



# Asset recovery legislation – best practices



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Asset recovery tools are integral to combatting corruption, organised crime, sanctions evasion and other profit-motivated crimes. However, in many states, the range of asset recovery tools available to law enforcement and criminal justice agencies is limited.

This quick guide examines the established good practices in asset recovery legislation as well as less conventional, broader measures. It shows how states can widen their asset recovery toolkit and increase the potential for asset recovery success.

It is drawn from a comparative study of good practices in asset recovery legislation in selected Organization for Security and Co-Operation in Europe (OSCE) participating States, published as [Working Paper 51](#) in March 2024 by the Basel Institute on Governance and the OSCE.

## **What are the established good practices in illicit asset recovery legislation?**

As a baseline, states should have conviction based mechanisms that capture the wide variety of assets that can be derived from an offence, as well as any instrumentalities that were used in the offence.

Ideally, states should also implement broader extended confiscation measures that can be applied to target additional assets held by a convicted person that have not demonstrably been derived from legal sources.

Both these traditional and extended measures should include broad definitions regarding the type of assets that can be targeted. Their scope should cover a wide range of situations where assets have been converted or transferred. They should also consider the rights of bona fide third parties.

## **How can states go beyond criminal confiscation?**

While *conviction based* confiscation measures are a foundation for asset recovery, and an ideal first option for asset recovery efforts, the ease with which criminals can disguise and move assets in the modern world means that it is often impossible for enforcement agencies to reach the high criminal evidential thresholds required for a conviction to activate these mechanisms. Additionally, it is often difficult to link an asset to a specific criminal activity.

Consequently, less traditional asset recovery tools make it more possible for agencies to serve the public interest of stripping criminals of the proceeds of their crimes through either lowering the standard of proof required to achieve confiscation or through permitting a court to reverse the burden of proof onto owners of potential illicit assets in certain situations.

Less traditional but somewhat established asset recovery mechanisms to expand the situations in which confiscation is possible include:

- Classic non-conviction based confiscation mechanisms to permit the recovery of illicitly sourced assets where a criminal proceeding has commenced but cannot be completed – potentially at a lower standard of proof.
- Civil recovery mechanisms that are not dependent on the existence of a criminal proceeding, and which permit states to seek confiscation when they can prove – to a civil standard – that certain assets have been derived from crime.

Some states have also introduced additional, arguably broader legislative mechanisms. These include:

- Criminal and civil illicit enrichment mechanisms that target “unexplained wealth” and permit the confiscation of assets purely on the basis that the person controlling them is unable or unwilling to demonstrate the legal sources from which they were derived.
- Information-gathering unexplained wealth orders to complement civil recovery proceedings, which compel targets to provide an explanation regarding the sources of their property.
- Additional mechanisms that permit presumptions of criminality to be made in limited situations – for instance when a person is connected to an organised crime or terrorist group.

## **Are these broader mechanisms internationally recognised?**

While such mechanisms are not always as widely recommended at an international level, they are increasingly being recognised as good practices. Criminal illicit enrichment laws, for example, are recommended by three international conventions: the United Nations Convention Against Corruption (Article 20), the Inter-American Convention Against Corruption (Article 9) and the African Union Convention on Preventing and Combating Corruption (Articles 1, 8).

The European Council has recently adopted a directive that obligates states to introduce mechanisms enabling the confiscation of unexplained wealth that can be linked to criminal organisations. Moreover, a requirement to introduce non-conviction based confiscation mechanisms was included in the Financial Action Task Force’s International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation in November 2023.

States without these broader legislative mechanisms should assess whether their asset recovery legislative frameworks could benefit from the experience and success of the less established mechanisms of other states. This would help them to identify any innovative mechanisms – or even minor reforms to laws, procedures and resource allocations – that may strengthen their own capacity to identify and justly recover criminal assets.

## **What do states need to consider when broadening their asset recovery toolkit?**

The introduction of any of the above mechanisms should be considered in the context of legal rights. It is important that any newly implemented laws are tested to ensure that they do not unreasonably infringe on established rights such as the right to enjoyment of property or the presumption of innocence.

A significant amount of existing case law, however, including from the European Court of Human Rights, demonstrates that it is possible to construct and apply such mechanisms in line with established legal protections.

Moreover, for any asset recovery mechanism enacted by a state, it is important that governments provide the requisite resources to the agencies tasked with applying them. Experience has shown that proper resourcing is a significant factor in the success of any new asset recovery law.

## **What else can states do to increase their asset recovery success?**

To increase the potential for asset recovery success, states can implement broader measures to combat money laundering and the proceeds of crime. This can include:

- Drafting relevant offences – such as money laundering or sanctions evasion offences – to have a wide scope of application.
- Exploring initiatives to increase their capacity to engage in both incoming and outgoing mutual legal assistance – through once again devoting the requisite resources to this function as well as taking constructive approaches to providing assistance to foreign countries.
- Seeking to reinforce their anti-money laundering frameworks (i.e., in line with the Financial Action Task Force standards) so that they are robust enough to detect and trace any criminal assets moving through legitimate markets.

Finally, to ensure that any recovered assets are repurposed effectively, states should introduce and use clear provisions regarding the disposal and sharing of confiscated assets, potentially keeping in mind social or specific purposes for which they can best be used.

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