Soros Foundation Moldova

NEEDS ASSESSMENT REPORT OF THE CRIMINAL ASSETS RECOVERY AGENCY OF MOLDOVA

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ABBREVIATIONS

ARBI	Criminal Assets Recovery Agency of the Republic of Moldova
AMO	Asset Management Office
ARO	Asset Recovery Office
FIU	Financial Intelligence Unit
KPI	Key Performance Indicators
MER	Mutual Evaluation Report
MLA	Mutual Legal Assistance
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism
NAC	National Anticorruption Centre
NRA	National Risk Assessment
OPFML	Office for the Prevention and Fight against Money Laundering
OPG	Order of the Prosecutor General
PGO	Prosecutor-General's Office
RM	Republic of Moldova
SFM	Soros Foundation Moldova
SIA RBII	Registry of Unavailable Criminal Assets
AML/CFT	Prevention and combating of money laundering and terrorist financing

EXECUTIVE SUMMARY

This report assesses the needs of the Criminal Assets Recovery Agency (ARBI) of the Republic of Moldova (RM) vis-à-vis the asset recovery system of the RM. It identifies opportunities for enhancing the role of the ARBI when undertaking its responsibilities in the asset recovery process and opportunities to increase its effectiveness.

The RM has a comprehensive legal system and institutional framework to conduct both criminal and parallel financial investigations, and to seize and confiscate criminal assets. The relevant institutions engaged in the asset recovery system of the RM have sufficient awareness in identifying, tracing, and recovering criminal assets. However, despite the legislation and operational knowledge in place, the effectiveness of the asset recovery system remains low.

The RM established the ARBI in 2017 within the National Anticorruption Centre (NAC) to act both as the asset recovery office (ARO) and asset management office (AMO) of the RM. It also gave the ARBI powers to conduct parallel financial investigations when so delegated by another criminal investigation or prosecutorial body, in connection with several criminal offences. However, successive legal amendments since the establishment of the ARBI diluted its initial purpose. Moreover, the Criminal Procedure Code of the RM retains the same purpose for both the criminal and parallel financial investigations. It consequently limits the effectiveness of the asset recovery system of the RM in the identification, tracing, seizure, and confiscation of criminal assets.

Having established its asset recovery system, the RM has yet to develop its national strategy on asset recovery. The lack of a clear policy objective on asset recovery demonstrates limited political will from policymakers and legislators. This, in part, is explained by their general lack of knowledge of asset recovery, resulting in equating the *asset recovery process* with its last stage, the *recovery of assets*. The result is a policymaker or legislator reacting to the circumstances rather than planning and identifying challenges and opportunities in the effective implementation of the asset recovery process in the RM.

The overarching findings indicated above have been categorised and discussed in this needs assessment report, by establishing (i) the state of play; (ii) the role played by the ARBI; and (iii) challenges and opportunities stemming from the findings. This report additionally proposes a roadmap for implementing the recommendations deriving from this report, considering the relevant regulation on the planning and implementation of public policy documents.

The current asset recovery system of the RM is young and has not been able to develop itself fully, given the different legal amendments made over the last five years. Compounded to the problem are unrealistic expectations set by policymakers, legislators, civil society and media on their expected outcomes for certain high-profile asset recovery cases the RM has experienced since 2013. A limited understanding of the asset recovery process by these actors, a lack of pre-defined criteria to assess the performance of the asset recovery process in the RM, and a lack of management of expectations regarding timelines and expected outcomes for the recovery of assets have resulted in a situation that any success from the asset recovery system of the RM will likely be deemed a failure.

The opportunity is ripe to allow the ARBI to fully develop its potential in leading policymaking related to the asset recovery process in the RM, and to coordinate its responsibilities with other relevant institutions responsible for the asset recovery system of the RM. However, the RM will only succeed in its asset recovery efforts if concerted efforts and political will support the policy and operational levels to the ARBI and other relevant institutions interacting with the asset recovery system of the RM. Furthermore, establishing and defining relevant performance indicators will increase the transparency and accountability of the asset recovery system of the RM, thereby enabling a virtuous circle complete with checks and balances among all those involved.

1 INTRODUCTION

1.1 Background

The Soros Foundation Moldova (SFM) conducted a needs assessment of the Criminal Assets Recovery Agency (ARBI) of the Republic of Moldova (RM), to strengthen its institutional capacities and identify the opportunities for enhancing the role of the ARBI when undertaking its responsibilities within the context of the asset recovery system of the RM.

1.2 Purpose and objectives

The needs assessment of the ARBI focuses on its needs vis-à-vis the asset recovery system of the RM, identifying the strengths of the ARBI and highlighting opportunities to increase its effectiveness.

The needs assessment achieved the above purpose by means of the following objectives:

(i) To understand the roles, responsibilities, and obligations of the ARBI when implementing the asset recovery process through the asset recovery system of the RM.
(ii) To identify the strengths of the ARBI when undertaking its responsibilities, and establish its effectiveness vis-à-vis the asset recovery system of the RM.
(iii) To establish the opportunities for enhancing the role of the ARBI when implementing its roles, responsibilities, and obligations within the asset recovery system of the RM.

1.3 Methodology

This needs assessment has been carried out by undertaking the following steps:

(i) Review the applicable legislation and regulations underpinning the asset recovery process in the RM and assess the role the ARBI has in its implementation. This step allowed determining the level of technical compliance of the ARBI vis-à-vis the asset recovery system of the RM.
(ii) Review the implementation of relevant policies related to the responsibilities of the ARBI. It enabled assessing the operational implementation of the asset recovery system of the RM and the role played by ARBI in it. The combination of these two elements enables this assessment report to establish the level of effective implementation of the activities of the ARBI vis-à-vis the asset recovery system of the RM.
(iii) Identify the strengths of the ARBI when undertaking its responsibilities, and determine the opportunities for enhancing its role when implementing the asset recovery system of the RM.[1]
(iv) Develop a roadmap and an action plan based upon the findings of the three items above to increase the technical compliance and operational effectiveness of the ARBI vis-à-vis the asset recovery system of the RM.

1.4 Target audience

This needs assessment report of the ARBI targets (i) legislators and policymakers; (ii) civil society; and (iii) the media.

[1] The consultants sought to interview several authorities to prepare this needs assessment report. The consultants held 7 interviews with the ARBI, the Anti-Corruption Prosecutor's Office (APO) and the Prosecutor's Office for Combating Organised Crime and Special Cases (PCCOCS).

2 THE ASSET RECOVERY PROCESS

2.1 Overview

Asset recovery is the process whereby jurisdictions identify, trace, restrain, and confiscate the proceeds of crime,[2] whose nature, origin, and ownership the perpetrator of the criminal offence disguised.[3] It is an essential tool in combating serious, organised, and financial crime, including money laundering and corruption-related offences. However, unlike traditional crimes, where law enforcement arrives at a crime scene with physical evidence to collect, the asset recovery process generally deals with criminal offences which are not discovered until long after the crime has been committed.[4]

Broadly speaking, asset recovery[5] is a four-phased process, encompassing:[6]

(i) Intelligence gathering (pre-investigation), whereby law enforcement authorities receive, analyse, and verify sources of intelligence and information[7] which may initiate an investigation.[8]

(ii) Investigation, whereby the relevant authorities initiate an investigation based on the substantiated intelligence and information, to further relevant lines of inquiry and to determine whether (a) the alleged offence had been committed; and (b) whether the offence has generated direct or indirect proceeds and instrumentalities of crime.
Law enforcement and prosecutorial authorities substantiate the intelligence and information during this phase, converting them into admissible evidence. They will furthermore seek to seize any criminal proceeds during this phase.

(iii) Judicial, whereby the judicial authorities issue a judgment based on the facts of the case presented to it and, where applicable, determine the confiscation of the proceeds and instrumentalities of crime.

(iv) Realisation, whereby the confiscation order is affected, resulting in the actual confiscation of the proceeds of crime, their realisation in accordance with the applicable legislation, and their return to the relevant jurisdiction.

Throughout the four phases above, two additional elements come to play:

(i) International cooperation, whereby jurisdictions either exchange information or conduct mutual legal assistance or other forms of international judicial cooperation with each other, as required.[9]

(ii) Asset management, entailing the management of seized assets with a view to preserving their value during the lifecycle of the asset recovery process, pending the outcome of the final decision on their confiscation and realisation, or restitution.

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[2] The term proceeds of crime used throughout this report equates to the term criminal property found under art. 6(44) of the Criminal Procedure Code of the RM.
[3] Pedro Gomes Pereira, Anja Roth, and Kodjo Attisso. 2011. Development Assistance, Asset Recovery and Money Laundering: Making the Connection, p. 15.
[4] C. Monteith, and P. Gomes Pereira. 2015. "Asset Recovery," in Routledge Handbook of Transnational Crime, ed. N. Boister, and R. J. Currie (New York: Routledge), p. 141.
[5] Art. 2291 of the Criminal Procedure Code codifies the asset recovery process into law in the RM.
[6] 2015., pp. 140-141.
[7] Art. 2(d) of the Council Framework Decision 2006/960/JHA defines information and intelligence as: (i) any type of information or data which is held by law enforcement authorities; and (ii) any type of information or data which is held by public authorities or by private entities and which is available to law enforcement authorities without the taking of coercive measures. This definition is equivalent to the definition of law enforcement information under art. 2(6) of the Directive (EU) 2019/1153. See: Council of the European Union. 2006. Council Framework Decision 2006/960/JHA of 18 December 2006 On Simplifying the Exchange of Information and Intelligence Between Law Enforcement Authorities of the Member States of the European Union. OJ L 386/89, 29.12.2006; European Parliament, and Council of the European Union. 2019. Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 Laying Down Rules Facilitating the Use of Financial and Other Information for the Prevention, Detection, Investigation or Prosecution of Certain Criminal Offences, and Repealing Council Decision 2000/642/JHA. OJ L 186/122, 11.7.2019.
[8] The asset recovery process focuses on intelligence gathering, processing and its dissemination. It does not, prima facie, include other forms of initiating a case, e.g., whistleblowers.
[9] The term normally encompasses mutual legal assistance (MLA), extradition, transfer of proceedings and joint investigation teams. However, this assessment report includes the stage prior to international judicial cooperation (exchange of information for law enforcement purposes) within the context of the term international cooperation.

The asset recovery process requires jurisdictions to have the capacity and sufficient resources to collect information and process it into relevant data which can be overlapped with other sources of intelligence and information[10] at both the national and international levels. Law enforcement thus relies on the use of indirect methods of proof, requiring the specialisation in evaluation, analysis, and dissemination of information.[11] This intelligence and information gathering exercise allows law enforcement, through an informed assessment, to arrive at new leads or confirm existing ones which might not have been apparent at first. These leads in turn support law enforcement and prosecutorial authorities in their efforts to identify the nature, origin, and ownership of criminal assets.

The asset recovery process is not linear. The phases above intertwine and normally occur either in parallel or simultaneously. Notwithstanding, understanding them separately enables (a) designing and implementing effective policies and regulations on asset recovery; and (b) efficient implementation and informed decision making at the operational level which considers both the fluid nature of the criminal justice and asset recovery processes.

Implementing the asset recovery process is broader than only recovering assets. The recovery of assets is the last stage of the asset recovery process, involving the confiscation, realisation and, where applicable, return (or repatriation) of the assets. It does not encompass the identification, tracing, seizure and management of assets, and the international cooperation efforts required in each of these stages.

2.2 The asset recovery system of the RM

The asset recovery process, when taken into its component parts, has largely been possible to implement since the adoption of the current Criminal[12] and Criminal Procedure[13] Codes, and other relevant legislation dealing with the criminal justice process in the RM. They contain the building blocks which, when reviewed together, comprise the asset recovery system of the RM. However, these laws initially focused on the criminal investigation and less on parallel financial investigations.

Laws No. 48/2017[14] and 49/2017[15] sought to fill the gaps for the implementation of the asset recovery process (e.g., absence of a legal definition for the asset recovery process, parallel financial investigations, management of seized assets) and enhance the efficiency of the asset recovery system of the RM. They sought to better delineate the roles and responsibilities of the institutions engaged in the asset recovery process, since the system itself lacked focus on depriving perpetrators of the financial benefits arising from a criminal offence. Before then, the criminal justice system focused on the seizure of assets either for evidentiary purposes or to repair the damage suffered by the injured party or victim.

2.3 The institutions comprising the asset recovery system of the RM

This needs assessment report uses throughout the term relevant institutions interacting with the asset recovery system of the RM. These are:

- Intelligence gathering: (i) the ARBI; and (ii) the Office for the Prevention and Fight against Money Laundering (OPFML).
- Investigation:[16] (i) the National Anti-Corruption Centre (NAC); (ii) the General Inspectorate of Police; (iii) the Customs Authority; and (iv) the State Fiscal Service.

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10. This report defines intelligence and information as any type of information or data held by (i) law enforcement authorities; or (ii) public authorities or by private entities and which is available to law enforcement authorities without the taking of coercive measures.
11. ICAR, Tracing Stolen Assets: A Practitioner's Handbook (Basel: Basel Institute on Governance, 2009), p. 39.
12. Republic of Moldova. 2002. Law No. 985-XV of 18.04.2002, on the Criminal Code of the Republic of Moldova. No. 128-129/1012 of 12.09.2002.
13. Idem. 2003. Code No. 122 of 14.03.2003, of Criminal Procedure of the Republic of Moldova. No. 248-251/699 of 05.11.2013.
14. Idem. Republic of Moldova. 2017. Law No. 48 of 30.03.2017, on the Agency for Criminal Assets Recovery. No. 155-161/251 of 19.05.2017.
15. Idem. 2017. Law No. 49 of 30.03.2017, for Completing some Legislative Acts. 155-161/253, of 19.05.2017.
16. Art. 56(1) of the Criminal Procedure Code and art. 6(1) of the Law No. 333/2006 establishes four criminal investigation bodies. See: Idem. 2006. Law No. 333 of 10.11.2006, on the Status of the Criminal Investigation Officer. No. 195-198/918 of 10.11.2006; Idem. Code No. 122 of 14.03.2003, of Criminal Procedure of the Republic of Moldova.

- Prosecution: (i) the Prosecutor-General's Office (PGO), the Anti-Corruption Prosecutor's Office (APO) and the Prosecutor's Office for Combating Organised Crime and Special Cases (PCCOCS).
- Freezing, seizure and confiscation: (i) the ARBI; (ii) courts, upon application by the relevant prosecutorial authority (concerning seizure and confiscation of assets).
- Asset management and the anticipated sale of seized assets: the ARBI and the State Fiscal Service.
- Realisation of assets: the State Fiscal Service and the Union of Bailiffs.
- Return of assets: The ARBI, in coordination with the PGO and the Ministry of Foreign Affairs and European Integration.

The institutions above are not the only institutions which may interact with the asset recovery system of the RM. This needs assessment report has instead focused on the institutions directly interacting with the asset recovery system of the RM, vis-à-vis the asset recovery process described in section 2.1 above.

3 NEEDS ASSESSMENT

3.1 Knowledge of the asset recovery process in the RM

Pursuant to the mutual evaluation report (MER) of the RM, conducted by MONEYVAL, the RM has a comprehensive and sound legal system for the application of provisional measures and confiscation of criminal assets.[17] It also has a comprehensive legal system and institutional framework to conduct criminal and parallel financial investigations.[18] The criminal investigation and prosecutorial bodies have sufficient awareness of the importance of financial analysis in identifying, tracing and recovering criminal assets.[19] Moreover, the relevant authorities responsible for the asset recovery system of the RM have taken steps to bridge the knowledge gap related to the different phases of the asset recovery process.[20]

Despite all these efforts, the MER concluded that the results – defined as investigations brought to courts – have room for improvement.[21] The MER suggests that the cause may lie in limited resources and capacities, e.g., financial experts, forensic accountants, IT hardware and software.[22] Criminal investigation and prosecutorial bodies have noted through anecdotal examples challenges in applying the tools of the asset recovery process with the judiciary in the RM, e.g., understanding the complex legal persons or arrangements, and establishing the real beneficial ownership of such schemes.

However, the knowledge gap applies not only to the judiciary, but also to policymakers and legislators. For example, attempts were made by the State Chancellery in 2020 to propose amendments to the Law No. 308/2017,[23] the Enforcement Code of the RM,[24] Law No. 135/2007[25] and Law No. 220/2007,[26] concerning the definition and extent of application of the notion of beneficial ownership in the RM and the execution of court decisions. Such amendments sought to draw a line between the pursuit of assets which belong to the debtor, and the pursuit of third-party assets on the basis that they are beneficiaries of the debtor. The proposed amendment confused beneficial ownership with legal ownership and sought to equate the two. The proposed amendment would have had a negative impact on the effectiveness of the asset recovery system of the RM, if approved.

Another indication of the limited understanding of the asset recovery process relates to the difference between the asset recovery process and the recovery of assets, noted in section 2.2 above. The expectation of policy and lawmakers, media, and civil society is the return of stolen assets, or the final stage of the asset recovery process. They do not consider (i) the resources needed to enact the asset recovery process to reach the actual recovery of assets; (ii) the sustained efforts needed over time to achieve such a goal; and (iii) the need to ensure due process to all parties involved in criminal and parallel financial investigations and prosecutions. There is no political will among decision makers to apply and implement the asset recovery process in the RM.

Art. 5 of the Law No. 48/2017 establishes several competences of the ARBI, which revolve around four main elements: (i) parallel financial investigations; (ii) evaluation and management of seized criminal assets; (iii) international exchange of information; and (iv) negotiating the return of confiscated criminal assets. Additionally, the ARBI is responsible for: (a) collecting statistics and developing a database on seized criminal assets;

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[17] MONEYVAL. 2019. Anti-Money Laundering and Counter-Terrorist Financing Measures. Republic of Moldova: Fifth Round Mutual Evaluation Report, in MONEYVAL(2019)6, p. 80.
[18] Idem., p. 64.
[19] Idem., p. 49.
[20] Idem., p. 38.
[21] Idem., p. 49.
[22] Idem.
[23] Republic of Moldova. 2017. Law No. 308 of 22.12.2017, on Prevention and Combating Money Laundering and Terrorism Financing. No. 58-66/133 of 23.03.2018.
[24] Idem. 2004. Code No. 443 of 24.12.2004, Enforcement Code of the Republic of Moldova. No. 214-220/704, 05.11.2010.
[25] Idem. 2007. Law No. 135 of 14.06.2007, on Limited Liability Companies. No. 127/130/548, 17.08.2007.
[26] Idem. 2007. Law No. 220 of 19.10.2007, on State Registration of Legal Entities and Individual Entrepreneurs. No. 184-187/711, 30.11.2007.

and (b) supporting judicial bodies with good practices in the identification and management of assets which can be the object of seizure and confiscation.

Section 3.2 below informs that the ARBI is the sole institution in the RM focusing on the asset recovery process.[27] However, the ARBI does not have ownership of the entire asset recovery process. Nevertheless, the ARBI has the advantage of being responsible for centralising the relevant statistics which can show the effectiveness of the asset recovery system of the RM. In possession of such data – which is collected across all relevant institutions engaged in the asset recovery system of the RM – the ARBI can strengthen the transparency and accountability of the system. This, in turn, feeds into the knowledge loop and enhances the general understanding of the asset recovery process not only by the ARBI and the relevant institutions engaged in the asset recovery system of the RM, but also to the civil society, media, and decision makers.

Moreover, in possession of the relevant data, the ARBI can have an overview of the state of play of the asset recovery system of the RM and collaborate with the relevant institutions engaged in the asset recovery system of the RM to enhance their activities, since one of the functions of the ARBI is to provide good practices. As such, the provision of such good practices would enable the judicial bodies to better understand the asset recovery process, its aims and tools used, to assist them in forming their opinions and making informed decisions. Thus, the ARBI could work with relevant institutions, e.g., the National Institute of Justice, to develop curricula for judicial bodies to enhance their knowledge in different areas of the asset recovery process, where the information received by the ARBI shows certain gaps.

However, the role above can only work if the ARBI receives the relevant information from the other institutions engaged in the asset recovery system of the RM. At present, anecdotal data suggests that the ARBI receives some, but not all the relevant information, thereby not allowing it to have an overview of the asset recovery system. Ultimately, the challenge lies in developing an automated system which can capture the relevant information while supporting the ARBI and other institutions responsible for the asset recovery system of the RM to take their financial investigations further, in parallel to the criminal ones. The ARBI is currently working on the development of such a system.[28]

Despite having a comprehensive legal system to apply the asset recovery process in the RM, its application is not yet effective. While this report identifies the major needs, they all begin first with understanding the asset recovery process, and the role of the asset recovery system of the RM.

The first main challenge relates to the misconception of the asset recovery process, which has been equated to the recovery of assets. When dealing with high-profile asset recovery cases – of which the RM has seen a few since 2013 – the relevant institutions engaged with the asset recovery system of the RM face an unrealistic expectation of not having managed to return any (real or perceived) stolen assets. The expectation raised by the media, civil society, policymakers, and lawmakers alike is that the asset recovery process not only equates to the recovery of assets, but that its application should be immediate.

A bigger concern is that such immediacy obviates due process requirements given to any judicial proceedings in the RM. The asset recovery process is a judicial process which requires observing fundamental, constitutional, and human rights of suspects or accused persons. A judicial process therefore requires time for its full implementation, from the identification and tracing of assets to their seizure, confiscation, and realisation. Thus, the ARBI and other relevant institutions, operating the asset recovery system of the RM, should take steps to raise awareness of the media, civil society, and decision makers of the complexities of the asset recovery process, and the time and resources needed to implement it, both at the abstract and case levels.

The second main challenge relates to the level of knowledge of different phases and tools of the asset recovery process by the courts. Profit-oriented crime control, of which the asset recovery process forms part, is a new paradigm in criminal justice systems. Criminal laws and procedures are established to identify the perpetrator(s) of a crime. In the asset recovery process, the goal is to identify the assets which have been generated, directly or indirectly,

[27] See section 3.6. When compared with the asset recovery process described in section 2.1, the ARBI is responsible for (i) intelligence gathering; (ii) financial investigations (under the conditions discussed in section 3.4); (iii) international exchange of information; and (iv) the management of assets. Additionally, the ARBI may freeze assets.
[28] Section 3.7 of this report discusses the Registry of Unavailable Criminal Assets (SIA RBII).

from a criminal offence, and to support the criminal investigation into the alleged wrongdoing of the perpetrator(s).

Moreover, there is not only a change in paradigm, but also in the way parallel financial investigations are conducted. They rely on the use of circumstantial evidence which generate logical conclusions and rebuttable presumptions during an investigation. This occurs because in most profit-driven crimes there is no crime scene and rarely any direct evidence connecting the perpetrators to their criminal assets. As a result, the judiciary must learn to apply the new legal standards imposed by law in financial investigations, thereby raising the chances of success in asset recovery cases. Thus, the ARBI and other relevant institutions, directly or through the National Institute of Justice, should take steps to raise judges' awareness of the challenges when conducting financial investigations and applying the asset recovery process in practice.

The third main challenge relates to the professionalisation of criminal investigation and prosecutorial bodies (e.g., forensic accounting, financial profiling, and the use of specialised software to conduct such investigations). Conducting the asset recovery process requires specialised knowledge to conduct parallel financial investigations effectively. The policy and legal choice of the RM has been to allow all criminal investigation and prosecutorial bodies to conduct parallel financial investigations. This requires considerable resources from the RM to professionalise the financial investigation teams for all criminal investigation bodies. An alternative may be to further professionalise the financial investigation staff of the ARBI, which can act as replicators of the knowledge to other criminal investigation bodies.

3.2 Establishment of a national asset recovery programme

The RM does not have a national asset recovery strategy. However, international standards advocate that, to effectively target and reduce criminal activity using asset recovery, jurisdictions need to establish a specific object of focus for the Ministers, Members of Parliament, policymakers, legislators, and practitioners.[29]

It follows that asset recovery needs to become a policy objective. The asset recovery system of the RM can only become efficient if all relevant institutions work towards a common goal, which in turn, requires firm political will.[30] To that end, the MER[31] recommended the RM to adopt the national strategy on criminal assets recovery foreseen in the National Integrity and Anti-Corruption Strategy (NIAS) 2017-2023.[32] The NIAS 2017-2023 foresees the NAC to establish an asset recovery policy.[33] Additionally, the National Strategy to Prevent and Combat Money Laundering and Terrorist Financing (AML/CFT strategy) 2020-2015[34] also requires focusing on establishing an asset recovery policy, albeit without identifying a lead agency.

The Government Decision No. 386/2020[35] defines the types, structure, and content of public policy documents. Its art. 5 groups public policy documents in the RM into two types: (i) strategies; and (ii) programmes. A strategy defines and plans long-term public policy documents (6-10 years) in one or several fields of activity of the Government,

[29] See: FATF. 2019. International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation. The FATF Recommendation 2 establishes that "(…) countries should have national AML/CFT policies, informed by the risks identified, which should be regularly reviewed, and should designate an authority or have a coordination or other mechanism that is responsible for such policies."
[30] Political will is understood as having three basic conditions: (i) knowledge (discussed in section 3.1); (ii) appropriate policy tools (discussed in section 3.2); and (iii) willingness to apply the appropriate policy tools (discussed in section 3.6).
[31] MONEYVAL, Anti-Money Laundering and Counter-Terrorist Financing Measures. Republic of Moldova: Fifth Round Mutual Evaluation Report, p. 47.
[32] Republic of Moldova. 2017. Parliament Decision No. 56 of 30.03.2017, on the Approval of the National Integrity and Anticorruption Strategy for the Years 2017-2020. No. 216-228/354, of 30.06.2017. The NIAS 2017-2023 had its validity extended to 2023, see: Idem. 2021. Parliament Decision No. 241 of 24.12.2021, on the Amendment of Parliament Decision No. 56/2017 for the Approval of the Strategy National Integrity and Anti-Corruption Measures for the Years 2017–2020. 27-33/32, of 28.01.2022.
[33] See Action 30, Priority III.4.
[34] Idem. 2021. Parliament Decision No. 239 of 16.12.2020 for the Approval of the National Strategy to Prevent and Combat Money Laundering and Terrorist Financing for the Years 2020–2025 and the Implementation Action Plan National Prevention and Control Strategy Money Laundering and Terrorist Financing for the Years 2020–2025. No. 33-41/18 of 05.02.2021.
[35] Idem. 2020. Government Decision No. 386 of 17.06.2020 on the Planning, Development, Approval, Implementation, Monitoring and Evaluation Public Policy Documents. No. 153-158/509.

as defined in the Law No. 136/2017.[36] A programme is a medium-term public policy document (3-5 years) which derives from the strategy and, respectively, contributes to its implementation.

The NIAS 2017-2023 and the AML/CFT strategy 2020-2025 both mention the need for an asset recovery strategy. However, based on the Government Decision No. 386/2017, such strategy is in fact a programme, since the national asset recovery strategy is a medium-term public policy document that derives from the existing anti-corruption and AML/CFT strategies.

The RM started, in the 2nd semester of 2021, the process of establishing a national asset recovery programme. The ARBI has prepared a preliminary list of activities to be discussed among the relevant institutions which directly or indirectly engage with the asset recovery process. Additionally, a working group has been set up with the relevant institutions to ensure a participatory approach in the development of the programme. The intention is to finalise the strategy by the end of 2022, including its approval by the Parliament.

The Law No. 48/2017 defines several competences of the ARBI.[37] However, it does not provide specific legal competence for establishing an asset recovery programme. Notwithstanding, such a competence is implied given that the (i) NAC established the NIAS 2017-2023; (ii) NAC is responsible for the recovery of criminal assets, pursuant to art. 4(1)(g) of the Law No. 1104/2002; and (iii) ARBI is a specialised autonomous subdivision of the NAC, pursuant to art. 4(1) of the Law No. 48/2017.

Thus, the success of its activities relies on its ability to coordinate, communicate, and cooperate with the other relevant institutions responsible for implementing the asset recovery system of the RM and in other jurisdictions. It is, therefore, in a unique position to support in the establishment of an asset recovery programme.
Establishing the national asset recovery programme is an opportunity for the ARBI and the relevant institutions, responsible for implementing the asset recovery system in the RM, to discuss the legal and operational issues they face when seeking to implement the asset recovery system of the RM effectively. It is also an opportunity for these institutions to take ownership of the process, thereby enhancing their accountability.
The absence of the asset recovery programme, as an appropriate policy tool in asset recovery, demonstrates a lack of willingness and clarity among decision makers for the appropriate implementation of the asset recovery system of the RM. Ultimately, it demonstrates an absence of the willingness to apply, at the policy level, asset recovery as a policy objective.

3.3 Process mapping of the asset recovery system of the RM

Two assessment reports concerning the asset recovery system of the RM have been issued: (i) in 2015-2016,[38] prior to the formalisation of the existing asset recovery system; and (ii) the present needs assessment of the ARBI. Both assessment reports identify strengths and shortcomings in both the ARBI and existing asset recovery system of the RM. They further suggest the implementation of activities to increase the recovery of assets in the RM. The two assessment reports identified many elements hindering effective asset recovery in the RM, in line with the complexity of the asset recovery process itself and its implementation in the RM.

However, the RM has not mapped out is asset recovery system, thereby enabling the RM to map and visualise its strengths and weaknesses over time. The goal of a process map is to improve the efficiency and quality of the asset recovery system of the RM. The plurality of asset recovery challenges and opportunities to increase the effectiveness of the asset recovery system of the RM require mapping the existing processes to enable prioritising the actions undertaken by the relevant authorities.

A process map of all phases of the asset recovery system of the RM will enable (i) contextualising the interaction of the relevant institutions responsible for implementing the asset recovery system of the RM throughout the

[36] Idem. 2017. Law No. 136 of 07.07.2017, regarding the Government. No. 252/412 of 19.07.2017. Art. 4(d) of the Law No. 136/2017 states that justice, home affairs, public order and civil protection are areas of activity of the Government.
[37] See fn. 27.
[38] Gomes Pereira, P. 2016. Analytical Study on Mechanisms for Asset Recovery and Confiscation in Moldova.

asset recovery phases;[39] and (ii) helping visualise the system as a whole, to better identify its strengths and shortcomings. It will help guide:

(i) Lawmakers to coherently amend or introduce relevant legislation to enhance the asset recovery system of the RM.
(ii) Policymakers to coherently adopt strategies and programmes which both intersect with the criminal justice and asset recovery systems of the RM, prioritising relevant actions.
(iii) Relevant authorities to implement the asset recovery process more efficiently through the existing system of the RM with clear and pre-defined goals.
(iv) Relevant authorities in prioritising actions needed to improve the asset recovery system over time, feeding the information into existing and forthcoming national asset recovery programmes.

Moreover, the process map will show the interdependency of the relevant institutions together with the decision-making incidence upon other parts of the asset recovery process. It will uncover potential bottlenecks, which could and should be resolved, or highlight successful segments that should be encouraged and replicated in other investigations.

The process map would also put in context the operational implementation of applicable international standards related to financial investigations, highlighting the importance of multiagency cooperation, exchange of information at the national and international levels, keeping track with detailed statistics on case progress and institutionalising parallel financial investigations. All these aspects are essential to the success of the RM in this area.

The development of a process map requires the buy-in from all relevant institutions, which need to be forthcoming with information regarding their internal procedures and processes. It thus requires collaboration and trust among the relevant stakeholders interacting with the asset recovery system of the RM. Additionally, the ARBI will need to review the process map regularly and periodically when, e.g., there is a change of internal procedures within one of the institutions, or there are relevant legislative revisions which may impact – whether positively or negatively – the asset recovery system in the RM.

3.4 Delegation of financial investigations to the ARBI

Performing financial investigations[40] alongside criminal ones, which result in a successful recovery of criminal assets, is a complex undertaking. It involves decisions taken by multiple stakeholders at the national and international levels, consecutively or in parallel. Successful asset recovery requires the relevant national authorities to understand their roles, responsibilities, and interdependencies vis-à-vis the asset recovery process. It further requires them to understand the impact and interconnectedness of their actions and decision making throughout the criminal and financial investigations. Thus, the authority, conducting the criminal investigation, should coordinate and cooperate at the earliest stages with the authority conducting the parallel financial investigation.

Art. 229[2](1) of the Criminal Procedure Code of the RM states that a criminal investigation body[41] may carry out parallel financial investigations to accumulate evidence regarding respective assets.[42] This is a positive outcome,

[39] These are: (i) intelligence gathering (pre-investigation); (ii) investigation; (iii) judicial; (iv) realisation; (v) international exchange of information and international cooperation; and (vi) management of seized assets.
[40] Art. 6(201) of the Criminal Procedure Code of the RM defines parallel financial investigations as all criminal prosecutions and special investigative measures carried out to accumulate evidence related to the suspect, accused, accused or convicted, to his or her patrimony and the assets he or she holds as a beneficial owner, to the patrimony of the owner and administrator of the assets held by the suspect, accused or convicted as a beneficial owner, to recover the criminal assets.
[41] Art. 56(1) of the Criminal Procedure Code of the RM and art. 6(1) of the Law No. 333/2006 establish the following criminal investigation bodies: (i) the National Anti-Corruption Centre (NAC); (ii) the General Inspectorate of Police; (iii) the Customs Authority; and (iv) the State Fiscal Service. See: Republic of Moldova. Law No. 333 of 10.11.2006, on the Status of the Criminal Investigation Officer. The ARBI is also a criminal investigation body since art. 4(1) of the Law No. 48/2017 establishes it as a specialised autonomous subdivision of the NAC.
[42] The PGO has interpreted this legal provision to mean meeting the following objectives in a parallel financial investigation: (i) identification of assets obtained from criminal offences; (ii) identifying assets which may be subject to confiscation; (iii) where there is an investigation into money laundering or an indication that money laundering may be taking place; (iv) identification of other predicate offences to money laundering; (v) identification of other natural or legal persons related to the person(s) initially investigated; (vi) profiling the lifestyle of the suspect; and (vii) financially profiling persons of interest to the investigation.

since the system encourages the interaction and cooperation among institutions. However, it places a human and financial resource burden on the RM, which must specialise criminal investigation officers in all criminal investigations bodies to conduct parallel financial investigations.

In turn, art. 229^{2}(2) of the Criminal Procedure Code of the RM allows the criminal investigation body to delegate such authority to the ARBI, where (i) at least one of the offences listed in art. 2(2) of the Law No. 48/2017 is under investigation; and (ii) it follows the conditions established under art. 258(3) of the Criminal Procedure Code of the RM.[43] Thus, the ARBI has neither the authority nor the competence to conduct criminal investigations *proprio motu* or *ex officio*.

Additionally, the Prosecutor General's Office (PGO) has issued three normative acts[44] providing guidance and instructions to prosecutors and criminal investigation bodies regarding parallel financial investigations and the asset recovery process. These normative acts confirm that any criminal investigation or prosecutorial bodies in the RM may conduct parallel financial investigations and instruct prosecutors to delegate them to the ARBI when investigating one of the offences under art. 2(2) of the Law No. 48/2017.

Delegating an investigation to the ARBI requires the person under investigation to have the procedural capacity of a suspect[45] or an accused,[46] in line with art. 6(20^{1}) of the Criminal Procedure Code of the RM. This generates a mismatch between the criminal investigation and the parallel financial investigation, since a fundamental element for a criminal investigation (identification of the alleged perpetrator) is transposed to the financial investigation (which should focus on the financial affairs related to a criminal activity).

A *financial investigation* is an enquiry into the financial affairs related to a criminal activity to (i) identify the extent of criminal networks or the scale of criminality; (ii) identify and trace criminal assets that are or may become subject to confiscation; and (iii) develop evidence which can be used in criminal proceedings.[47] It may be argued that the parallel financial investigation for the purposes of item (iii) above does indeed require a person under investigation to be classified as a suspect or an accused.

However, investigations into items (i) and (ii) may not have a specific person or persons identified as a suspect or accused. Moreover, investigations into items (i) and (ii) may go beyond the suspect or accused, since its objectives might be, e.g., to support a future application into special[48] or extended[49] confiscation proceedings, pursuant to art. 6(4^{4}) in conjunction with art. 106(2) of the Criminal Procedure Code of the RM. It may also go beyond the scope of criminal property, particularly when applying extended confiscation.

As a result, the process of delegating a parallel financial investigation to the ARBI is flawed, since the delegating authority may not be able to identify a person or persons, thereby making it impossible to execute the delegated task, pursuant to the Criminal Procedure Code of the RM. More generally, other criminal investigation bodies may also not be able to conduct their parallel financial investigations for the reasons mentioned above.

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43. Art. 258(3) of the Criminal Procedure Code of the RM states that the criminal investigation body may delegate its territorial competence to the ARBI for it to pursue criminal property, accumulate evidence regarding the criminal property and to make them unavailable.
44. 2018. Order of the Prosecutor-General No. 18/1975, of 29.09.2018, General Instruction on the Application of Legal Provisions Relating to the Seizure and Confiscation of Criminal Property; 2019. Order of the Prosecutor-General No. 18/11 of 09.04.2019, Guide on Conducting Parallel Financial Investigations; 2021. Order of the Prosecutor-General No. 54/6 of 23 July 2021, Methodological Instruction on the Recovery of Criminal Assets.
45. Art. 63(1) of the Criminal Procedure Code defines the suspect as the person against whom there is evidence of having committed a crime, but who has not yet been indicted. A person can be recognised as a suspect in one of the following procedural acts (i) report of detention; (ii) the ordinance or the conclusion of the application of a non-custodial preventive measure; or (iii) the ordinance recognising the person as a suspect.
46. Art. 65(1) of the Criminal Procedure Code defines the accused as the natural person against whom an indictment is filed. Confiscation under the Criminal Code of the RM does not classify as a criminal punishment. Rather, art. 98(1) of the Criminal Code defines it as a security measure that aims at eliminating the danger and preventing that criminal acts would be committed. Confiscation is, therefore, seen in the legislation, as a predominantly preventive tool or as means of securing reparation for damages.
47. FATF, Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems (Paris: FATF, 2018), p. 78.
48. Art. 106 of the Criminal Code of the RM defines special confiscation as a security measure which can be applied by courts both in instances where the accused is convicted, or in instances where the accused cannot be convicted.
49. Extended confiscation applies when (i) a person has been convicted of a criminal offence; and (ii) the court is satisfied, based on the circumstances of the case, that the property in question derived from criminal conduct. Art. 1061 of the Criminal Code of the RM limits the application of extended confiscation to a list of offences identified in art. 1061(1) of the Criminal Code, and the cumulative conditions of art. 1061(2).

Depending on the complexity of the criminal actions, it may not be possible to precisely identify the person(s) subject to the investigation. The result is a mismatch between the procedures for initiating a criminal investigation, and those related to a parallel financial investigation. The latter may not always be initiated together with the former, greatly reducing the latter's effectiveness in identifying criminal assets and supporting the criminal investigation.

At the same time, the Criminal Procedure Code of the RM places a criminal investigation burden on the parallel financial investigation, requiring the identification and classification of an alleged perpetrator as a suspect or an accused. This threshold is very unlikely to be met in complex investigations, e.g., the Banking Fraud Scandal[50] or the Global Laundromat[51] cases, which occurred in the RM. The resulting risk is challenges in advancing a parallel financial investigation, if the persons of interest to those investigations are not classified as suspects or accused.

The current system of delegating parallel financial investigations to the ARBI should, therefore, be reviewed. Criminal investigation bodies should have the authority to initiate financial investigations when no suspect or accused person has been identified, since one of its purposes is to locate criminal assets. The present system, enabling the delegation of the parallel financial investigation to the ARBI, where the conditions of art. 258 of the Criminal Procedure Code of the RM and art. 2(2) of the Law No. 48/2017 are met, does not yield the most effective results. There is an opportunity to better define the role of the ARBI when conducting parallel financial investigations without impinging upon the jurisdiction of other criminal investigation bodies.

3.5 Base offences which trigger the jurisdiction of the ARBI

Art. 2(2) of the Law No. 48/2017 lists 54 criminal offences forming the jurisdiction of the ARBI when conducting parallel financial investigations. This needs assessment has neither been able to identify the rationale leading to the enumeration of the 54 criminal offences, nor how the lawmakers reached such a policy choice. It restricts the authority of the ARBI to a narrow set of criminal offences, most of which are not deemed high-risk offences under the NRA of the RM.

The relevant applicable European standards[52] on combating serious, organised, and cross-border crimes list 32 priority criminal offences.[53] However, there is at best a partial match between those offences and the ones listed in art. 2(2) of the Law No. 48/2017. Additionally, not all the offences listed under the Law No. 48/2017 are high-risk offences, pursuant to the AML/CFT national risk assessment (NRA) of the RM.[54] Finally, the criminal offences listed under art. 2(2) of the Law No. 48/2017 do not match those listed under art. 106[1] of the Criminal Code of the RM, regarding extended confiscation.

If existing legislation empowers all law enforcement and prosecutorial authorities to conduct parallel financial investigations, it follows that the ARBI, under the existing legislation, should be a specialised unit dealing with high-profile crimes, *regardless* of the offence under investigation. This needs assessment report puts this argument forward, supported by the fact that the Law No. 48/2017 implied that NAC had the sole jurisdiction over investigating corruption offences and money laundering, at the time of its enactment. The subsequent changes to the jurisdictional authority of the criminal

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[50] This case involves three Moldovan banks which were consecutively subjected to significant shareholder changes, which had the effect of transferring ownership to a series of apparently unconnected natural and legal persons. Thereafter, each of the banks entered a series of questionable transactions, which do not appear to have a sound economic rationale, and which ultimately resulted in such a significant deterioration in each of their balance sheets that they were no longer viable. See: Kroll. 2017. Project Tenor II. Summary Report.

[51] The Global Laundromat scheme involved high-value payments made based on court decisions, following unpaid or overdue tripartite loan agreements signed between (i) a loaning company; (ii) a debtor (company from the Russian Federation) and a guarantor acting as an underwriter (sub-guarantor). The underwriters were citizens of the RM which gave competence to the courts of the RM to rule the settlements. The APO opened on February 2014 a criminal investigation into allegations of money laundering in excess of EUR 22 billion. See: CoE. 2013. Resolution CM/Res(2013)13 on the statute of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL). Adopted by the Committee of Ministers on 9 October 2013 at the 1180th meeting of the Ministers' Deputies, pp. 66-67.

[52] Council of the European Union. 2007. 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. OJ L 332/103, 18.12.2007; European Parliament, and Council of the European Union. 2018. Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the Mutual Recognition of Freezing Orders and Confiscation Orders. OJ L 303/01, 28.11.2018.

[53] These are: terrorism; organised crime; drug trafficking; money laundering activities; crime connected with nuclear and radioactive substances; immigrant smuggling; trafficking in human beings; motor vehicle crime; murder and grievous bodily injury; illicit trade in human organs and tissue; kidnapping, illegal restraint and hostage-taking; racism and xenophobia; robbery and aggravated theft; illicit trafficking in cultural goods, including antiquities and works of art; swindling and fraud; crime against the financial interests of the Union; insider dealing and financial market manipulation; racketeering and extortion; counterfeiting and product piracy; forgery of administrative documents and trafficking therein; forgery of money and means of payment; computer crime; corruption; illicit trafficking in arms, ammunition and explosives; illicit trafficking in endangered animal species; illicit trafficking in endangered plant species and varieties; environmental crime, including ship-source pollution; illicit trafficking in hormonal substances and other growth promoters; sexual abuse and sexual exploitation, including child abuse material and solicitation of children for sexual purposes; and genocide, crimes against humanity and war crimes.

[54] Republic of Moldova. 2022. Report on National Risk Assessment in the Field of Money Laundering and Terrorist Financing,

investigation and prosecutorial bodies since 2017 has since enabled all criminal investigation bodies to pursue money laundering cases and to conduct parallel financial investigations.

Thus, the ARBI together with criminal investigation and prosecutorial bodies should establish an appropriate policy choice to the offences it would be responsible to investigate, thus generating the need for delegating authority to the ARBI. This approach would allow the ARBI to make more effective use of its resources and would remain sufficiently malleable as to act as a specialised investigation unit dealing with high risks and threats faced by the RM.[55]

Moreover, the Law No. 48/2017 provides for knowledge sharing between the ARBI and other law enforcement agencies, thereby ensuring a level playing field among all law enforcement institutions, regardless of whether a financial investigation is delegated to the ARBI.

Cross-referencing the list of offences under art. 2(2) of the Law No. 48/2017 with the most significant proceeds-generating offences pursuant to the NRA, provides a match for approximately 20 criminal offences. It is therefore possible to draw two main conclusions: (i) the initial policy choice appears to have been to have the ARBI as a criminal investigation body specialised in financial investigations into the most significant proceeds-generating offences pursuant to the NRA; and (ii) a range of other offences have been added without a clear rationale, operating against a policy choice of having the ARBI as a specialised financial investigations body.

The result is a challenge in the ability of the ARBI to rationally and effectively allocate its resources, since it needs to retain sufficient knowledge and expertise when dealing with all the 54 criminal offences listed under art. 2(2) of the Law No. 48/2017. Another challenge is the dilution of the specialisation of the ARBI as a specialised financial investigation body. It risks having other criminal investigation bodies delegating authority over certain offences which may not justify the resources and expertise of the ARBI, and which may detract its criminal investigation officers from using their resources for more priority cases.

3.6 Review and update national legislation and associated standard operating procedures

The current asset recovery system of the RM based itself on the roles and responsibilities attributed to the criminal investigation and prosecutorial authorities at the time those laws were enacted. In 2017, art. 4(1)(c) of the Law No. 1104/2002 established that the NAC had jurisdiction in the prevention and combating of money laundering, terrorist financing and corruption-related offences. Moreover, at the time of establishing the ARBI, the OPFML was a specialised autonomous subdivision of the NAC until the adoption of the Law No. 308/2017.

Thus, when establishing the ARBI in 2017, the asset recovery system of the RM was geared towards placing the NAC in the centre of the asset recovery process, focusing on:

(i) The pre-investigation phase, carried out by OPFML and the ARBI, within the NAC.
(ii) The investigation phase, conducted by the NAC (criminal investigation) and the ARBI (parallel financial investigation).
(iii) The judicial phase, carried out by the judiciary, responsible for seizing and confiscating criminal assets. Asset management within the judicial phase would be coordinated by the ARBI, which would implement it directly or through the State Fiscal Service or the Union of Bailiffs.
(iv) The realisation phase, coordinated by the ARBI and implemented by it and the State Fiscal Service or the Union of Bailiffs. Any transnational recovery efforts in this phase would be coordinated by the ARBI and the Ministry of Foreign Affairs and European Integration.

[55] The NRA identifies the most significant proceeds-generating as: smuggling, cybercrime, trafficking in persons, money laundering, trafficking in drugs, tax evasion and corruption. See: MONEYVAL, Anti-Money Laundering and Counter-Terrorist Financing Measures. Republic of Moldova: Fifth Round Mutual Evaluation Report, p. 72 and 81.

Moreover, the PGO, responsible for leading criminal investigations and prosecuting offences, would retain the responsibility to closely coordinate all asset recovery phases and apply to courts for the seizure of criminal assets and their confiscation at the end of the criminal proceedings.

However, subsequent legislative amendments[56] removed the exclusive jurisdiction of the NAC over the prevention and combating of money laundering and terrorist financing. The OPFML has been removed from the NAC and placed under the Government.[57] The list of criminal offences falling under the purview of delegated financial investigations of the ARBI increased to include non-high-risk crimes pursuant to the NRA.

These changes increased the jurisdictional flexibility to allow any criminal investigation body to investigate money laundering – and consequently work towards recovering stolen assets. However, they made the asset recovery system of the RM more diffuse, and its coordination more complex. Moreover, it increases the costs of the asset recovery system of the RM, since it requires developing and specialising all criminal investigation bodies in the skillsets and resources needed to effectively conduct parallel financial investigations.

Understanding the policy choices leading to the mentioned legislative changes goes beyond the scope of this report. However, this report notes that those changes have impacted the effectiveness of the asset recovery efforts of the RM. The RM designed an asset recovery system compatible with the size and resources of the country. It accepted existing limitations and sought to focus the limited resources in existing institutions, further specialising them to conduct the asset recovery process more effectively. It ultimately sought to balance the need to specialise criminal investigation bodies with the costs for enhancing the asset recovery efforts in the RM.

This needs assessment report does not suggest the RM changes the current structure of the ARBI. It does, however, acknowledge that the legal amendments introduced since the establishment of the ARBI may not have taken into consideration their impact on the ARBI activities vis-à-vis the existing asset recovery system. It follows that a lack of strategy and policymaking in asset recovery has likely not allowed the asset recovery system of the RM and the ARBI to live to their full potential. Thus, the absence of an asset recovery programme and successive legal amendments have made the purpose of some of the responsibilities of the ARBI less clear.

Moreover, the initial conceptualisation of the asset recovery system of the RM foresaw the NAC taking a leading role in supporting the prosecutorial bodies. However, with the legislative changes since 2017 the role of the ARBI as a centre of excellence in the RM for conducting parallel financial investigations and implementing the asset recovery process is less clear.

The ARBI and the relevant institutions, engaged in the asset recovery system of the RM, should take the opportunity to discuss their role and functions vis-à-vis each other, to better ascertain their most effective role in implementing the asset recovery process in the RM.

3.7 Development of the Registry of Unavailable Criminal Assets

The RM does not have at present an automated solution for keeping records of seized criminal assets. Art. 5(c) and 12 of the Law No. 48/2017 requires the ARBI to establish a database, with the approval of the Government, to keep records of seized criminal assets. Government Decision No. 34/2020 approved the establishment of the Registry of Unavailable Criminal Assets (SIA RBII),[58] currently under development.

Despite the absence of an automated solution, the ARBI currently keeps records of the seized criminal assets through a range of electronic documents. However, the current system in place involves several risks ranging from information security – given the risk of human error – to a lack of interaction with other government information systems.

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[56] Idem. 2018. Law No. 160 of 26.07.2018 for the Modification of Some Legislative Acts. No. 309-320/488, of 17.08.2018.
[57] Idem. Republic of Moldova. Law No. 308 of 22.12.2017, on Prevention and Combating Money Laundering and Terrorism Financing.
[58] Idem. 2020. Government Decision No. 34 of 22.01.2020 regarding the approval of the Technical Concept of the Automated Information System "Register of Seized Criminal Assets" and of the Regulation on the maintenance of the State Register of Seized Criminal Assets formed by the Automated Information System "Register of Seized Criminal Assets". No. 55-61/125, 21.02.2020.

Furthermore, those systems may not have the required information to adequately monitor the existing asset recovery efforts in the RM.

According to Annex I of the Government Decision No. 34/2020, the aim of the SIA RBII is to improve the documentation and administration of parallel financial investigations, the management of electronic documents and integration with the Criminal Prosecution: e-File management system of the PGO. The ARBI expects that the SIA RBII will increase its efficiency, thereby ensuring enhanced transparency and accountability regarding the seizure and management of seized assets.
The ARBI has a key role in the establishment of the SIA RBII. It is seeking to automate processes regarding information pertaining to the asset recovery process, spread throughout different actors within the asset recovery system of the RM. However, identified and seized criminal assets can only be identified by the ARBI when (i) it conducts the financial investigation itself and applies with the prosecution to seize them; or (ii) it receives a request to freeze or seize assets from a foreign counterpart.

For all other financial investigations conducted by different law enforcement authorities in the RM, the ARBI relies on the cooperation and collaboration from these authorities to provide the relevant information to it. It follows that the information held by the ARBI presently is reliable, although likely not fully accurate, either because the ARBI has not received the pertinent information from the relevant authorities, or is duplicated, given the multiplicity of databases from which the data may be extracted. Moreover, the element of human error should not be discounted since the information today is manually input into databases.

The SIA RBII is an essential component for benchmarking the effectiveness of the asset recovery system of the RM. Its concept will enable the ARBI to better interact with the relevant criminal investigation and prosecutorial bodies regarding their ongoing investigations and those whose parallel financial investigation have been assigned to the ARBI. Moreover, it will allow the ARBI to have a complete overview of the assets subject to seizure, management and confiscation in the RM. It will allow the ARBI to collect relevant statistics which will enable the relevant institutions engaged in the asset recovery system in the RM to assess the effectiveness of their actions. Finally, it will allow the ARBI and the relevant institutions engaged in the asset recovery system of the RM to identify key performance indicators (KPI) for the asset recovery process in the RM.

However, the establishment of the SIA RBII faces three main challenges. The first is the collaboration and coordination among the relevant institutions engaged in the asset recovery system of the RM to willingly share the relevant information electronically with the ARBI. This in turn requires ensuring the quality and reliability of the information provided to the SIA RBII. Anecdotal information suggests that the existing databases with which the SIA RBII will connect are not adequately populated.

The last challenge relates to the time for the development of the SIA RBII, based on the requirements set out by the Government Decision No. 34/2020. By way of example, the Consolidated Asset Tracking System (CATS) of the United States was first conceptualised in the 1980s, to professionalise and oversee the asset forfeiture programme in that country. The development of the CATS began in 1990, but only became fully operational in early 2000s, after nearly 20 years of conceptualisation and implementation.

3.8 Lack of key performance indicators

International reports note a lack of progress or effectiveness of the asset recovery system of the RM.[59] In the RM, the Parliament has also conducted an assessment of the effectiveness of the ARBI.[60]

[59] European Commission. 2019. Joint Staff Working Document Association Implementation Report on Moldova, in SWD(2019) 325 final, 11.9.2019, p. 7; Idem. 2021. Joint Staff Working Document Association Implementation Report on the Republic of Moldova, in SWD(2021) 295 final, 13.10.2021, pp. 2, 11 and 14; MONEYVAL, Anti-Money Laundering and Counter-Terrorist Financing Measures. Republic of Moldova: Fifth Round Mutual Evaluation Report, pp. 47-48, 80-96.
[60] Parliament of the Republic of Moldova. 2021. Report Evaluating the Activity of the National Anticorruption Centre for the Period January 2016 to September 2021, in No. 358, of 17.11.2021, pp. 46-49.

The reports issued by the European Commission do not make public the tangible and objective criteria supporting the conclusions reached in their reports. It is therefore not possible to assess how the European Commission reached its conclusions. On the other hand, the MER for the RM is based on a published methodology.[61] The MER rates the efforts of the RM regarding elements of the asset recovery process (intelligence gathering, investigation and prosecutions, and confiscation of assets) as moderate.

The report issued by the Parliament of the RM appears to equate efforts in implementing the asset recovery process with the *recovery of assets*.[62] The report evaluates the ARBI in areas which is has no competence, e.g., confiscation, and fails to evaluate it in other elements of the asset recovery process for which the ARBI is responsible, e.g., parallel financial investigations. Given the lack of methodological approach and discrepancy in the information provided, the report issued by the Parliament provides little insight as to tangible and objective criteria for measuring the effectiveness of the asset recovery system of the RM.

Moreover, this assessment report has been unable to identify key performance indicators (KPIs) agreed upon by all the relevant institutions interacting with the asset recovery system of the RM which would enable establishing a baseline for evaluation of the progress of the asset recovery system of the RM over time. The absence of such KPIs and a baseline enables evaluating the asset recovery system of the RM only subjectively, given the absence of tangible and objective indicators.

The ARBI has an important role in helping set up KPIs for the asset recovery system of the RM. Art. 5(i) of the Law No. 48/2017 establishes that the ARBI is responsible for supporting the judicial bodies in establishing good practices in the matter of identification and management of assets which can be subject to seizure and confiscation. Moreover, art. 5(c) and (f) establish that the ARBI is responsible for keeping records of seized criminal assets, including those based on requests from foreign authorities, and statistical information pertaining to the offences under art. 2(2) .
The ARBI is developing the Registry of Unavailable Criminal Assets (SIA RBII).[63] Through the SIA RBII, the ARBI will have relevant datasets which can be used to establish a baseline and identify the relevant KPIs related to the progress of the implementation of the asset recovery system in the RM.

The first challenge will relate to the identification of the relevant KPIs for each of the phases of the asset recovery process. As such, the KPIs should be SMART (specific, measurable, achievable, relevant and time bound). Moreover, the selected KPIs should demonstrate that the efforts of the ARBI, the relevant institutions engaged in the asset recovery system of the RM and the government are applying the national asset recovery programme[64] and are committed to it. More importantly, it will enable the ARBI to disassociate the current perception equating *asset recovery* with the *recovery of assets*.

However, the ARBI will need the cooperation and collaboration of the relevant institutions engaged in the asset recovery process, and legislators and policymakers will need to agree on providing the relevant information to review the KPIs for the asset recovery process over time. The absence of such cooperation and collaboration will make it difficult to obtain the objective criteria which will demonstrate the progress of asset recovery over time.

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[61] FATF, Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems.
[62] See section 2.1 above concerning the distinction between the terms asset recovery and the recovery of assets.
[63] Republic of Moldova. Government Decision No. 34 of 22.01.2020 approving the Technical Concept of the Automated Information System "Register of Seized Criminal Assets" and the Regulation on the maintenance of the State Register of Seized Criminal Assets formed by the Automated Information System "Register of Seized Criminal Assets". See section 3.7 above.
[64] See section 3.2 above.

4 ROADMAP AND ACTION PLAN

4.1 Roadmap

The roadmap has been divided into short, medium, and long-term actions. The latter two are based on the guidance provided by the Government Decision No. 386/2020.

4.1.1 Short-term (1-2 years)

There are three immediate priorities which the ARBI should focus on with regard to the asset recovery system in the RM:

(i) Developing and approving the national asset recovery programme.

(ii) Developing a process map of the asset recovery system of the RM.

(iii) Establishing KPIs to assess the effectiveness of the asset recovery system in the RM.

4.1.2 Medium-term (3-5 years)

In the medium term, the ARBI should focus on:

(i) Developing a programme to enhance capacities and knowledge among the relevant institutions engaged in the asset recovery system in the RM, including awareness raising with the judiciary, policymakers, legislators, civil society and media.

(ii) Revising and clarifying the base offences triggering the delegated jurisdiction of the ARBI to conduct parallel financial investigations, and the mechanism for delegating authority to the ARBI.

(iii) Updating the relevant legislation, regulations and standard operating procedures related to the asset recovery system in the RM.

4.1.3 Long-term (6-10 years)

In the long-term, the ARBI should take the following steps:

(i) To periodically review the KPIs and the process map for the asset recovery system of the RM, to cater for changes in the system.

(ii) To ensure the ARBI retains the responsibility for developing the national asset recovery strategy by, e.g., amending the Law No. 48/2017.

Over time, the RM should consider transforming the asset recovery and the AML/CFT programmes into strategies, in the sense of the Government Decision No. 386/2020. This is because money laundering and asset recovery go together. Money laundering is the criminal activity that perpetrators commit to hide the true origin, nature and ownership of their criminal property. On the other hand, asset recovery is the action taken by criminal investigation and prosecutorial bodies to trace criminal property, seize it, and restore it to its rightful owner.

4.2 Action plan

1	**Knowledge of the asset recovery process in the RM**
1.1	To identify knowledge gaps with the relevant criminal investigation and prosecutorial bodies regarding the implementation of the asset recovery process in the RM
1.2	To identify knowledge gaps with the courts regarding the implementation of the asset recovery process in the RM
1.3	To identify knowledge gaps with policymakers and legislators regarding the implementation of the asset recovery process in the RM.
1.4	To identify knowledge gaps with civil society and media regarding the implementation of the asset recovery process in the RM.

1.5	To prepare a training programme for the relevant criminal investigation and prosecutorial bodies regarding the implementation of the asset recovery process in the RM
1.6	To prepare an awareness raising programme with the courts regarding the implementation of the asset recovery process in the RM
1.7	To prepare an awareness raising programme with policymakers and legislators regarding the implementation of the asset recovery process in the RM.
1.8	To prepare an awareness raising programme with civil society and media regarding the implementation of the asset recovery process in the RM.
1.9	To assess the effectiveness of the training programme and awareness raising efforts.
2	**Establishment of a national asset recovery programme**
2.1	To identify the actions to be placed in the national asset recovery programme
2.2	To prepare a draft of the national asset recovery programme
2.3	To identify the relevant institutions to comprise the asset recovery working group for the development of the national asset recovery programme
2.4	To set up the asset recovery working group
2.5	To invite the relevant institutions to participate in the asset recovery working group
2.6	To draft the rules of procedure for the elaboration of the national asset recovery programme
2.7	To approve the rules of procedure by the asset recovery working group
2.8	To conduct meetings of the asset recovery working group to discuss the draft national asset recovery programme
2.9	To finalise the national asset recovery programme
2.10	To submit the national asset recovery programme for approval by the Parliament of the RM
2.11	To publish the approved national asset recovery programme
3	**Process mapping of the asset recovery system of the RM**
3.1	To draft a concept note and methodology for the process map
3.2	To outline and map out the activities and relevant authorities comprising the asset recovery system of the RM
3.3	To prepare a draft process map
3.4	To interview the relevant authorities to verify the accuracy of the process map
3.5	To finalise the process map.
4	**Delegation of financial investigations to the ARBI**
4.1	To review the effectiveness of the mechanism for delegating financial investigations to the ARBI

4.2	To discuss with the relevant criminal investigation and prosecutorial bodies the policy objective of the ARBI, and the effective manner for delegating parallel financial investigations to it.
4.3	To propose legislative amendments to review the delegation mechanism to the ARBI
5	**Base offences which trigger the jurisdiction of the ARBI**
5.1	To prioritise the existing offences falling under the purview of the Law No. 48/2017, based on the AML/CFT NRA.
5.2	To review and compare the priority offences with the existing list of offences under art. 2(2) of the Law No. 48/2017
5.3	To assess the priorities which should fall under the purview of the ARBI
5.4	To propose legislative amendments to review the list of offences falling under the purview of parallel financial investigations conducted by the ARBI
6	**Review and update national legislation and associated standard operating procedures**
6.1	To review the legislative changes made since the adoption of the Law No. 48/2017
6.2	To assess the impact of the legislative changes to the asset recovery system of the RM
6.3	To propose legislative amendments to enhance the existing asset recovery system of the RM
7	**Development of the Registry of Unavailable Criminal Assets**
7.1	To identify the needs for the Registry of Unavailable Criminal Assets (SIA RBII)
7.2	To procure contractor to develop the SIA RBII
7.3	To discuss and agree upon with the relevant institutions the way data will be shared with the SIA RBII
8	**Lack of key performance indicators**
8.1	To identify objective and realistic indicators concerning the implementation of the asset recovery process by the asset recovery system of the RM
8.2	To identify objective and realistic indicators concerning the performance indicators of policymakers and legislators in their efforts to enhance the effectiveness of the asset recovery system of the RM
8.3	To identify the relevant datasets needed for monitoring progress of the implementation of the asset recovery process by the asset recovery system of the RM
8.4	To identify the relevant datasets needed for monitoring progress of the efforts undertaken by policymakers and legislators in enhancing the asset recovery system of the RM
8.5	To implement the monitoring process and determine the time period for monitoring
8.6	To review the results and prepare report with findings.

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