



Anti-money laundering and counter-terrorist financing measures

Romania

Fifth Round Mutual Evaluation Report

<https://rm.coe.int/moneyval-2023-5-mer-romania/1680abfd1c>

Selection of findings, conclusions and references to the
National Agency for the Management of Seized Assets (NAMSA/ANABI)

64. The National Agency for the Management of Seized Assets (NAMSA) is responsible for tracing assets internationally and managing high value seized assets. It sits in the MoJ.

118. NAMSA is an operationally independent structure under the MoJ and is the contact point for an integrated approach to asset recovery - combining support for criminal prosecution bodies with attributes of international cooperation, management of seized assets and social reuse of confiscated assets.

166. Although the strategy against organised crime was approved in 2021 and the authorities' work on achieving strategic objectives is recent, some important legislative amendments had already been introduced in July 2022 - these relate, among other matters, to the NAMSA's mandate to identify assets in foreign jurisdictions, expanding the agency's mandate concerning administration and capitalisation of the seized assets.

3. LEGAL SYSTEM AND OPERATIONAL ISSUES

3.1. Key Findings and Recommended Actions

Immediate Outcome 8

c) Seized assets are overall effectively managed and when needed shared with international counterparts or returned to the victims. NAMSA has demonstrated impressive results within the short period of time of its operation.

344. Romania has adopted a National Asset Recovery Strategy 2021-2025 (National Asset Recovery Strategy) which sets out the relevant legal provisions and the objectives (for the judicial authorities and the administrative institutions with supporting functions) to apply, in an effort to ensure that they act in an integrated manner from the commencement of criminal proceedings until their conclusion; the aim being that criminal property is identified, seized, valued, recovered

effectively and managed properly. The National Asset Recovery Strategy was drafted by NAMSA, promoted by the MoJ and adopted by the Government. It is a horizontal policy which applies to all stakeholders and for all sectorial strategies (anticorruption, organised crime, etc).

346. The establishment of NAMSA in 2015 was an important milestone for Romania and it has demonstrated impressive results within the short period of time of its operation (see below). NAMSA ensures an integrated approach to asset recovery by combining support for prosecution agencies in the fields of international cooperation, the management of seized assets and the social application of confiscated assets. One of the NAMSA's functions is the facilitation of the tracing and identification of criminal assets and other property potentially subject to seizure or confiscation. Some of NAMSA's main objectives are to ensure an increase in the number of confiscation orders made in criminal cases and to improve the efficiency of the management of seized assets. NAMSA is also the designated Asset Recovery Office, responsible for the tracing and the identification of proceeds from or other property related to crime and for cooperation between the Asset Recovery Offices of EU Member States. NAMSA's work is supported by various global and regional networks such as CARIN, Interpol and international legal instruments such as UN Convention against Corruption (UNCAC) and can reach approximately 170 jurisdictions for tracing criminal assets.

Table: 3.21: NAMSA - Confiscation measures applied by the authorities

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Type of measure	Number of court decisions in which this type of measures was imposed					Sums of money (EUR)				
	2017	2018	2019	2020	2021	2017	2018	2019	2020	2021
Fine imposed as the main penalty	95	386	434	392	279	2 144 050	3 965 671	1 968 750	744 915	771 316
Extended confiscation	14	20	30	18	24	385 152	795 654	239 688	272 086	295 136
Special confiscation	5 630	10 203	11 645	10 471	3 182	36 151 946	171 377 804	22 221 220	78 2 77 091	7 459 724
Compensation to public authorities or institutions	596	669	810	651	510	12 781 490	18 434 843	8 532 931	5 770 055	24 674 581

355. No statistics were provided on types of property seized/confiscated but the conducted interviews and information from NAMSA on managed assets (see below) confirmed that seizure and confiscation is applied for movable and immovable property and funds. The NRA noted that

the Police say that they pay particular attention to money tracing for predicate offences and ML and has in recent years seized approximately 600 vehicles and 400 properties as proceeds of crime.

Case study 3.15: Virtual assets seizure in fraud and ML case

Virtual assets seizure in fraud and ML case In 2017, 11 suspects were investigated for setting up an organized criminal group involved in online frauds and ML. The suspects opened several bank accounts in the names of fake legal persons based in Romania, by using forged identity documents and offered through fake accounts of different websites and platforms different non-existent goods and services to the victims. The victims paid amounts requested as an advance and/or as expenses for the delivery while the received payments were laundered, being successively transferred through several bank accounts among those previously described and controlled by the members of the organized criminal group and in the end withdrawn either from the ATMs or directly at the banking units. The criminal activities took place online (websites/platforms), the victims being mostly from abroad. The 11 defendants, 10 from Cameroun and 1 from Nigeria, were Romanian residents. They are currently under judicial control, under the obligation to regularly appear before the court.

There was an investigation into the laundering of the proceeds of these predicate crimes. The investigation identified that the suspects used the money obtained from crime to buy several luxury cars and real estates on their names.

During the investigation, the prosecutors seized several assets (real estate, cars, contents of bank accounts) amounting to, in total, EUR 342 667. The prosecutors also seized the VAs identified in two of the suspects' Binance wallets and Ledger device (BTC, USDT, DOGE, XRP) in total approximately EUR 14 000. The VAs were transferred within the electronic wallet held by NAMSA.

In September 2022, DIOCT prosecuted the 11 suspects. The trial is still pending at Bucharest Tribunal (case no. 25654/3/2022) and the court maintained the provisional measures taken by the prosecutors. Returning proceeds of crime to the victims 367.

The authorities explained that NAMSA returns the seized proceeds of crime to the victims according to the court's decision. Although no specific statistics were provided, some case 99 examples were given demonstrating the successful return of the proceeds of crime to the victims. For example, in 2021, the Copenhagen Municipal Court ordered the confiscation of the amount of EUR 440 034 on Romanian territory and the amount recovered was transferred in full to the victim of the crime in Denmark.

Assets shared

368. Romania has successfully shared confiscated assets with other countries based on bilateral agreements concluded by NAMSA and presented several successful case examples that showed strong and effective cooperation with international counterparts to trace and seize criminal

assets. However, most of these cases are related to assets sharing based on confiscation orders issued by other countries and only a few related to confiscation orders issued by Romania. This shows that there is still room for improvement for more proactive asset tracing.

Managing seized and confiscated assets

369. Romania has effective measures in place enabling the authorities to preserve the value of seized and confiscated proceeds and instrumentalities. NAMSA is an agency established in 2015 appointed as the national office for the management of frozen and seized assets. It has several functions including managing seized assets (money, high value movable assets⁴⁹ and immovable assets). At the time of the onsite visit, the NAMSA managed around 150 assets with a total value of approximately EUR 5 599 755. The management of all other seized assets that are below the thresholds remain in the custody of the Police, owner or other custodian designated by the judicial authorities (prosecutor or judge). Confiscated assets of any type, are sold by the Fiscal Administration according to relevant procedures in place.

370. Following the interlocutory sale⁵⁰ ordered by the courts or prosecutors, all amounts of money obtained are deposited in the unique bank account managed by NAMSA. By June 30, 2022, the NAMSA managed in the unique bank account approximately EUR 66 291 325. Between 2016 and 2021, the NAMSA organised more than 415 interlocutory sales⁵¹, regarding a wide range of assets: vehicles, including luxury cars; construction materials; VAs; large stocks or merchandise; locomotives and other means of railway transportation; large amounts of oil extraction pipelines and steel coil, securities etc. The total amount obtained between 2016 and 2021 from interlocutory sales was approximately EUR 4 048 676 (with VAT). This demonstrates that NAMSA manages different types of seized assets, including VAs (see case study 3.14 above).

Overall conclusions on IO.8

380. Since the previous evaluation round Romania has improved its ability to freeze, seize and confiscate the proceeds and instrumentalities of domestic predicates. It has adopted the relevant National Asset Recovery Strategy and established NAMSA that has demonstrated impressive results within the short period of time of its operation.

916. The NAMSA, which also acts as the Romanian asset recovery office, is the competent body to dispose assets obtained following the execution of a confiscation order and has the mandate to negotiate and sign asset sharing agreements. NAMSA has recorded the execution of 41 international confiscation orders, but did not specify how many of those were related to ML. The case studies provided by NAMSA (see IO.8) indicate that the Romanian authorities have been able to confiscate assets on the request of different jurisdictions and share the confiscated assets based on bilateral agreements.

938. NAMSA receives requests from Romanian judicial authorities and requests assistance from ARO/CARIN Offices in foreign jurisdictions (requests tracking and identification of criminal proceeds).

Table 8.9: Outgoing requests sent through the ARO / CARIN networks

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	2017	2018	2019	2020	2021	31.06.2022	Total
Total number of requests (all crimes)	119	121	82	79	154	106	661
Sent requests in relation to ML offences	32	37	30	16	37	4	156
Executed	32	37	30	16	37	4	156
Refused	0	0	0	0	0	0	0
Average time for execution (days)	<7	<7	<7	<7	<7	<7	<7

939. Requests to identify assets were sent by NAMSA to a wide variety of countries. Requests for additional information from foreign AROs (relating to a number of predicate offences) by the Police, NAD, DIOCT and judges are transmitted through the NAMSA. The overall proportion of outgoing requests related to ML (compared to other criminal offences) is significant and has been around 25%. Still, a sharp decline in ML-related requests was observed in 2022.

940. The above statistics do not provide evidence that use of the ARO network to identify and trace assets in foreign jurisdictions is extensive; thus, the mandate and capacity of the NAMSA is significantly under used. Over the years, the most prevalent predicate offences in ARO-to-ARO information exchange have been fraud, corruption, and tax evasion. This does not correspond entirely to the actual risk context of Romania, as, for example, human and drug trafficking is not in the picture. It is noted that incoming ML-related requests in ARO-to-ARO cooperation have been at least 2 times higher in comparison to outgoing requests All of the above shows that the mandate and capacity of the NAMSA could be used more extensively for tracing assets in ML investigations.

954. NAMSA receives requests from ARO/CARIN Offices to provide financial intelligence and information about assets under investigation in foreign jurisdictions that are held in Romania.

Table 8.14: Incoming requests received through the ARO / CARIN network

Table 8.14: Incoming requests received through the ARO / CARIN network

	2017		2018		2019		2020		2021		31.03.2022	
Incoming requests	ML	TF	ML	TF	ML	TF	ML	TF	ML	TF	ML	TF
Total number of requests (all crimes)	185		186		194		160		205		133	
Received requests in relation to ML/TF	69	1	73	0	65	1	53	0	76	2	40	0
Executed	69	1	73	0	65	1	53	0	76	2	40	0
Refused	0	0	0	0	0	0	0	0	0	0	0	0
Average time for execution (days)	<7	<7	<7		<7	<7	<7		<7	<7	<7	

955. Statistics provided by the authorities indicates that none of the incoming requests were refused and the average time for execution was below 7 days. The statistics also show that a significant proportion of incoming requests from foreign AROs are related to ML. Furthermore, during the assessment period, ARO received 41 international confiscation orders, which triggered NAMSA's activities with regard to sharing confiscated assets with the foreign jurisdictions; 13 of those were related to ML.

965. The NAMSA holds statistics on basic company information exchanged with the foreign counterparts in relation to ML/TF cases and the authority informs that there was no distinction made between basic and BO information throughout the review period. Outgoing requests for basic information have been significantly lower than incoming requests. There are no statistics available on requests for BO data as NAMSA advised that they started gathering data on BO in 2022.

Table 8.18: Incoming and outgoing requests of basic and BO information in ARO

Table 8.18: Incoming and outgoing requests of basic and BO information in ARO

	2017		2018		2019		2020		2021		30.06.2022	
	Basic	BO	Basic	BO	Basic	BO	Basic	BO	Basic	BO	Basic	BO
Requests received	9	n/a	23	n/a	20	n/a	5	n/a	14	n/a	14	8
Requests executed	9	n/a	23	n/a	20	n/a	5	n/a	14	n/a	14	8
Requests refused	0	n/a	0	n/a	0	n/a	0	n/a	0	n/a	0	0
Requests sent	9	n/a	1	n/a	8	n/a	9	n/a	5	n/a	0	0
Responses received	9	n/a	1	n/a	8	n/a	9	n/a	5	n/a	0	0
Requests refused	0	n/a	0	n/a	0	n/a	0	n/a	0	n/a	0	0

The prosecution authorities (via appointed police officers from the structures for fighting organised crime and structures for fighting economic crime) can also access the DCOC - PATRIMVEN database from the Fiscal Administration to identify declared incomes, movable and immovable assets (cars and real estate) for which taxes are paid and also the register of bank accounts and safe deposit boxes, NTRO, financial information and analysis from the NOPCML-FIU, and assets held abroad through NAMSA. NAMSA has direct access to the following databases: Population Databases (this includes personal information, passport information and vehicle information), the Aircraft Register, Company Register, Boat Register, On-line Land Register, Bank Account Register, Fiscal Administration databases (information about incomes, beneficial owner etc.), Border Police and General Immigration Inspectorate databases. NAMSA has established in 2015 and according to law it is obliged to cooperate with the competent Romanian public authorities and institutions, with a view to identifying and tracing property that may be subject to precautionary measures in the course of criminal judicial proceedings, special or extended confiscation, by transmitting data and information to which it has direct or indirect access (Law no. 318/2015 on the establishment, organisation and functioning of the NAMSA, Art. 4(1)).

Recommendation 4 - Confiscation and provisional measures

Criterion 4.2 - Romania has measures, including legislative measures, that enable competent authorities to:

(c) Take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation. When property is seized for confiscation, a general prohibition on disposal of the asset comes into effect and any transactions entered in violation of the prohibition are considered void, unless the transaction was done in good faith (Civil Code, Art.116). In addition to provisional measures to prevent any dealing, transfer, or disposal of property subject to confiscation (see above) the CPC 225 provides opportunity to carry out interlocutory sales of movable and immovable assets (CPC, Art 2521). According to authorities, these provisions were introduced in order to preserve the value of the seized assets and to guarantee the effective execution of confiscation. NAMSA has clear duties management of frozen/seized assets and conduct interlocutory sales (Law 318/2015, Articles 27, 28, 29 and the following).

Criterion 4.4 - Mechanisms are in place to manage, and where necessary, dispose of seized and confiscated assets. Romania has mechanisms for managing and, when necessary, disposing of property frozen, seized through NASMA (established in 2015 and became fully operational in 2016) which is responsible for managing and when necessary, disposing of frozen/seized property (Law 318/2015, Articles 27, 28, 29 and the following). NAMSA has responsibility to secure and manage frozen/seized assets as well as to manage national integrate electronical system of criminal assets (Law 318/2005, Art.3).

Confiscated assets of any type, entered into the state's private property and that fulfil the conditions for being traded, are sold by the fiscal bodies (Fiscal Administration and its subordinated units). Procedures are in place to evaluate and manage the sale of assets (GEO No

14/2007), possibility of public and social reuse of mobile confiscated assets (GEO No 14/2007) and selling confiscated immovable property (Law no. 216/2016). Regarding confiscating assets NAMSA has a limited mandate regarding the procedure for social or public reuse of imovable assets. If in 45 days from the date an imovable confiscated asset is evaluated there is now 226 decision of NAMSA on reuse, the asset is sold by the Fiscal Administration. Some categories of products are exploited by other state authorities applying special procedures regulated by other normative acts (e.g., goods described in Art. 5(2) of GEO 14/2007 – military goods, medical goods, objects of worship and cultural heritage, drug precursors, toxic substances and preparations, nuclear and radioactive materials, etc.).

Criterion 38.3 - Romanian authorities can co-ordinate seizure and confiscation by formal and informal channels of cooperation. Eurojust, EJM, ARO and CARIN networks as well as JIAs and liaison officers are used to coordinate the identification, freezing, seizing and confiscation of property. CPC provides the set up for managing and disposing frozen and seized assets during criminal proceedings (Title V Chapter III). The NAMSA - central authority, that plays a role of ARO, is also responsible for the management of frozen, seized and confiscated assets as well as for disposition of such property when necessary. After the seizure of the assets, the owner of the assets is informed that the assets can be sold before the final verdict. Following the amendments of CPC from July 24th, 2022, the interlocutory sale of immovable property is only possible upon receipt of the owner's request or approval (Art. 2521(1)). Still, the confiscated assets (both, movable and immovable) are transferred to the property of the state and may be disposed, or, in case of immovable property, may be reused for social or public purposes.

Criterion 38.4 - Upon approval of the Minister of Justice, the NAMSA is authorized to negotiate and facilitate the conclusions of bilateral agreements for sharing of confiscated assets (Art. 324, Law no. 302/2004 corroborated with art.42 of Law no. 318/2015). If the confiscated amount is below EUR 10 000 (or equivalent in foreign currency), the assets are transferred to the state budget. If the value of confiscated assets is higher than the equivalent of EUR 10 000, 50% of the confiscated assets will be transferred to the state who issued the confiscation order. If the case refers to confiscation in foreign jurisdiction based on Romanian court decision, the NAMSA is authorised to negotiate the percentage of confiscated assets to be shared with the requested state, which executed the confiscation.

Criterion 40.1 - The NOPCML-FIU has the authority to exchange wide variety of information in relation to ML, associated predicate offences and TF with the foreign FIUs as well as with the other competent authorities both spontaneously and upon request (AML/CFT Law Art. 36 (1) and Art. 39 (3q)). The central registers and the NOPCML-FIU have the ability to provide information on the beneficial owners of the legal entities to the competent authorities and FIUs of other EU Member States; this information should be communicated in a timely manner and free of charge (AML/CFT Law Art 19 (1), (5), (11)). The AML/CFT Law also provides for the possibility of cooperation between financial supervisors and the competent authorities to ensure an effective supervision; special emphasis on cooperation with the competent authorities from other EU

Member States on which territory the supervised entity headquartered in Romania performs its economic activities (Art. 26 (7)). Additionally, the AML/CFT Law allows supervisory authorities to conclude cooperation agreements with the competent authorities of third countries that have similar responsibilities to the Romanian supervisory authorities (Art. 381(6)). The NAMSA is authorised to exchange wide variety of information with the other AROs as well as foreign entities responsible for asset management (Law No. 318/2015 Art. 20-23). Romanian Police can exchange financial information (Art. 11 and 12 of the Government Ordinance 9/2021).

Criterion 40.2 - (a) AML/CFT Law, Law 302/2004 and Law 39/2003 stipulate the lawful basis for international cooperation (please also see Criterion 40.1).

(d) The financial intelligence exchange with the foreign FIUs and police cooperation with foreign LEAs does not require approval from other national authorities. The AML/CFT Law requires the NOPCML-FIU to collect requested information from FIs, DNFBPs and VASPs promptly and respond to the requests of foreign FIUs in a timely manner (Art. 36 (5), (6)). The NOPCML-FIU has internal guidelines for prioritisation of requests (PO 09.02 No. 447/2021). Additionally, the NOPCML-FIU follows the Egmont principles for prioritising the timely execution of requests. The processing and the deadlines for international police cooperation are expressly stipulated (GEO no. 103/2006) and the prioritisation of requests is carried out according to the urgency applied by the applicant. Some authorities, such as RIS, supervisors, NAMSA, did not provide information on legal acts or internal guidelines, where prioritisation process and the timeliness (e.g., deadlines for responding) are stipulated for other forms of international cooperation, especially concerning non-EU countries. The RIS informs that commonly the deadline for responding is up to 30 days.

(e) The AML/CFT Law provides the NOPCML-FIU and other supervisory authorities clear process for safeguarding the information received (Art. 36 (1), (3), (8), Art. 381 (1), (7)). In safeguarding the information received from foreign counterparties Police relies on Data Processing Regulations by Interpol as well as Europol Regulation, Law 363/2018. Some authorities, such as RIS, supervisors, NAMSA did not provide information on the process for safeguarding the information received from foreign counterparties.

Criterion 40.3 - Romania has the EU instruments as well as multilateral and bilateral instruments in place for international cooperation. Signing memoranda of understanding with foreign competent authorities is not a prerequisite for financial information exchange in Romania.

The NBR has concluded 117 multiple bilateral MOUs with corresponding foreign national authorities as well as multiple multilateral agreements with the ECB and EU national competent authorities based on the powers stipulated in the GEP 99/2006 (Art. 184). Similarly, the FSA the NAMSA have the authority to negotiate MoUs and agreements with foreign counterparties.

Criterion 40.4 - There are no specific legal requirements to provide feedback to requesting foreign competent authorities on the use and usefulness of the information and assistance obtained from them. As a member of Egmont, the NOPCML-FIU is bound by the Egmont Principles for Information

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Exchange, which provides that feedback to foreign FIUs should be given upon request and also spontaneously and this also stipulated in the internal procedures of the NOPCML-FIU (OP 09.02) The regulations for the Police stipulate that each request from foreign authorities should be addressed and dealt with; the authorities advised that the requests on feedback are handled as any other requests (GEO No. 103/2006). For the Police and for NAMSA the obligation to provide feedback is derived from the usage of international instruments for international cooperation. Requirement to provide feedback is also embedded to several bilateral and multilateral cooperation agreements.

Criterion 40.17 - LEAs can exchange information available domestically with foreign counterparts for intelligence purposes. Information for investigative purposes can be provided to foreign counterparts only through judicial cooperation through MLA process by prosecutors' offices. The Centre for International Police Cooperation is the central national authority in the field of international police cooperation. Being part of the Interpol and Europol cooperation and information exchange, the Police are able to exchange domestically available information with foreign counterparts. Similarly, the NAMSA as part of ARO and CARIN networks can exchange domestically available information with the foreign counterparts (Law 318/2015). No information was provided on information exchange with foreign counterparts for intelligence and/or investigative purposes.