerland is said to be 'leading the way' in terms of 'using frozen assets to give back to victims of foreign corrupt officials'.^[145] Switzerland's Foreign Illicit Assets Act provides that assets deposited in Switzerland by foreign corrupt officials or their close associates can be frozen and confiscated, then restored to the country of origin for the specific purpose of 'improving the living conditions of the inhabitants of the country of origin' and strengthening the rule of law.^[146] The country has also used civil society organisations to monitor returned assets and ensure transparency in their use.^[147] Similarly, in 2021, France adopted provisions allowing the return of 'ill-gotten gains' to victims.^[148] Where a politically-exposed person has been convicted in French courts of laundering embezzled public funds or proceeds of corruption, their assets can be seized, confiscated, and sold. Previously, the revenues were directed to the French state budget; now, they are returned to the population of the foreign state in question, specifically with the intention to finance cooperation and development initiatives. The ministry of Foreign Affairs Public Development Assistance Mission allocates the revenue to different groups (such as a French Development Agency, an international organisation such as the World Bank, a national treasury, or a local or international non-governmental organisation) on a case-by-case basis.^[149]

Including civil society and non-governmental organisations

Governments should, when considering how to target social reuse programmes, consider the role of civil society or non-governmental organisations. In many states, the assets are considered state property, and civil society are neither consulted regarding their use, nor approached as potential bodies to oversee social reuse programmes.^[150] Yet, existing studies (Đorđević, 2022) outline the 'key role' that CSOs have in the social reuse of confiscated assets, and the international guidance that States should promote the active participation of CSOs in asset recovery processes.^[151] CSOs can be involved through:

- 1) Awareness-raising, research and advocacy. For example, the Tunisian Association for Financial Transparency (ATTF), lobbies the government to strengthen anti-corruption institutions and asset recovery systems. Another example includes the EU-funded project CAUSE (Confiscated Assets Used for Social Experimentation) implemented by Partners Albania with two Italian CSOs, whose successful social reuse projects 'changed the mentality and approach of state institutions toward the administration of confiscated assets': the new legal framework regulating the work of the Albanian AAPSK (Agency

[143] Costantino (n 10) s. 4.1.

[144] *ibid.*

[145] Aline Doussin, Megan Smith and Yasmin Waljee, 'Finance for Restorative Justice: Using sanctions and terrorist financing legislation to fund reparations for victims of sexual violence in conflict' (Hogan Lovells 2020) 24.

[146] *ibid.* 23.

[147] *ibid.* 24.

[148] Redress, 'Draft MLA Treaty on Asset Recovery – Civil society submission' (2022).

[149] Sara Brimbeuf, 'The ill-gotten gains of corruption: a possible French model for restitution' (U4 Anti-Corruption Resource Centre 2021) <<http://bit.ly/3lZgZz2>> accessed 23 February 2023.

[150] Kolarov et al (n 71) 35.

[151] Arab Forum on Asset Recovery, 'Guide to the Role of Civil Society Organisations in Asset Recovery' (International Centre for Asset Recovery; UK G8 Presidency; Arab Forum on Asset Recovery 2013), 7.

of Administration of Seized and Confiscated Assets) was influenced by outcomes from CAUSE projects.^[152] In November 2021, the Agency signed contracts with seven CSOs, disbursing financial awards derived from criminal assets for the purpose of social reuse.^[153]

- 2) Assisting states in managing frozen assets or advising on the use of returned assets.
- 3) Acting as a facilitator between states and victims, perhaps through NGO-run projects. For example, Romania's 2015 law mandates that fifteen per cent of the proceeds from asset confiscation is invested in prevention, education and victims' assistance projects specifically developed by NGOs.^[154]
- 4) Receiving and managing assets for social purposes, or monitoring the use of assets in this way by other parties. Of note is the work of Libera Terra in Italy, which is involved in initiatives to reuse confiscated assets for local communities by creating jobs for young people or creating agricultural centres.^[155] Romania's 2015 law similarly gives NGOs and public authorities the right to reuse confiscated properties.

Transparency

Another consideration in the procedure of funding social reuse programmes is that of transparency. Best practice demonstrates the need for transparency and accountability, including by establishing independent committees to prevent political influencing in the identification of priorities for confiscated assets and allocation of proceeds.^[156] This is particularly important to demonstrate the success of anti-crime systems and restore public trust in state institutions – in the Western Balkans, 92% of citizens perceive serious, organised and financial crime as the most pressing security challenge for the region to address.^[157] With one key aim of asset recovery being the reinforcement of trust in government, transparency is key. Transparency is mitigated by use of technology, but it has the additional effect (as seen above in the cases of Romania and Brazil's Check In project) of streamlining the process of social reuse and ensuring assets are maximised. While most national authorities collect information on confiscated assets primarily on paper, one means of ensuring transparency (in terms of providing statistics on sums raised and the outcome) as well as efficiency (in terms of supporting the smooth recovery, management and disposal of assets) includes incorporated dedicated ICT data management systems.^[158] One example is Italy's publicly-accessible web portal, *Confiscati bene* 2.0.^[159] This provides official data on confiscated and destined properties, updated in real time, presents data in an interactive map, and is developing a network to publicise successful incidences of direct social reuse.^[160]

As this section shows, when instituting routes for the funding of social reuse programmes, governments should be mindful to clearly earmark funds, consider targeting proceeds towards at-risk or victimised communities, engage with civil society, and ensure transparency throughout.

[152] 'CAUSE: Confiscated Assets Used for Social Experimentation' (Tirana: Partners Albania for Change and Development 2020), 23.

[153] Đorđević (n 2) 19.

[154] 'Social reuse of confiscated assets', EEA and Norway Grants (n 116).

[155] Arab Forum on Asset Recovery (n 151) 7.

[156] Vettori and Misoski (n 83) 713.

[157] Đorđević (n 2) 7.

[158] Kolarov et al (n 71) 35.

[159] Đorđević (n 2) 3.

[160] Available at www.confiscatibene.it.

Social reuse and victims' compensation and support programmes

This policy paper advocates for the power of social reuse in fulfilling states' responsibilities towards victims. The definition of 'victim' can be perceived here more broadly than in the context of other offences. Some serious and organised crime (especially money laundering or corruption) may not be connected to one identifiable victim. Social reuse projects thus often compensate a wider notion of 'victim', including communities at large. Indeed, the majority of social reuse programmes overviewed for this paper do target a more general group of people, with a focus on 'giving back to the community'.

However, there is also a place for targeted social reuse programmes, which would seek to serve identifiable victims. This is currently a less frequently seen form of social reuse, with the greatest advances in targeted social reuse programmes being in the field of drug trafficking. Like victims of drug trafficking, victims of human trafficking are often identifiable and in need of special treatment and rehabilitation programmes, which can be funded by the proceeds of selling or renting of confiscated property. Yet, the notion of social reuse as a form of supporting victims has not been mentioned in reports by GRETA, the body monitoring the Council of Europe Convention on Action against Trafficking in Human Beings. This paper therefore recommends that states take the initiative in recognising the potential of social reuse – in both direct and indirect forms – as a feasible means of securing funds to support victims of serious organised crime such as human and sex trafficking.

Indirect social reuse can be used to support direct victims of such crimes, by using proceeds to fund victim support programmes. This may include funding medical, legal, or psychosocial support as well as schemes to reintegrate vulnerable people into a community or teach skills that will help lift individuals out of precarious situations.

These schemes could and perhaps should include other members of the community. The United Nations Trust Fund in Support of Victims of Sexual Exploitation and Abuse is administered by an international body but works differently in national contexts: the Democratic Republic of the Congo (from 2018), the Central African Republic (from 2018), and Haiti (from 2021).^[161] The Fund finances local schemes intended to prevent victims from re-victimisation, including training in income-generating activities. These schemes often include both victims of sexual exploitation and abuse by UN staff and partners, and other women at risk in the community. This avoids singling out victims to the rest of the community, promotes their integration, and helps to prevent those who are not victims from being in positions most vulnerable to SEA. The income-generating schemes financed by the Trust Fund hold similarities with a social enterprise established through CASE. The Social Crafting Garage is a workshop set up within confiscated real estate, where women and girl victims of organised crime and domestic violence, or those at risk, make handicraft products for market.^[162] Over 2,500 women and girls were trained and employed in the production during the implementation period of May 2019-20.

The direct social reuse of confiscated assets for assisting a group of identifiable victims is less frequently used. Direct social reuse is less common than indirect reuse, and when it does occur often involves the transfer of property to state or local institutions.^[163] Cases of direct reuse in Italy,

[161] Established in 2016 by 'Special measures for protection from sexual exploitation and abuse: report of the Secretary-General', United Nations General Assembly, sixty-ninth session, agenda item 137, A/69/779 (2015). Administered by the UN Department of Management, Strategy, Policy and Compliance. See United Nations, 'Fourth Annual Report of the Trust Fund in Support of Victims of Sexual Exploitation and Abuse' (United Nations Publications 2022).

[162] 'CAUSE: Confiscated Assets Used for Social Experimentation' (n 152), 21.

[163] Costantino (n 10) 40.

for example (the only EU state where this form of reuse is more common than indirect reuse), generally relate to broader schemes that benefit communities or groups within communities, as opposed to direct and identifiable victims.^[164] Direct social reuse to assist identifiable victims of crime is represented by the example of the Serbian Centre for the Protection of Victims of Trafficking, which after extensive lobbying received a confiscated facility to use as a safe house for victims of human trafficking.^[165] This, however, appears to be a relatively rare occurrence. This paper therefore joins existing studies in recommending that such assets should 'more readily' be used to directly compensate and support identifiable crime victims.^[166]

Summary and key findings

This overview draws on multiple national contexts, in order to provide examples of best practice in a variety of areas for states considering the development of their own social reuse system. States should be mindful of developing all stages of the social reuse process; the confiscation of assets is vital, but they must also be managed well to avoid depreciation. Their confiscation and management must then be complemented through effective disposal. The proper implementation of these three stages is vital to ensure maximum proceeds for social reuse programmes, which should be used to benefit victims (both in the sense of identifiable victims of specific crimes, and in the sense of the broader community impacted by serious and organised crime.

The following key conclusions can be drawn from this overview:

- » Legal instruments for asset confiscation should be developed to make the confiscation of criminal assets easier, particularly in reversing the burden of proof, applying third-party confiscation, and exploring options for non-conviction-based confiscation and value confiscation.
- » Proper asset management is a vital part of the social reuse process. Existing studies suggest that asset management by a specialised institution generates the most effective disposal of assets.
- » Disposal most frequently involves the selling or renting of assets, but the direct repurposing, donating, or even destruction of assets should be considered in order to prevent depreciation and encourage reuse. States should introduce measures that assist in the expedient selling of assets, such as preliminary sales prior to final confiscation orders; time limits to ensure assets do not depreciate; and streamlined auction processes including through the registering of assets in online databases. For direct reuse, publicly-accessible online databases should also be used to allow NGOs and public authorities to view (and apply to use) reclaimed assets from across the country.
- » Funds should be routed directly to a social reuse fund rather than through a general budget, as this ensures money is publicly earmarked for social reuse purposes and promotes visibility of the system and trust in the state. States may wish to set up specific funds for specific purposes, such as funds which take proceeds only from assets related to drug crime for investment in specific drug-prevention initiatives; but states may also wish to implement one fund that relates to all forms of organised crime.

[164] For example, the Social Market of Milan in Italy. See Costantino (n 10) s. 4.1.2.

[165] Đorđević (n 2) 3.

[166] *ibid.*

- » Civil society groups have an important role to play in the process. States should recognise the potential for these groups to contribute through research, by advising on the use of assets, by implementing programs for victims, or by managing or monitoring direct reuse of assets.
- » Transparency is vital for reinforcing trust in government, an ultimate aim of social reuse. States should utilise technology, such as publicly-accessible databases, both to streamline processes, to promote a culture of transparency and safeguard against corruption.
- » Victims of human trafficking, drug trafficking, or similar crimes are often easily identifiable and in need of specialised treatment or rehabilitation. Victims can be supported through indirect or direct social reuse. Victim support programmes should provide psychosocial support and work to prevent re-victimisation. They should be careful to avoid stigmatising or singling out victims.

5. Conclusions and Recommendations

Across Europe, social reuse of confiscated assets takes a variety of forms and serves a diverse range of purposes. Where comprehensive legislation and mechanisms have been introduced to support the reuse of confiscated assets for social purposes, these schemes can lead to numerous positive outcomes and provide an innovative source of funding to support otherwise underfunded institutions, projects, and communities. The time is now, therefore, ripe to introduce more comprehensive policies and create specific institutions in the region to support the social reuse of confiscated assets, taking account of the good practice and lessons learned from social reuse legislation and practices implemented to date. In particular, the following key recommendations for social reuse legislation and systems can be drawn from the analysis in this study:

1. Legislation and systems should be introduced across the Western Balkans to ensure confiscated assets, and the proceeds from their sale, are utilised as a primary source to fund victim compensation funds and other social purpose schemes.
2. States should utilise a broad notion of 'victim' when designing and implementing social reuse legislation and systems. They should include provisions aimed at compensation and reparation for identified victims of specific crimes, as well as compensation and reparation for a wider category of individuals and communities impacted by the broader effects of serious and organised crime.
3. States should adopt a wide notion of 'social purpose' when designing and implementing social reuse legislation and systems, which includes both compensation *and* reparation for victims. This means utilising confiscated assets for purposes such as rehabilitation, mental and physical health support, building skills and employment opportunities and encouraging reintegration into society for victims, in addition to providing financial compensation to victims.
4. The success of social reuse depends on the effective implementation of the preceding stages of investigation, confiscation and asset management. States should establish a specialised asset management office, tasked with protecting and preserving confiscated assets, maximising their value and determining the optimum manner by which to dispose of them.
5. Sufficient funding, staff and specialised training should be dedicated to the asset management office, to ensure employees understand the particular practical and legal issues which can arise when disposing of assets without a clear prior chain of ownership.
6. Any determination regarding how an asset should be reused or disposed of, must take account of the type of asset, the quality of the asset, its origin and any relevant socio-political context. For example:
 - a. Sale of an asset might in some contexts provide the most useful way to obtain funds for social reuse purposes. However, sale might not be appropriate if a complex ownership chain, deterioration of the asset, or fear and intimidation by the previous owner means no one wants to buy it.

- b. If sale of an asset is not possible or attractive, renting the asset, or direct reuse of the asset might represent a more appropriate form of reuse.
 - c. Depending on the levels of fear and intimidation surrounding the prior owner of a confiscated asset, considerable engagement with the community (for example via CSOs) might be required to encourage direct reuse for community purposes.
 - d. Charitable donations might be the most appropriate form of disposal of low value or perishable assets.
 - e. Destruction of or discarding an asset might be the most appropriate form of disposal where the asset is an illicit substance, or a product which does not naturally serve a social purpose. In this scenario, states should explore partnerships beyond the scope of organisations that work with victims of crime. For example, partnerships with organisations who deal in disposal or recycling of the relevant type of asset.
7. Transparency in the operation of social reuse schemes is paramount to their success. States should design and build a comprehensive, online, public register of confiscated assets, to provide a useful inventory of confiscated assets to assist in their management, assist CSOs and other relevant groups to understand what assets are available and how they might apply for their use, and ease any future auction or sale process.
 8. States should maintain and publish accurate statistics on the destination of confiscated assets, and how they have been used.
 9. The existence of indirect social reuse funds or the availability of confiscated assets must be accompanied by comprehensive information campaigns and advice, to ensure victims or other relevant parties are aware of their existence, the criteria to benefit from social reuse and the procedure to apply.
 10. The institution responsible for asset management and disposal should maintain close cooperation with the police and judiciary to ensure they are made aware of the existence and relevant details of a confiscated asset in a timely manner. They should also engage proactively with CSOs who could use or benefit from confiscated assets, who may have pre-existing relationships with the communities that social reuse seeks to serve, and who can act as an intermediary between the government and victims of crime.
 11. Given the strong role and engagement of the civil society sector in the Western Balkans, which is often more agile than state institutions, especially in terms of providing psychological and legal support to victims of crime, securing their accommodation in safe houses, or identifying victims of human trafficking, it is necessary to ensure that a portion of recovered assets is allocated to CSOs. A useful model to consider is the one established in Romania, discussed in this study.

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