

ANNEX I on Spanish legislation.

I.- FREEZING ORDER

DESTRUCTION OF ASSETS.

SPANISH CRIMINAL CODE OF PROCEDURE CODE (SCCP)

Unofficial translation into EN

Article 367 a.

Judicial effects will, in criminal law, considered to be all assets placed at the disposal of the courts, attached, seized or apprehended during the course of the criminal proceedings.

Article 367 b.

1. The destruction of the judicial effects may be ordered, leaving sufficient samples, where it is necessary or appropriate due to the nature of the effects themselves or due to the real or potential danger involved in their storage or custody, after hearing the Public Prosecutor and the owner, if known, or the person in whose possession the effects it is intended to destroy were found.

Where toxic drugs, narcotics or psychotropic substances are concerned, the administrative authority holding custody of them, once the relevant analytical reports have been carried out, ensuring conservation of the minimal, essential samples which, in accordance with scientific criteria, are needed to ensure later testing or investigation, and after notification to the Examining Magistrate, will proceed with their immediate destruction if, after one month has passed since the reports, the judicial authority has not ordered conservation of such substances in their entirety with a grounded decision.

At any event, whatever is conserved will always be kept at the disposal of the competent judicial body.

2. In all cases, the Court Clerk will draw up the appropriate court record and, if destruction has been agreed, there must be evidence on the records of the nature, grade, amount, weight and measurement of the effects destroyed. If there has been no prior appraisal, a record will also be made of their value if this would be impossible to set after their destruction.

3. The provisions of the two previous paragraphs are also applicable to effects seized in relation to the commission of crimes against intellectual and industrial property.

They may also be destroyed early once such effects have been expertly examined, ensuring conservation of such samples as may be necessary to ensure later testing or investigations, unless the judicial authority agrees to their entire conservation within a period of one month from the request for destruction by a reasoned decision.

4. If the objects cannot, due to their nature, be conserved in their original condition, the Judge will decide as they deem fit in order to conserve them in the best possible manner.

Article 367 c.

1. Judicial effects which are legal trade may be sold, before the trial, as long as they are exhibits or pieces of evidence or must remain at the expense of the proceedings, in any of the following cases:

a) Where they are perishable.

b) Where their owner expressly abandons them.

c) Where the costs of conservation and storage are higher than the value of the object itself.

d) Where its conservation may be a danger to public health or safety, or may give rise to a significant decrease in its value, or may seriously affect its normal use and functioning.

e) Where the effects, without undergoing material impairment, substantially depreciate over the course of time.

f) Where the owner, having been duly requested about the destination of the judicial effect, makes no declaration for that purpose.

2. Where any of the cases provided for in the previous paragraph occurs, the judge, ex officio or at the request of the Public Prosecution Services, the parties or the Asset Recovery and Management Office, and after hearing the interested party, will agree the realisation of the judicial effects, unless any of the following circumstances occur:

a) An appeal lodged by the interested party against the attachment or decommission of the assets or effects is pending a decision.

b) The measure may be disproportionate, in the light of the effects it may have on the interested party and, in particular, on the greater or lesser relevance of the evidence that the cautionary decommission measure was based on.

3. Notwithstanding the provisions in the previous paragraphs, where the asset in question is attached in execution of an agreement adopted by a foreign judicial authority in application of the Law on mutual recognition of criminal judgments in the EU, it may not be sold without previous authorisation gathered from the foreign judicial authority.

Article 367 d.

1. Realisation of the judicial effects may consist of:

a) Delivery to non-profit making organisations or the Public Authorities.

b) Realisation by a specialist person or entity.

c) Public auction.

2. The judicial effect may be delivered to non-profit making organisations or the Public Authorities where it is of negligible value or it is foreseen that realisation by a specialist person or entity or by public auction would not be economical.

3. Realisation of judicial effects will be done in accordance with the regulatory procedure provided for. Notwithstanding the foregoing, prior to agreement, the Public Prosecution Service and the interested parties will be granted a hearing.

The proceeds of the realisation of the effects, assets, instruments and gains will be used for the expenses which were caused by conservation of the assets and in the procedure for their realisation and the surplus will be paid into the court or tribunal deposit account, being held for the payment of such civil liabilities and costs as are declared, as appropriate, during the proceedings. They may also be definitively totally or partially allotted, under the terms and using the procedure set by the regulations, to the Asset Recovery and Management Office and to the bodies of the Public Prosecution Service in charge of repressing the activities of criminal organisations. All of the above is without prejudice to the provisions on the Fund of assets decommissioned due to illegal drug trafficking and other related crimes.

In the case of realisation of an asset attached or decommissioned by order of a foreign judicial authority, the provisions of the Law on mutual recognition of criminal judgments in the European Union will apply.

Article 367 e.

1. Provisional use of the assets or effects decommissioned as a precautionary measure may be authorised in the following cases:

a) Where the circumstances set out in letters b) to f) of paragraph 1 of article 367 c, and the use of the effects will be more advantageous to the Administration than with early realisation, or their early realisation is not considered appropriate.

b) Where effects particularly suited to provision of a public service are concerned.

2. Where any of the cases provided for in the previous paragraph occurs, the judge, ex officio or at the request of the Public Prosecutor, the parties or the Asset Recovery and Management Office (hereinafter ORGA), and after hearing the interested party, will agree the provisional use of the judicial effects, unless any of the circumstances provided for in the second paragraph of paragraph 2 of article 367 c occur.

3. The ORGA will be responsible, in accordance with legal and regulatory provisions, for deciding on awarding the use of the assets decommissioned as a precautionary measure and on the conservation measures to be adopted. The office will notify the judge or court, and the Public Prosecutor, of its decision.

Article 367 f.

The judge or court, ex officio or at the request of the Public Prosecution Service, or the ORGA itself, may entrust the location, conservation and management of the effects, assets, instruments and gains arising from criminal activities committed within the framework of a criminal organisation to the ORGA.

The organisation and operation of that Office will be legally regulated.

II.- CONFISCATION: SPANISH CRIMINAL CODE (SCC)

Article 127

1. All penalties imposed for a malicious criminal offence shall lead to loss of the assets obtained therefrom and of the goods, means or instruments with which they were prepared or executed, as well as the gains obtained from the criminal offence, whatever the transformations these may have undergone.

2. In cases in which the Law foresees imposing a sentence of imprisonment exceeding one year for committing an reckless criminal offence, the Court may order the loss of the assets obtained thereby and of the assets, means or instruments with which this has been prepared or executed, as well as the gains from the criminal offence, whatever transformations they may have undergone.

3. If, for any circumstance, it were not possible to confiscate the assets stated in the preceding Sections of this Article, other assets corresponding to the equivalent value thereof, and to the gains that may have been obtained, shall be confiscated. The same shall apply in the case of confiscating certain goods, assets or gains, when their value is lower than at the time of acquisition.

Article 127 *bis*

1. The Court shall also order the confiscation of the goods, assets and gains pertaining to a person convicted of any of the following criminal offences when it is determined, based on well-founded objective evidence, that the goods or assets were obtained from a criminal activity, and their legal origin cannot be accredited:

- a) Criminal offences involving trafficking in human beings;
- b) Criminal offences related to prostitution and the sexual exploitation and corruption of minors and criminal offences of sexual abuse and aggression against minors under the age of sixteen;
- c) Computer-related criminal offences set forth in Sections 2 and 3 of Article 197 and Article 264;
- d) Criminal offences against property and against the socio-economic order of a reiterated nature and in case of recidivism;
- e) Criminal offences related to punishable insolvency;
- f) Criminal offences against intellectual or industrial property;
- g) Criminal offences of corruption in business;

- h) Criminal offences of receiving stolen goods set forth in Section 2 of Article 298;
- i) Criminal offences of money laundering;
- j) Criminal offences against the Inland Revenue and the Social Security;
- k) Criminal offences against workers' rights set forth in Articles 311 to 313;
- l) Criminal offences against the rights of foreign citizens;
- m) Criminal offences against public health set forth in Articles 368 to 373;
- n) Criminal offences of counterfeiting of currency;

- o) Criminal offences of bribery;

- p) Criminal offences of misappropriation;
- q) Criminal offences of terrorism;

- r) Criminal offences committed within a criminal organisation or group.

2. To the effects outlined in Section 1 of this Article, the following aspects shall be evaluated in particular, among others:

1. The disproportion between the goods and assets in question and the lawful income of the convicted individual.
2. The concealment of the ownership or any power of disposal over the goods or effects via the use of natural or legal persons or bodies without legal personality, or tax havens or territories with no taxation that hide or hinder the identification of the true ownership of the assets.
3. The transfer of the goods or assets via transactions that hinder or prevent ascertaining their location or destination and that have no valid legal or economic justification.

3. In these cases, the provisions set forth in Section 3 of the preceding Article shall also apply.

4. If the individual is subsequently convicted of criminal offences similar to those committed previously, the Judge or Court of Law shall assess the extent of the previous confiscation upon resolving the confiscation ordered in the new proceedings.

5. The confiscation referred to in this Article shall not be ordered when the criminal activities from which the goods or assets were obtained have prescribed or have already been subject to criminal proceedings, resulting in an acquittal or a ruling for acquittal with the status of *res judicata*.

Article 127 *ter*

1. The Judge or Court of Law may order the confiscation outlined in the preceding Articles even if no sentence has been handed down, when the unlawful financial position has been demonstrated in adversarial proceedings and in any of the following cases:

- a) That the subject is deceased or suffers from a chronic illness impeding his trial and that there is a risk that the criminal offences may prescribe;
- b) He is in a situation of default, preventing a trial within a reasonable period of time; or
- c) No sentence is handed down as the individual is exempt from criminal responsibility or said responsibility has been finalised.

2. The confiscation referred to in this Article may only be adopted against individuals who have been formally accused or against defendants for whom there is circumstantial evidence of criminality when the situations outlined in the preceding Section have prevented criminal proceedings from continuing.

Article 127 *quáter*

1. Courts may also order the confiscation of the goods, assets and gains referred to in the preceding Articles that have been transferred to third parties, or others of an equal value, in the following cases:

- a) In the case of assets and gains, when they were acquired with full knowledge that they were obtained from a criminal activity or when a diligent person would have had reasons to suspect their unlawful origin, given the circumstances of the case;
- b) In the case of other goods, when they were acquired with full knowledge that such an acquisition would hinder their confiscation or when a diligent person would have had reasons to suspect that such an acquisition would hinder their confiscation, given the circumstances of the case.

2. It shall be assumed, unless evidence to the contrary is produced, that the third party knew or had reasons to suspect that the goods in question were obtained from a criminal activity or that they were transferred to avoid confiscation, when the goods or assets were transferred for free or for a price below real market value.

Article 127 *quinquies*

1. Courts may also order the confiscation of goods, assets and gains obtained from the convict's prior criminal activity, when the following circumstances are fulfilled, cumulatively:

- a) That the convict is or has been convicted for any of the criminal offences referred to in Article 127 bis.1 of the Criminal Code;
- b) That the criminal offence was committed in the context of a continuous, prior criminal activity;
- c) That there is well-founded *prima facie* evidence that a significant part of the convict's assets was obtained through prior criminal activity.

Significant *prima facie* evidence includes:

1. A disproportion between the goods and assets in question and the lawful income of the convicted person;
2. The concealment of the ownership or any power of disposal over the goods or effects via the use of natural or legal persons or bodies without legal personality, or tax havens or territories with no taxation that hide or hinder the identification of the true ownership of the assets;
3. The transfer of the goods or assets via transactions that hinder or prevent ascertaining their location or destination and that have no valid legal or economic justification.

The provisions of the preceding Paragraph shall only apply when there is well-founded *prima facie* evidence that the subject has obtained gains over € 6,000 from his criminal activity.

2. To the effects outlined in the preceding Section, it shall be deemed that the criminal offence has been committed in the context of a continuous criminal activity when: three or more criminal offences from which he has obtained direct or indirect economic gain, or for a reiterated criminal activity including, at least, three criminal offences from which he obtained direct or indirect economic gain, or; b) When, during the six-year period prior to the commencement of the proceedings in which he was convicted for any of the criminal offences outlined in Article 127 bis of the Penal Code, he had been convicted for two or more criminal offences from which he obtained economic gain, or for a reiterated criminal activity including, at least, two criminal offences from which he obtained economic gain.

Article 127 *sexies*

To the effects outlined in the preceding Article, the following presumptions shall apply:

1. It shall be presumed that all goods acquired by the convict within the six years prior to the date of opening of criminal proceedings were obtained from his criminal activity.

To this effect, it shall be understood that the goods were acquired on the earliest date on which it can be demonstrated that they were in the possession of the subject.

2. It shall be presumed that all costs incurred by the convict during the period of time outlined in the first Paragraph of the preceding Sub-Paragraph, were paid with funds obtained from his criminal activity.

3. It shall be presumed that all of the goods outlined in Sub-Paragraph 1 were free of encumbrances when acquired.

The Judge or Court of Law may decide that the preceding presumptions are not to be applied in relation to certain goods, assets or gains when, given the specific circumstances of the case, they prove to be incorrect or disproportionate.

Article 127 septies

If it were not possible to proceed with the confiscation, in whole or in part, due to the nature or status of the goods, assets or gains in question, or for any other reason, the Judge or Court of Law may, via a ruling, order the confiscation of other goods, even those of lawful origin, owned by the individuals criminally liable for the criminal offence, with a value equal to that of the part of the confiscation initially decreed and not carried out.

The same shall apply in the case of confiscating certain goods, assets or gains, when their value is lower than at the time of acquisition.

Article 127 octies

1. In order to guarantee the effectiveness of the confiscation, the goods, means, instruments and gains may be apprehended or seized and placed in storage by the judicial authority from the outset of the proceedings.

2. Pursuant to provisions contained in the Criminal Procedure Act, the Judge or Court of Law may decree the advance disposal or provisional use of the goods and assets seized.

3. The goods, instruments and gains confiscated via a final ruling, except those allocated to pay compensation to the victims, shall be assigned to the State, and shall be used as provided for by law or regulation.

Article 128

When those assets and instruments are of lawful trade and their value is not proportional to the nature or severity of the criminal offence, or when the civil liabilities have been fully settled, the Judge or Court of Law may decide not to order the confiscation, or may order only a partial one.

Article 129

1. In the case of criminal offences committed within, in collaboration with, or through or by means of companies, organisations, groups or any other kind of entities or groups of persons that, due to not having legal personality, are not included in Article 31 bis, the Judge or Court of Law may hand down a reasoned resolution ordering on those companies, organisations, groups, entities or groups one or several ancillary consequences of the relevant punishment imposed on the offender, with the content

foreseen in Sub-Paragraphs c) to g) of Section 7 of Article 33. Definitive prohibition to carry out any activity, even if lawful, can also be decreed.

2. The ancillary consequences referred to in the preceding Section may only be applied to firms, organisations, groups or entities or associations mentioned therein when this Code specifically foresees this, or in the case of any of the criminal offences for which it allows the criminal accountability of legal persons to be demanded.

3. Temporary closure of premises or establishments, suspension of the corporate activities and judicial intervention might also be ordered by the Investigating Judge as a provisional measure during the investigation proceedings for the purposes established in this Article and within the limits stated in Article 33.7.

Article 129 bis

In the case of individuals convicted of having perpetrated a serious criminal offence against life, people's integrity, liberty, sexual freedom or indemnity, or of terrorism, or any other serious criminal offence that entails a serious risk to the life, health or physical integrity of individuals when, based on the circumstances of the criminal offence, background, the evaluation of his personality or any other available information, it can be deduced that there is a significant risk of repeat offending, the Judge or Court of Law may order that biological samples be taken and analysed in order to obtain DNA identifiers and to record said DNA in the police database. Only the necessary analyses may be conducted in order to obtain the DNA identifiers providing, exclusively, genetic information identifying the person and his gender. If the individual in question opposes the collection of the samples, compulsory enforcement may be imposed via the minimum coercive measures necessary for enforcement, which in all cases must be proportionate to the circumstances of the case and respectful of his dignity.

SPANISH CRIMINAL CODE OF PROCEDURE (SCCP)

CHAPTER I

On the intervention in the criminal proceedings of third parties who may be affected by confiscation Article 803 b. i. *Judicial decision on summons to the proceedings.*

1. The judge or court will order, ex officio or at the request of a party, the intervention in the criminal proceedings of such persons as may be affected by confiscation where there is a record of facts from which the following could reasonably ensue:
 - a) that the asset whose confiscation is sought belongs to a third party other than the accused, or
 - b) that there are third party holders of rights over the asset whose confiscation is sought who may be affected by it.
2. Intervention of the affected third parties may be foregone in the proceedings where:
 - a) it has not been possible to identify or locate the possible holder of the rights over the asset whose confiscation is sought, or
 - b) there are facts from which it may arise that the information grounding the claim to intervention in the proceedings is not true, or the alleged owners of the assets whose confiscation is sought are intermediaries linked to the accused or who acted in collusion with them.
3. An appeal may be lodged against the decision in which the judge declares the intervention of the third party in the proceedings to be inappropriate.
4. If the party affected by the confiscation declared to the judge or court that they did not oppose the confiscation, their appearance in the proceedings will not be ordered, or the appearance ordered will end.
5. In the event that it is agreed to receive a statement from the party affected by the confiscation, they will be informed of the content of article 416.

Article 803 b. ii. *Particulars on the intervention and summons to court of the affected third party.*

1. The person who may be affected by the confiscation may take part in the criminal proceedings once their intervention is ordered, although this intervention will be limited to such aspects as directly affect their assets, rights or legal position and may not be extended to matters relating to the criminal liability of the accused.
2. In order for the third party affected by the confiscation to intervene, assistance from a lawyer will be compulsory.

3. The person affected by the confiscation will be summoned to court in accordance with the provisions of this Act. The summons will indicate that the trial may be held in their absence and that it may, at any event, decide on the confiscation sought.

The person affected by the confiscation may act through their legal representative at the trial, without it being necessary for them to be physically present at it.

4. Non-appearance of the person affected by the confiscation will not prevent the trial from continuing.

Article 803 b. iii. *Notification and challenge of the judgment.*

The judgment ordering the confiscation will be notified to the person affected by it, even though they did not appear in the proceedings, without prejudice to the provisions of paragraph 2 of article 803 b. i. The person affected may lodge the appeals provided for in the law against the judgment, although such appeal must be restricted to the rulings directly affecting their assets, rights or legal position, and may not extend to matters related to the criminal liability of the accused.

Article 803 b. iv. *Non-appearance of the third party affected by the confiscation.*

1. Non-appearance of the third party affected by the confiscation who was summoned in accordance with the provisions of this law will have the effect of them being declared in default. The default of the third party affected will be governed by the rules set out in the Civil Procedure Act regarding a defendant in default, including those provided for notifications, appeals against the judgment and rescission of the final judgment at the request of the person in default, although, in the case of rescission of the judgment, this will be limited to the rulings on assets, rights or legal position which directly affect the third party. In this case, a certification will be sent to the court that passed judgment in the first instance, if a different court passed the rescission of the judgment and, thereafter, the following rules will be adhered to:

a) The third party will be granted a period of ten days to submit a statement of defence against the claim for confiscation, proposing evidence, in relation to the relevant facts for the pronouncement affecting them.

b) Once the statement has been submitted within the time limit, the court will decide on the admissibility of the evidence in a court order and, in accordance with the general rules, will set a date for the hearing, the purpose of which will be limited to hearing the civil action proposed against the third party or the effect on their assets, rights or legal position caused by the criminal proceedings.

c) The appeals provided for in this law may be lodged against the judgment.

If a statement of defence against the claim is not submitted within the time limit or the third party does not appear, duly represented, at the hearing, judgment will be passed, without further ado, reverting to that rescinded in the affected rulings.

2. The same rights as provided for in the previous paragraph are granted to the third party affected who may not have had the opportunity to oppose the confiscation as they were unaware of its existence.

CHAPTER II

Procedure for autonomous confiscation

Article 803 b. V. *Subject.*

1. The action by which confiscation of assets, effects or gains, or their equivalent value may be the subject of the separate confiscation proceedings regulated in this Title, where they have not already been taken, with the exception of the provisions of article 803 b. XVI.

2. In particular, this procedure will be applicable in the following cases:

- a) Where the prosecutor has limited their statement of case to requesting confiscation of assets, expressly reserving their determination for this procedure.
- b) Where requested as a result of the commission of a punishable act whose culprit has died, or cannot be tried as they are in default or unable to appear at the trial.

3. In the event that the prosecutor reserves the action, separate confiscation proceedings may only be initiated when the proceedings ruling on the criminal liability of the accused have concluded with a final judgment.

Article 803 b. VI. *Jurisdiction.*

The following will have jurisdiction to hear the separate confiscation proceedings:

- a) the judge or court that passed the final judgment,
- b) the judge or court which may have been hearing a stayed criminal case, or
- c) the judge or court with jurisdiction to hear the trial where this has not opened, under the circumstances provided for in article 803 b. V.

Article 803 b. VII. *Proceedings.*

The rules regulating oral trials in Title III of Book II of the Civil Procedure Act, in as far as they are not contradictory to those provided for in this chapter, will be applicable to separate confiscation proceedings.

Article 803 b. VIII. *Public Prosecutor's exclusivity in bringing the action.*

The confiscation action in the separate confiscation proceedings will be exclusively brought by the Public Prosecutor.

Article 803 b. IX. *Assistance of a lawyer.*

The rules regulating the accused's right to the assistance of a lawyer, provided for in this Act, will be applicable to all persons whose assets or rights may be affected by confiscation.

Article 803 b. X. *Eligibility and summons to the trial.*

1. The individuals against whom the action is directed due to their connection to the assets to be confiscated will be summoned to court as defendants.
2. The accused in default will be summoned by a notification addressed to their court representative in the stayed proceedings and by placing an edict on the court bulletin board.
3. The third party affected by the confiscation will be summoned in accordance with the provisions of paragraph 3 of article 803 b. II.

Article 803 b. xi. *Appearance of the accused in default or with modified legal capacity.*

1. If the defendant declared in default in stayed proceedings does not appear in the separate confiscation proceedings, a procurator and lawyer will be appointed ex officio and will represent and defend them.
2. The appearance of the accused with modified legal capacity to appear in the stayed criminal proceedings in the separate confiscation proceedings will be governed by the rules in the Civil Procedure Act.

Article 803 b. xii. *Claim in application for separate confiscation.*

1. The claim for separate confiscation will be submitted in writing and will set out the following in separate, numbered paragraphs:
 - a) The persons the application is directed against and their addresses.
 - b) The asset or assets intended to be confiscated.

- c) The crime and its connection to the asset or assets.
- d) The criminal classification of the offence.
- e) The position of the person against whom the application in connection with the asset is directed.
- f) The legal grounds for confiscation.
- g) Proposal of evidence.
- h) The application for precautionary measures, justifying the suitability of their adoption to ensure effective confiscation, as appropriate.

2. Once the claim is admitted, the competent body will pass the following decisions:

- 1. It will order or refuse the precautionary measures sought.
- 2. It will notify the claim for confiscation to the eligible parties, who will be granted a time limit of twenty days to appear in the proceedings and submit a statement of defence to the claim for confiscation.
- 3. Once precautionary measures have been adopted, objection to them, or their amendment or lifting, and putting a replacement caution in place will be carried out in accordance with the provisions of Title VI of Book III of the Civil Procedure Act, in as far as it does not contradict the rules provided for in this chapter.

Article 803 b. XIII. *Statement of defence against the claim for confiscation.*

- 1. The statement of defence against the claim for confiscation will contain the pleas of the defendant, in the same numerical order as those in the statement of claim.
- 2. If the defendant does not lodge their statement of defence within the time limit granted, or if they withdraw from it, definitive confiscation of the assets, effects or gains, or for a value equivalent to them, will be ordered.

Article 803 b. XIV. *Decision on evidence and hearing.*

The competent body will decide on the evidence put forward by court order, which will set the date and time for the hearing in accordance with the general rules. This decision is not appealable, although the request for evidence may be repeated at the trial.

Article 803 b. XV. *Trial and judgment.*

1. The trial will be carried out in accordance with the provisions of article 433 of the Civil Procedure Act and the judge or court will pass judgment within 20 days of its conclusion, with one of the following rulings:

- 1. Uphold the claim for confiscation and order definitive confiscation of the assets.
- 2. Partially uphold the claim for confiscation and order definitive confiscation for the relevant amount. In this case, such precautionary measures as may have been ordered with respect to the remainder of the assets will become null and void.
- 3. Dismiss the claim for confiscation and declare that it is inappropriate as one of the grounds for objection occurs. In this case, all the precautionary measures which may have been ordered will become null and void.

2. Where the judgment upholds the claim for confiscation, in whole or in part, it will identify those suffering damages and set the appropriate compensation.

3. The award as to costs will be governed by the general rules provided for in this act.

Article 803 b. XVI. *Effects of the confiscation judgment.*

1. The judgment will set out the material effects of res judicata in relation to the persons against whom the action was taken and the case made, consisting of the relevant facts for approving confiscation, those relating to the crime and the situation against the assets of the defendant.

2. Other than the material effect of res judicata provided for in the previous paragraph, the content of the judgment in the separate confiscation proceedings will not be binding on the later trial of the accused, if any.

In the later criminal proceedings against the accused, if any, the confiscation of assets ruled on with the effect of res judicata in the separate confiscation proceedings will not be requested to be or be subject to the trial.

3. The confiscated assets will be destined as provided for in this act and in the Criminal Code.

4. Where confiscation was ordered for a specific value, the person in relation to whom this was ordered will be required to pay the relevant amount within the time limit set; or, otherwise, that they assign assets for a sufficient value over which the confiscation order may be made effective. If the request is not heeded, the confiscation order will be enforced in the manner provided for in the following article.

Article 803 b. XVII. *Investigation by the Public Prosecution Service.*

1. The Public Prosecution Service may, on its own, via the Asset Recovery and Management Office, or other authorities, or the members of the Judiciary Police, carry out the investigative measures needed to locate the assets or rights owned by the person in relation to whom the confiscation had been ordered.

The authorities and civil servants whose collaboration is requested by the Public Prosecution Service are under the obligation to provide it, with the warning of committing a crime of disobedience, unless the rules regulating their activity provide otherwise, or set limits or restrictions which must be adhered to, in which case they will send the prosecutor the grounds for their decision.

2. Where the prosecutor considers it necessary to carry out any investigative measures which must be authorised by the court, they will present a request to the judge or court that heard the confiscation proceedings.

3. Furthermore, the Public Prosecution Service may address financial institutions, public organisations and registries and individuals or incorporated entities so that they provide, within the framework of their specific regulations, a list of the assets of the enforcement debtor that they are aware of.

Article 803 b. XVIII. *Appeals and review of the final judgment.*

1. The rules regulating appeals applicable in fast-track criminal proceedings are applicable to separate confiscation proceedings.

2. The rules regulating review of final judgments are applicable to separate confiscation proceedings.

Article 803 b. XIX. *Non-appearance by the accused in default and the affected third party.*

Non-appearance of the accused in default and the affected third party in the separate confiscation proceedings will be governed by the provisions of article 803 b. IV.

Article 803 b. XX. *Joinder of the application for confiscation against the accused in default or person who is legally incapacitated in the case being brought against a different accused.*

In the event that the case brought against the accused in default or person who is legally incapacitated continues for the trial of one or more accused, the separate confiscation action against the former may be joindered to the same case.

Article 803 b. XXI. *Submission of a new application for confiscation.*

The Public Prosecutor may request the judge or court to issue a new confiscation order where:

- a) if the existence of assets, effects or gains is discovered, which should be covered by the confiscation but the existence or ownership of which was unknown when confiscation proceedings commenced, and
- b) there was no previous decision on the suitability of confiscating them.

III.- MUTUAL RECOGNITION:

LAW 23/2014, OF 20^o NOVEMBER, ON MUTUAL RECOGNITION OF JUDICIAL DECISIONS IN CRIMINAL MATTERS

TITLE VII : FREEZING ORDER (ART. 143-156).

TITLE VIII: CONFISCATION ORDER (ART. 157-165)

<https://www.ejn-crimjust.europa.eu/ejnupload/InfoAbout/English%20version%20LAW%2023%20of%202014.pdf>

IV.- ASSET RECOVERY AND MANAGEMENT OFFICE (ORGA)

Regulated by RD 948/2015 23 October

On the other hand, must also be mention the Office for Asset Recovery and Management (ORGA) which is not inside Courts competent for execute a confiscation order or establish a preventive seizure, but inside the Ministry of Justice).

Regulated by RD 948/2015 23 October, it is a specialized unit created in order to identify, search and locate assets, instruments and proceeds of crime located both within or outside Spanish territory, and also safeguarding and recovery of assets.

Office for Asset Recovery and Management is established and given responsibility for the tracking, recovery, conservation, administration and realization of assets derived from criminal activities in the terms provided by Criminal Law.

LEGAL FRAMEWORK, STATUS, OBJECTIVES, PROCEDURE AND SCOPE

1. - LEGAL FRAMEWORK

Article 10 of 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 urges Member States to take the necessary measures to establish centralised national offices «to ensure the adequate management of property frozen with a view to possible subsequent confiscation».

In Spain, this provision of the Directive has been included in the Sixth Additional Provision of the Code of Criminal Procedure, by which the Office for Asset Recovery and Management (ORGA) is established and given the responsibility for the tracking, recovery, conservation, administration and realisation of assets derived from criminal activities in the terms provided by criminal and procedural law.

Royal Decree 948/2015 of 23 October regulates the Office for Asset Recovery and Management, and Order JUS/188/2016 of 18 February determines the scope of action and the start of operation of the Office for Asset Recovery and Management as well as the opening of its Deposits and Consignments Account.

ORGA shall act when so entrusted by a competent Judge or Court, sua sponte or at the behest of the State Prosecutor Office or the Office itself. It shall also proceed to trace assets at the request of the Public Prosecution Service within the framework of its competences in the areas of criminal investigation, international legal cooperation and autonomous confiscation procedures, or in whatever other actions within the terms provided by criminal or procedural law.

The Office is also responsible for deciding on the use to be given to seized property and on the protection measures to be adopted, provided its provisional use is authorized by the judge.

2 .- STATUS

The Office is set out as an auxiliary administrative body within the Administration of Justice, with the purpose of fulfilling a significant role in locating and managing assets derived from crime, with the support of the institutional structure and the necessary financial and human resources, in order to facilitate the freezing and confiscation tasks of judges and courts within the framework of criminal proceedings.

It is, therefore, defined as a body within the State General Administration and an auxiliary for the Administration of Justice.

3.- OBJECTIVES

- Contributing to the recovery of proceeds of crimes referred to in Article 127 bis of the Criminal Code.
- Reducing costs derived from the management of seized and confiscated goods while at the same time discharging the courts from this task.
- Optimising the value of the product obtained so that it is sufficient to deal with the financial restitution to victims.
- Complying with the obligations arising from international cooperation and collaborating with the courts and the Public Prosecution Service in their functions concerning judicial assistance in criminal matters.
- By means of the Allocation Committee, transferring the product obtained to social purposes and to the strengthening of institutions aimed at fighting against organised crime.

4.- PROCEDURE AND SCOPE

- Action at the request of judges, courts or the Public Prosecution Service

Actions initiated at the request of judges, courts or the Prosecution Service, shall only refer to property seized or confiscated from 24 October 2015, effective date of Royal Decree 948/2015 of 23 October when ORGA became operational, onwards, and in relation to one of the criminal offences described in Article 127 bis of the Criminal Code.

-Action at the request of the ORGA itself

If action is initiated at the request of ORGA, the Office may act within the framework of any criminal activity whenever deemed appropriate in view of the nature or the special circumstances of the goods, with prior judicial approval and regardless of the date on which the goods have been confiscated or seized.

SUB-DIRECTORATE GENERAL FOR ASSET LOCALISATION AND RECOVERY

- Identification, search and location of assets, instruments and proceeds of crime located both within or outside national territory.
- Safeguarding and recovery of assets.
- Provision of the information obtained to the judicial authority or the competent international bodies and institutions.

SUB-DIRECTORATE GENERAL FOR ASSET PRESERVATION, ADMINISTRATION AND REALIZATION

- Conservation, management and administration of assets derived from crime.
- Management of the ORGA's Deposits and Consignments Account.
- Realisation of assets, if so agreed by a Judge or Court after confiscation, as well as advanced realisation of seized property.
- Technical advice to judicial bodies and the prosecution service regarding the enforcement of seizures and confiscations.
- Support the activity of the Committee for the allocation of the proceeds of crime.

MINISTRY OF JUSTICE CONTACT POINTS:

OFFICE FOR ASSET RECOVERY AND MANAGEMENT

San Bernardo, 19 1.^a planta – 28015 MADRID Tel.: (+34) 913 904 890 / 91 orga@mjusticia.es

S.G. FOR ASSET LOCALISATION AND RECOVERY

Tel.: (+34) 913 904 889 localizacionbienes.orga@mjusticia.es

S.G. FOR ASSET PRESERVATION, ADMINISTRATION AND REALISATION

Tel.: (+34) 913 904 912 administracionbienes.org@mjusticia.es

INTERNATIONAL COOPERATION spain.judicial.aro@mjusticia.es

5.- LINKS

Royal Decree 948/2015 of 23 October regulating the Asset Management and Recovery Office.

Order JUS/188/2016 of 18 February.

Sixth Additional Provision of the Code of Criminal Procedure.

Directive 2014/42/EU.