



# The disposal and sharing of confiscated assets – best practices



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Asset recovery is a critical tool in the fight against corruption and organised crime. But what happens after assets have been confiscated? How can they be most effectively repurposed, in order to contribute to sustainable and equitable development?

This Quick Guide will examine the various approaches that states take along these lines – how they allocate recovered funds towards general government spending, redirect assets towards public interest causes or repatriate assets to their country of origin.

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 OSCE.

## **Assets designated towards general use by the state**

The most basic approach to the disposal and reuse of recovered assets is for a state to simply place these proceeds under the control of the treasury. For instance, in Ireland, any funds recovered under the Proceeds of Crime Act (or any proceeds from the sale of other recovered properties) are transferred to the Exchequer of Ireland.

An approach recommended by the Financial Action Task Force in this regard is to create a designated “asset forfeiture fund” into which either all, or a portion, of the confiscated property can be deposited and redirected towards critical public sectors (e.g., law enforcement, health or education) or be used for other appropriate purposes. For example, in Malta, assets confiscated by the Asset Recovery Bureau under the Proceeds of Crime Act are directed towards the state’s “Consolidated Fund”.

## **Specific designation of assets to law enforcement agencies tasked with confiscation**

Some countries permit the allocation of confiscated funds specifically to asset recovery-related enforcement agencies to increase their overall ability to recover criminal assets.

For example, in France, the Criminal Procedure Code specifically permits its main asset management agency to retain a capped portion of the assets under its management that are subjected to final confiscation orders.

Similarly, through the UK’s Asset Recovery Incentivisation Scheme, confiscated assets are redistributed to law enforcement agencies with asset recovery responsibilities, with the objective of providing “operational partners with incentives to pursue asset recovery as a contribution to the overall aims of cutting crime and delivering justice”. Under this scheme, recovered funds are generally split between the UK’s Home Office (50 per cent) and enforcement agencies (50 per cent). Between the relevant enforcement agencies, the funds received are further divided on a proportional basis depending on the relative contribution of each agency and the level of expenditure incurred.

It should be noted, however, that the re-allocation of confiscated funds to enforcement agencies has received criticism in some

jurisdictions. In the US, for example, laws permitting state enforcement agencies to retain funds confiscated through forfeiture provisions have been questioned on the basis that it creates a situation where these agencies are motivated to “police for profit”. Consequently, if taking this approach, countries should be mindful that such policies do not distort the decision making process or create inappropriate incentives within law enforcement agencies.

## **Redirection of confiscated funds towards social causes**

States often specifically designate varying amounts of recovered funds towards social causes.

For example, Scotland takes a different approach to the rest of the UK as described above, and diverts assets recovered under the Proceeds of Crime Act to a CashBack for Communities programme, which in turn invests these funds into “community programmes, facilities and activities largely, but not exclusively, for young people at risk of turning to crime and anti-social behaviour as a way of life”.

In a similar vein, a portion of the assets that are confiscated under Italy's anti-mafia law are redirected specifically for social purposes.

## **Redirection of confiscated funds towards specific other causes**

Less commonly, states may also introduce legislation which stipulates that assets recovered in certain circumstances are repurposed for a specific cause.

An example is the US Consolidated Appropriations Act, introduced in December 2022 in the context of the Russian war of aggression against Ukraine. Under this law, if a Russian-linked asset is subject to a sanctions regime, and is subsequently forfeited through a judicial procedure (e.g., if it is proven to be the proceeds of a sanctions violation offence) then this asset can be directed to the Secretary of State for the purpose of providing “assistance to Ukraine to remediate the harms of Russian aggression...”.

## **Repatriation/sharing of assets in international cases**

If confiscated assets have originated from another country, it is considered best practice for states to take the necessary measures to enable the sharing or complete return of these confiscated assets with/to the country of origin – particularly when the confiscation resulted from a coordinated effort of each country's enforcement authorities.

For example, if assets from a foreign country are confiscated in the US through either conviction based or non-conviction based confiscation mechanisms, the Attorney General and/or Secretary of the Treasury is statutorily empowered to remit these assets back to their country of origin through an international agreement. The US used these powers to authorise the return of approximately USD 1.2 billion that had been misappropriated from Malaysia's investment development fund.

Similarly, a 2022 policy paper published by the UK Home Office obligates the UK to return foreign-sourced proceeds of crimes covered by the UN Convention Against Corruption (UNCAC) to their country of origin. While the paper outlines that the UK's default position in such circumstances will be to retain any "reasonable expenses" that were incurred, it also has the discretion to return the assets in full to the originating country in certain circumstances (for example if the country is on the Organisation for Economic Co-operation and Development's list of countries eligible for official development assistance).

Switzerland also outlines an asset-sharing procedure in its Federal Act on the Division of Forfeited Assets. The Act requires that foreign-sourced proceeds of crime are shared on a proportional basis, with 50 per cent returned to the relevant country, 30 per cent retained by the Federal Government of Switzerland, and 20 per cent to the cantons in which the forfeited assets were located.

Some countries also take a slightly different approach, particularly in the context of corruption, and do not return assets directly to the control of countries of origin. Instead, assets are returned via development-focused initiatives. For example, under France's act on inclusive development and the fight against global inequalities, if a formal request is received from a country of origin, a portion of the assets in question can be returned to that foreign state via development actions which are managed in co-operation with the foreign state (such as infrastructure projects and support for civil society actions).

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