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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

FOURTH REVISED DRAFT LAW

**ON FORFEITURE IN FAVOUR OF THE STATE OF ASSETS
ACQUIRED THROUGH CRIMINAL
OR ANOTHER ILLEGAL ACTIVITY**

OF BULGARIA

FORFEITURE IN FAVOUR OF THE STATE OF ASSETS ACQUIRED THROUGH CRIMINAL OR ANOTHER ILLEGAL ACTIVITY ACT

Chapter One

GENERAL PROVISIONS

Article 1. (1) This Act shall regulate the terms and procedure of forfeiture in favour of the State of assets acquired through or in connection with criminal or another illegal activity, or assets acquired from criminal activity.

(2) Enrichment from criminal activity shall be proved on the basis of financial analysis of the sources of acquiring the assets.

Article 2. (1) The purpose of this Act shall be to protect the interests of the society by ***weakening of the economic basis*** of the criminality and preventing and limiting the possibilities for deriving economic benefits from criminal or another illegal activity.

(2) Acquisition of assets acquired through or in connection with criminal or another illegal activity or assets acquired from criminal activity is unjust enrichment on account of the society. Accordingly the ownership of such assets shall be subject to return to the State.

(2) The proceedings under this Act shall observe the right of defence of affected persons and the achievement of proportionality between the purpose of the Act and the measures imposed.

Chapter Two

AUTHORITIES FOR THE IDENTIFICATION OF ASSETS ACQUIRED THROUGH CRIMINAL OR ANOTHER ILLEGAL ACTIVITY

Article 3. (1) The Commission for Establishing Property Acquired through Criminal or other Illegal Activity, hereinafter referred to as "the Commission" shall be a specialized standing State body carrying out examination and identification of assets acquired through or in connection with criminal or another illegal activity or assets acquired from criminal activity under the terms and procedure established by this Act.

(2) The Commission shall be a legal person with a head office in Sofia and a first-level spending unit.

(3) The activity of the Commission shall be assisted by administration.

(4) Territorial directorates headed by directors are the territorial units of the Commission.

Article 4. (1) The Commission shall be a collegial body which shall consist of five members, including a Chairperson and a Deputy Chairperson.

(2) The Chairperson of the Commission shall be a person who has graduated in law from a higher educational establishment and shall be appointed by the Prime Minister. The Deputy Chairperson and two of the members shall be elected by the National Assembly, and one of the members shall be appointed by the President of the Republic.

(3) The term of office of the Commission shall be 5 years. A Commission member shall be entitled to not more than two successive terms of office.

(4) The term of office of the Commission shall start running from the moment of ***filling of its staff*** positions.

(5) The State authorities referred to in para 2 shall elect, appoint respectively, the new members of the Commission not later than a month prior to the expiry of the terms of office of the Commission.

Article 5. (1) Eligibility for membership of the Commission shall be limited to a legally capable Bulgarian citizen, who:

1. has not been convicted of a deliberate publicly actionable criminal offence, regardless of whether he/she has been rehabilitated or not;
2. has graduated in Law or Economics from a higher educational establishment, and have at least five years' experience in the relevant field.
3. has not been released from criminal liability for a deliberate publicly actionable criminal offence;
4. has not been constituted ineligible for a particular State position or to exercise a particular profession or activity;
5. has access to information classified as "Top Secret".

(2) The Commission members shall take the necessary steps to obtain access to information classified as "Top Secret" within one month after their election or appointment.

(3) The member of the Commission may not:

1. exercise commercial activity or be unlimitedly liable associate, managing director or member of supervisory, management or control bodies of any commercial companies, cooperatives, State-owned enterprise or non-profit legal entity;
2. receive remunerations for pursuit of activities under contract or under a civil-service relationship with any State or public organization, commercial company, cooperative or non-profit legal entity, natural person or sole trader, except for scientific research and teaching or exercising copyright.

(4) Any incompatibility under paragraph 3 should be eliminated within one month from the election, the appointment respectively.

Article 6. (1) The civil-service relationship of a Commission member shall be terminated ahead of term by the respective authority upon:

1. death;
2. resignation;
3. objective inability to perform the duties thereof for a period exceeding six months;
4. sentence imposed or release from criminal liability for a deliberate publicly actionable criminal offence;
5. incompatibility under art. 5, para 3 in case where it has not been eliminated within one month after its rise;
6. serious breach or systematic failure to discharge his/her obligations,
7. entry into effect of a written statement, ascertaining conflict of interests under the Conflict of Interest Prevention and Disclosure Act.
8. in case of denial to issue clearance or withdrawal of clearance for access to information classified as "Top Secret".

(2) Upon occurrence of the circumstances under para 1 the Commission shall notify the respective authority.

(3) Dismissal ahead of term shall be made in accordance with the procedure for the appointment or election of a new member of the respective quota.

(4) Where a Commission member is dismissed ahead of term, a new member of the respective quota shall be appointed or elected, as the case may be, to serve the term of office not later than one month from the dismissal.

Article 7. (1) The Chairperson of the Commission shall receive a basic monthly remuneration to an amount equivalent to 90 per cent of the basic monthly remuneration of the Chairperson of the National Assembly.

(2) The basic monthly remuneration of the Deputy Chairperson shall be 90 per cent of the remuneration of the Chairperson.

(3) The rest of the Commission members shall receive the basic monthly remuneration to an amount equivalent to 85 per cent of the remuneration of the Chairperson of the Commission.

Article 8. (1) The Commission shall make decisions on:

1. institution of proceedings for identification of assets acquired as benefit from criminal or another illegal activity;
2. extension of the term of the examination under art. 26;
3. termination of proceedings for identification of assets acquired through or in connection with criminal or other illegal activity or assets acquired from criminal activity;
4. submission to the court of a request for imposition of injunctions;
5. starting an action for forfeiture in favour of the State of assets acquired through or in connection with criminal or other illegal activity or assets acquired from criminal activity;
6. conclusion of a settlement under art. 91;
7. appointment and dismissal of the directors of territorial directorates;
8. appointment and dismissal of the inspectors upon proposals of the directors of territorial directorates;
9. exercise of other powers as provided for in this Act.

(2) The decisions of the Commission shall be adopted by a majority of more than one half of the members and shall be reasoned. In its decisions the Commission shall state the facts of the case, the evidences on the basis of which they have been established and the legal conclusions drawn.

(3) Record of Proceedings shall be kept for the Commission's meetings.

Article 9. The Chairperson of the Commission shall:

1. represent the Commission;
2. organize and direct the operation;
3. schedule and preside over the meetings;
4. control and be responsible for implementation of the budget;
5. issue penalty decrees on violations committed under this Act.

Article 10. (1) The directors of territorial directorates and the inspectors at the territorial directorates shall be the Commission authorities in the process of identification of assets acquired through or in connection with criminal or another illegal activity or assets acquired from criminal activity.

(2) Eligibility for the office of directors and inspectors of the territorial directorates shall be limited to persons who meet the requirements under art. 5.

Article 11. (1) The supervision on the Commission's activity shall be exercised by a standing commission of the National Assembly.

(2) The members of the Commission shall be obliged to appear, upon invitation, before the Commission under para 1 and provide the information requested;

Article 12. (1) The Commission shall annually submit a report on its activity to the National Assembly by 31 May.

(2) The report shall be further submitted to the President of the Republic and the Council of Ministers and shall be published on the Commission's website.

Article 13. The Commission members, the authorities referred to in art. 10, para 1 and the officers in the administration of the Commission may not be members of a political party or an organization pursuing political goals as well as perform political activity.

Article 14. (1) The information of which the Commission members, the authorities referred to in art. 10, para 1 and the officers in the administration have become aware in the course of exercising or on the occasion of discharging their powers constitutes an official secret.

(2) When coming into office the Commission members, the authorities referred to in art. 10, para 1 and the officers in the administration shall sign a declaration that they will not divulge the information mentioned in para 1 during tenure of office as well as after stepping out of office.

(3) The Commission members, the authorities referred to in art. 10, para 1 and the officers in the administration shall sign a declaration for private interest and a declaration for a private interest in a concrete occasion.

Article 15. The Commission members, the authorities referred to in art. 10, para 1 and the officers in the Commission's administration shall not bear material liability for damages inflicted while exercising the functions and powers entrusted to them by law except if they have committed a deliberate publicly actionable criminal offence.

Article 16. The members of the Commission, the authorities referred to in art. 10, para 1 and the officers in the Commission's administration shall be compulsorily insured with life insurance and against accident on the account of the State budget.

Article 17. (1) The length of service of the persons under art. 10, para 1 as well as of the persons holding a position for which a degree in law and legal capacity is required shall be recognized as length of service in this field.

(2) The length of service of the persons under art. 10, para 1 as well as the persons holding a position for which a degree in economics is required shall be recognized as length of service in this field.

Article 18. (1) Bearing of a service weapon is allowed for officers of the Commission, nominated by an order of the Chairperson of the Commission, who have access to information classified as "Top Secret".

(2) Bearing of a service weapon is allowed under the terms and procedures of the Control of Explosives, Firearms, Ammunitions and Pyrotechnical Goods Act.

Article 19. (1) The Commission shall adopt Regulations governing its organization and activities as well as the organization and activities of its administration.

(2) The Regulation shall be published in the State Gazette.

Chapter Three

IDENTIFICATION OF ASSETS ACQUIRED THROUGH CRIMINAL OR ANOTHER ILLEGAL ACTIVITY

Section I

Examination of the sources of acquisition of assets

Article 20. (1) 1) The proceedings before the Commission under this Act shall be instituted for identification of the origin of the assets for which there is doubt that it has been acquired as a benefit from criminal or another illegal activity.

(2) Examination of the sources of acquisition of the assets shall be made and measures shall be taken during the proceedings to secure future requests for forfeiture of assets if it is established that the assets have been acquired from criminal activity, through or in connection with criminal or another illegal activity.

Article 21. (1) The Commission shall institute proceedings to establish the origin of the assets of a person who has been constituted as an accused for an offence of a nature to derive benefits under some of the following texts of the Criminal Code:

1. art. 108a and art. 109;
2. art. 110;
3. art. 116, para 1, sub-para 7 and 10;
4. art. 142 and 142a;
5. art. 155, 156 and 159;
6. art. 159a – 159d;
7. art. 194, art. 195, para 1 - 3 and 196a;
8. art. 198- 200;
9. art. 201 - 203;
10. art. 209 - 211, art. 212, para 3, 4 and 5, art. 212a and 213;
11. art. 213a - 214;
12. art. 215, para 2, sub-para. 1 and art. 217;
13. art. 220, art. 225c, art. 227c, art. 227d and art. 227e;
14. art. 233, 234, 234a, 234b and art. 235;
15. art. 242 - 242a;
16. art. 243 – 246 and art. 249 – 252;
17. art. 253, art. 253a, para 1 and 2 and art. 254b;
18. art. 255 – 256, art. 259 and art. 260;
19. art. 278, 278b and art. 280;
20. art. 282, art. 283 and art. 283a;
21. art. 301 - 306;
22. art. 308, para 2, 3 and 5 and art. 310;
23. art. 319a, para 2 – 5, art. 319b, para 3 and 319e, para 2;
24. art. 321, art. 321a and art. 327, para 1 - 3;
25. art. 337, art. 339; art. 346, para 2, sub-para 4, para 3, para 5 and para 6 and art. 349a, para 2;
26. art. 354a, art. 354b, para 4 – 6 and art. 354c, para 1 – 5.

(2) The Commission shall institute proceedings to establish the origin of the assets of a person against whom penal proceedings have not been instituted for an offence under para 1 or the instituted proceedings have been terminated because:

1. an amnesty has followed ;
2. the term of statutory prescription has expired;
3. the perpetrator has died;

4. the perpetrator has come to a state of mental derangement of prolonged duration which excludes penal responsibility;

5. transfer of penal proceedings in another State in respect of a person has been admitted.

(3) The Commission shall institute proceedings also in the cases where the criminal proceedings for an offence under para 1 has been suspended and the person cannot be constituted as accused because:

1. it has come to a state of mental derangement of short duration which excludes penal responsibility or suffers another serious disease;

2. enjoys immunity;

3. the address of the person is unknown and he/she cannot be found.

Article 22. (1) The Commission shall institute proceedings to establish the origin of the assets of a person for which there are sufficient data that it possesses or has obtained assets acquired through or in connection with criminal activity of another person regardless of the implementation of the penal responsibility of the perpetrator.

(2) The Commission shall institute proceedings to establish the origin of the assets of a legal person where there are sufficient data that it possesses, controls or has obtained assets acquired through or in connection with criminal activity of another person regardless of the implementation of the penal responsibility of the perpetrator.

23. (1) Proceedings under this act shall be conducted as well in cases where there is an act of a foreign court concerning any of the crimes under art. 21, para 1, recognized under the procedure provided for in the Criminal Procedure Act.

(2) Proceedings shall be conducted as well in cases where there have been identified assets acquired from criminal activity or assets acquired through or in connection with criminal activity carried out abroad which does not fall under the criminal jurisdiction of the Republic of Bulgaria.

Article 24. The Commission shall institute proceedings to establish the origin of concrete assets for which there are data that they have been obtained as a benefit through or in connection with illegal activity provided the benefit amounts to BGN 60 000 and are not subject to forfeiture or cannot be forfeited under another procedure since specific requirements established by law have not been met.

Article 25. Proceedings under art. 21 shall be instituted on the basis of a notification of the bodies of the pretrial proceedings.

(2) the Notification shall contain information on:

1. the person in respect of which the respective ground under art. 21 is present;

2. the crime which has been committed;

3. the assets of the person upon availability of data about them.

(3) The Ministry of Justice shall notify the Commission for each case of criminal proceedings instituted in another State or a sentence issued by a foreign court that has entered into force against Bulgarian nationals for offences similar to those under art. 21, para 1.

(4) The Supreme Prosecution Office of Cassation and the Ministry of Justice shall notify the Commission for any transfer of criminal proceedings.

(5) In the cases under art. 22 the proceedings shall be instituted on the basis of notifications by the bodies of the judiciary, communications of State and municipal authorities, organizations and citizens containing data for assets acquired from criminal activity or upon initiative of the Commission when it disposes of the necessary information.

(6) Proceedings under art. 24 shall be instituted on the basis of information which is gathered:

1. in the process of detection of the administrative offence by the authority which is competent to identify it;
2. from official documents drawn up by State and municipal authorities;
3. from acts of the bodies of the judiciary terminating criminal proceedings and the file being forwarded to an administrative body since the act does not constitute a crime;
4. from acts drawn up upon carrying out of an inspection or an audit.

(7) When the sources of information do not contain sufficient data regarding the presence of the grounds provided for in the Act, the Commission shall institute proceedings after having gathered further information on the facts and circumstances which are subject to identification. Where appropriate, the Commission may request assistance from other authorities and institutions.

(8) Proceedings cannot be instituted on the basis of an anonymous signal except where there are other data as well which confirm the signal.

Chapter Four

POWERS OF THE COMMISSION'S BODIES IN THE PROCESS OF CARRYING OUT AN EXAMINATION

Article 26. (1) Proceedings under this Act shall start with examination which shall last for up to 10 months. This term may be extended by the Commission once by not more than six (6) months.

Article 27. Financial analysis of the economic activity and the life maintenance of the person and his/her family shall be carried out during the examination and other evidences regarding the assets, the income, the expenses and obligations in the period of examination shall be collected.

Article 28. (1) The authorities referred to in art. 10, para 1 herein shall examine:

1. the assets, their location, the value and the legal grounds for the acquisition thereof;
2. the transformation of the assets;
3. the income of the person under examination and of his/her family members;
4. the obligations at public law to the State and the municipalities, paid by the person under examination and his/her family members;
5. the customary and extraordinary expenditures for maintenance of the person under examination and his/her family members;
6. the tax declarations of the examined person and of his/her family members;
7. the transactions with assets of the person under examination and of his/her family members;
8. the travels abroad of the person under examination and of his/her family members;
9. the securities and encumbrances imposed on the property and the obligations taken;
10. any other circumstances relevant to clarification of the origin of the assets and of the manner of acquisition and transformation thereof.

Article 29. Where appropriate for the purposes of this Act, the Commission and the directors of territorial directorates may request the court to rule the reveal of the bank secret, the commercial secret under art. 35, para 1 of the Markets of Financial Instruments Act and the information under art. 133 of the Public Offering of Securities Act.

Article 30. In the cases under art. 24 it shall be established whether the person has obtained profit, whether it derives from illegal activity and the value thereof.

Article 31. If new circumstances relevant to the case have been revealed, the Commission may resume the proceedings by attaching the materials collected under the first file.

Chapter Five Interaction with other public authorities

Article 34. (1) In order to achieve the purposes of this Act the authorities referred to in art. 10, para. 1, the police authorities, the State Agency for National Security authorities, the revenue authorities, the Customs Agency authorities and the Prosecution Office shall jointly conduct examination of the sources of acquisition of the assets which is aimed at the preparation of an entire profile of the activity of the examined person.

(2) The procedure for the exercise of joint activity and control over it shall be specified in a joint instruction of the Commission, the Chairman of the State Agency for National Security, the Minister of Interior and the Prosecutor General, the directors of the National Revenue Agency and the Customs Agency.

Article 33. (1) The authorities under art. 10, para. 1 shall exchange information with the police concerning:

1. the assets of person which are supposed to be acquired from criminal activity in the country, or abroad or through or in connection with criminal activity;
2. the vehicles belonging to the examined persons;
3. the whereabouts of persons and vehicles when necessary for the proceedings under this Act;
4. other facts and circumstances relevant to the proceedings under this Act.

(2) Information under para. 1 shall be exchanged in compliance with the provisions of the Ministry of Interior Act.

Article 34. (1) The authorities under art. 10 para. 1 shall exchange information with the authorities of the State Agency for National Security concerning:

1. the assets of the examined persons and its transformation;
2. the import and export of assets, Bulgarian and foreign currency in cash, precious metals, gemstones and articles made with and of them;
3. bank accounts of the persons in the country or abroad;
4. involvement of the persons in business companies or other entities;
5. other facts and circumstances relevant to proceedings under this Act.

(2) The exchange of information under para. 1 shall comply with the provisions of the State Agency for National Security Act.

Article 35. After constitution of the person as an accused party for any of the offences referred to in art. 21, para. 1 the investigating authority shall forthwith notify the director of the respective territorial directorate. Notification shall be sent also for any new constitution of an accused as well as for any suspension and termination of the criminal proceedings.

Article 36. (1) Prosecutors, assigned to supervise the case file and pre-trial proceedings for a crime under art. 21, para. 1 shall forthwith notify the director of the respective territorial directorate about:

1. the institution of pre-trial proceedings for a crime under art.21, para 1;
2. the decrees whereby initiation of criminal proceedings is refused or the institution has been suspended or terminated as well as those whereby the suspended criminal proceedings for a crime under art. 21, para 1 has been resumed;
3. submission to the Court of an indictment.

4. the injunctions imposed on the assets of the accused party.

Article 37. (1) In case of communications under art. 25, para 5 the Commission shall notify the Prosecution Office to take relevant steps.

(2) The Prosecution Office shall notify the Commission of the initiation or the refusal to initiate criminal proceedings on the basis of communications under art. 25, para 5.

(3) The authorities referred to in art. 10, para 1 shall notify the respective prosecution office of initiated, terminated or suspended proceedings for establishment of assets acquired through criminal activity.

Article 38. The authorities under art. 10, para. 1 shall exchange information with the National Revenue Agency and the Customs Agency relating to:

1. the assets of the examined person;
2. the sources of income and its value;
3. the customary and extraordinary expenditures;
4. the paid obligations at public law;
5. the filed tax declarations;
6. the transformation of the assets;
7. the import and export of assets, including Bulgarian levs and foreign currency in cash.

Article 39. (1) The directors of territorial directorates may request the competent revenue authorities to provide the entire tax and social-insurance information for the examined person and to carry out tax audit or examination to identify the sources of acquisition of the assets.

(2) Upon termination of the audit or examination the revenue authorities shall notify the directors of the respective territorial directorates.

Article 40. The directors of territorial directorates shall provide to the National Revenue Agency authorities information of the assets, forfeited in favour of the State and location thereof.

Article 41. (1) The authorities under art. 10 para 1, in exercise of their powers under this Act may seek assistance and information from all State and municipal authorities, merchants, credit institutions and other entities, notaries and public enforcement agents.

(2) Authorities and persons under para 1 shall be obliged to provide information within one month of the request.

(3) Classified information shall be exchanged in accordance with the Classified Information Protection Act.

(4) Personal data shall be processed in accordance with the Personal Data Protection Law.

Article 42. Administrative authorities and the bodies of the judiciary shall forthwith notify the Commission where the conditions under art. 24 are present and shall forward the materials of the case file.

Article 43. Public authorities and other institutions shall grant the Commission access to their information data-bases and records, including through the provision of personal data in electronic form or by remote access, following the procedures established by joint instructions.

Article 44. Record of Proceedings shall be drawn up for each action under this Act by the authorities under art. 10, para 1 except where the action that has been taken is certified in another document.

Article 45. Persons who have become aware of the information of the examination that has been carried out are not entitled to divulge it.

Chapter Six

TERMS AND PROCEDURE FOR IMPOSITION OF INJUNCTIONS AND FORFEITURE IN FAVOUR OF THE STATE OF ASSETS ACQUIRED THROUGH CRIMINAL OR ANOTHER ILLEGAL ACTIVITY

Section I

Injunctions

Article 46. (1) The Commission shall make decision on presenting to the court a request for imposition of injunctions on the assets on the basis of a report provided by the director of the respective territorial directorate where it has been established that:

1. there is a concrete benefit acquired through or in connection with criminal or another illegal activity;
2. the value of the assets as at the moment of acquisition substantially exceeds the net income of the examined person and of his/her family members for a definite period wherefrom it can be reasonably assumed that the assets have been acquired from criminal activity.

(2) The encumbrances and securities on the assets, if any, shall be specified in the decision under para 1.

(3) The Commission shall file the request for imposition of injunction on the assets to secure future requests for forfeiture of the assets acquired from criminal activity or for forfeiture of assets acquired through or in connection with criminal and other illegal activity before the regional court exercising jurisdiction over the permanent address of the individual, over the registered office of the legal entity respectively and where corporeal immovable is incorporated into the assets - over the location of the property.

(4) The request shall be reasoned and all evidences gathered in the file shall be attached thereto.

(5) The Commission may not require imposition of injunction on assets which are not subject to coercive enforcement under article 444 of the Civil Procedure Code.

Article 47. (1) Where no concrete benefit acquired through or in connection with criminal or another illegal activity has been identified, the Commission shall make decision for termination of the proceedings.

(2) The proceedings shall be subject to termination also where no reasonable assumption can be made from the evidence collected in the case file that the person has acquired the assets from criminal activity since the lack of correspondence between the assets and the net income of the person and his/her family members which has been established for the period of examination is not substantial.

Article 48. The court shall pronounce within 48 hours of receipt of the request, rendering a ruling whereby it shall grant or refuse the imposition of injunction.

(2) The imposition of injunction shall be granted where in the absence thereof it will be impossible or difficult to exercise the rights under the court's decision and where the request of the Commission is backed with persuasive documentary evidences establishing that the person:

1. has acquired, possesses or controls concrete assets which constitute a benefit acquired through or in connection with criminal or other illegal activity;

2. has acquired assets acquired from criminal activity since there is substantial lack of correspondence between the assets and the net income of the person and his/her family members during the period of examination.

(3) The ruling granting an injunction shall be subject to immediate enforcement.

(4) The court ruling referred to in para 3 shall be appealable with an interlocutory appeal within seven days, which period shall start running for the appellant from the date of serving of the ruling, and for the respondent – from the date where a communication for the injunction imposed was served by the public enforcement agent, by the registry service or by the court.

(5) Upon request of the Commission and on the basis of the court ruling separate injunction orders shall be issued for movables and immovable property in view of the territorial jurisdiction of the public enforcement agent.

Article 49. (1) Injunctions are:

1. preventive attachment of a corporeal immovable;
2. by means of a garnishment of movables, receivables or participation in legal entities;
3. garnishment of the bank accounts;
4. other appropriate measures ruled by the court upon request of the Commission.

(2) The injunction comprises also the interest on and the acquisition of other civil fruits from the assets on which it has been imposed.

(3) The court may admit several kinds of injunctions up to the amount of the claim.

(4) Should there be a risk of the assets being squandered, destroyed, concealed or disposed of, upon request of the authorities referred to in art. 10, para 1, the court may order the sealing of premises, equipment and means of transport where such assets are stored without taking into consideration the ownership thereon.

Article 50. (1) After coming into force of the ruling for imposition of injunction, the court, acting on a reasoned application by the interested person or on request of the Commission, may permit the effecting of a payment or other acts of disposition of the assets, where this is required for the purpose of:

1. medical treatment or other urgent humanitarian needs of the person on the assets whereof injunctions are imposed, or of a member of the family of the said person;
2. payment of support;
3. payment of obligations at public law to the State;
4. payment of remunerations for work performed;
5. compulsory social and health insurance;
6. payment of expenses needed to preserve and maintain the assets whereon injunctions are imposed;
7. payment of expenses in relation to the proceedings under this Act;

(2) The court shall pronounce within 48 hours after filing of any such application or request with a ruling which shall be subject to appeal.

(3) The annulment of preventive attachment, the lifting of the garnishment as well as annulment of any other injunction shall be made on the basis of the effective court ruling.

Article 51. (1) The injunctions shall be enforced by the respective recordation judge and the public enforcement agents who shall be nominated by the Commission taking into account the territorial jurisdiction under art. 427, para. 1 of the Civil Procedure Code.

(2) Recordation of a preventive attachment and imposition of garnishment shall be made immediately.

(3) No stamp duties shall be collected for the actions related to the implementation of the injunctions.

Article 52. (1) The imposition of preventive attachment of a corporeal immovable upon request of the authorities referred to in art. 10, para. 1 shall be made through registration of the injunction order of the court upon order of the respective recordation judge.

(2) The recordation judge shall send a notification to:

1. the owner of the property on which preventive attachment has been imposed – for the registration;
2. the Central Pledge Register – for the preventive attachment imposed where the assets belong to a commercial company;

(3) A special pledge of a commercial company, in which the immovable is incorporated under para 1, recorded after such preventive attachment shall be inopposable to the public receivable of the State.

Article 53. (1) Garnishment of a corporeal movable shall be forthwith imposed by the public enforcement agent upon request of the authorities referred to in art. 10, para 1 by notifying the defendant in the injunction.

(2) The garnishment shall be considered to have been imposed upon receipt of the notice of garnishment by the defendant in the injunction, and from this moment he cannot dispose, transform, damage or destroy it.

(3) Upon request of the authorities referred to in art. 10, para 1, the public enforcement agent shall draw up an inventory, shall value and shall deliver the movables for safe-keeping to the defendant in injunction or to a third party, or shall seize and shall deliver them for storing to the authorities referred to in art. 10, para. 1, and a garnishment mark (sticker) may be applied thereon.

(4) The public enforcement agent shall also notify the Central Pledge Register for preventive attachment imposed where the assets belong to a commercial company.

Article 54. (1) Upon a preventive attachment imposed on a ship or other water-craft the public enforcement agent shall notify the Maritime Administration Executive Agency for recording in the relevant ship registers.

(2) In cases where a motor vehicle is garnished, a notice of the garnishment imposed shall be forwarded to the authorities of the Ministry of Interior.

(3) In cases where a civil aircraft is garnished, a notice of the garnishment imposed shall be transmitted to the Directorate General of Civil Aviation Administration for entry into the civil aircraft register.

(4) In cases where the garnishment is imposed on agricultural or forestry machinery subject to registration according to the procedure established by Article 11 of the Agricultural and Forestry Machinery Registration and Control Act, the public enforcement agent shall notice the Technical Control Inspection of the Ministry of Agriculture and Food.

Article 55. (1) Garnishment imposed under art. 54 shall be considered to have been imposed from the date of the receipt of the notice of garnishment by the authorities of the respective registers.

(2) The defendant in injunction shall be notified of the imposed garnishment after service of the garnishment notice to the public officer of the respective register.

(3) Changes in the register of the vehicles and machinery specified in art. 54 shall not be admitted before the lifting of the garnishment.

(4) The public enforcement agent may request from the authorities of the Ministry of Interior the immobilization of the motor vehicle with imposed garnishment on it for a period of three months.

Article 56. (1) Garnishment of receivables which the defendant in injunction has from a natural person or a legal entity shall be imposed by the public enforcement agent by means of despatch of garnishment notice to the third garnishee and the bank wherewith the third garnishee holds account.

(2) Garnishment shall be considered to have been imposed as from the date and hour of receipt of the garnishment notice by the third garnishee or the bank wherewith the third garnishee holds account.

(3) The defendant in injunction shall be notified of the imposed garnishment after the service of the garnishment notice by the third garnishee.

(4) Where the garnished receivable is secured by a pledge, the pledgee shall be ordered to surrender the said movable to the public enforcement agent who shall deliver it for safe-keeping to a person, appointed by the authority referred to in art. 10, para. 1.

(5) Where the garnished receivable is secured by a mortgage, the garnishment shall be noted in the relevant book at the Registry Service.

(6) Where there is a writ for the receivables under para 1, the public enforcement officer shall withdraw the same from the person holding it and deliver it for safe-keeping to a person, appointed by the authority referred to in art. 10, para 1 with a record of proceedings.

(7) The extinctive prescription shall cease running from the moment of the receipt of the garnishment notice by the third garnishee.

Article 57. (1) In the cases under in art. 56, para 6 the authorities referred to in art. 10, para. 1 shall have the right to request the power for collection of the receivables and the initiation of separate enforcement proceedings against the person – debtor on the writ.

(2) The collected amounts of the enforcement proceedings shall be transferred from the public enforcement agent to a special account of the Commission.

Article 58. (1) Cash in national or foreign currency shall be garnished by means of drawing up an inventory, seizing and depositing the cash on the special account of the Commission. When translating the exchange rate of the foreign currency the exchange rate of the Bulgarian National Bank for the day of the inventory for the respective currency shall be applied.

(2) Garnishment of all types of bank accounts of the defendant in injunction in national or foreign currency shall be imposed by sending the garnishment notice to the bank.

(3) Garnishment may also be imposed on all kinds of movables deposited in safe-deposit vaults, including the content of safe-deposit boxes, and on amounts delivered for trust management by the defendant in injunction.

(4) Garnishment under paras 2 and 3 shall be considered to have been imposed from the date of the service of the notice of garnishment by the bank. The notice of the imposed

garnishment shall be forwarded to the defendant in injunction after the receipt of the notice by the bank.

(5) The person serving the garnishment notice shall record the date and time of the receipt. Where the notice is delivered by mail the respective officer shall record the date and time of receipt.

Article 59. (1) Garnishment on available securities shall be made in their nominal value by means of drawing up an inventory and seizure of the securities by the public enforcement agent.

(2) Upon garnishment of physical registered shares or bonds, the public enforcement agent shall notify the company of this. The garnishment shall have effect in respect of the company as from the moment of receipt of the garnishment notice.

(3) The public enforcement agent shall deliver the physical securities for safe-keeping at a bank and draw up a record of proceedings.

Article 60. (1) Garnishment of dematerialized securities shall be imposed by means of dispatch of a garnishment notice to the Central Depository, simultaneously notifying the company.

(2) Garnishment shall have effect as from the moment of service of the garnishment notice to the Central Depository.

(3) The Central Depository shall forthwith notify the relevant regulated market of the garnishment imposed.

(4) Within three days after receipt of the garnishment notice, the Central Depository shall provide information to the public enforcement agent as to the securities owned by the defendant in injunction and whether other garnishments have been imposed on other receivables.

(5) The public enforcement agent shall notify the authorities referred to in art. 10, para. 1 of the information received under para. 4.

Article 61. (1) Garnishment of government securities shall be imposed by means of despatch of a garnishment notice to the person keeping a register of government securities.

(2) Garnishment shall be considered to have been imposed as from the date of receipt of the garnishment notice by the person keeping a register of government securities.

(3) The person keeping a register of government securities is obliged within 3 days of the receipt of the garnishment notice to provide information to the public enforcement agent as to the securities owned by the defendant in injunction and whether other garnishments have been imposed on other receivables.

(4) The public enforcement agent shall notify the authorities referred to in art. 10, para. 1 of the information received under para. 3.

Article 62. (1) Garnishment of securities shall cover all property rights attaching to the securities.

(2) Any disposal of the shares occurring after the garnishment notice shall have no effect in respect of the State.

(3) The management bodies of joint-stock companies shall refuse to record transfers of registered shares by the defendant in injunction after garnishment.

Article 63. (1) Garnishment of an equity interest of a commercial company shall be imposed by means of despatch of a garnishment notice to the Registry Agency by the public enforcement agent.

(2) The garnishment shall be recorded according to the procedure applicable to the recording of a registered pledge of interests in commercial companies and shall be considered to have been imposed from the date of its record in the Commercial Register. The Registry Agency shall notify the commercial company of the garnishment recorded.

Article 64. The transfer of the right of ownership, the creation and transfer of rights in rem and the creation of encumbrances in respect of the garnished corporeal immovable, as well as disposal of the garnished movables, securities, equity interests and receivables made after the date on which the attachment or the garnishment are considered to have been imposed, shall have no effect in respect of the State.

Article 65. Assets in respect of which injunctions have been imposed according to the procedure established by this Act shall be excluded from the insolvency estate, from the property subject to liquidation respectively, in cases where insolvency proceedings or proceedings for dissolution with liquidation of the merchant or the legal entity, have commenced after the imposition of injunctions.

Article 66. The Commission may bring an action against the garnishee for the amounts or movables which he/she refuses to surrender voluntarily.

Article 67. Coercive enforcement under the Civil Procedure Code and the Law on Special Pledges is not allowed for assets and receivables in respect of which injunctions have been imposed according to the procedure established by this Act.

Article 68. Injunctions may be imposed according to the procedure established by this Act also on assets on the territory of the Republic of Bulgaria acquired from criminal or another illegal activity if the competent authorities of another State have so requested and where so provided for in an international treaty whereto the Republic of Bulgaria is a party.

Article 60. For all other cases not regulated by this Act the general rules of the Civil Procedure Code shall apply.

Section II

Actions upon imposition of injunctions

Article 70. (1) Upon imposition of an injunction the authorities referred to in art. 10, para 1 herein shall invite the natural person under examination to submit a declaration in writing regarding:

1. the corporeal immovable and motor vehicles, any ships and aircraft, limited real rights to corporeal immovable, cash deposits, securities, works of art, movable archaeological values, participating interests in commercial companies, receivables, patents, trademarks and industrial designs, owned by the examined person and by the members of his/her family;
2. a list of the bank accounts held by the person under examination and by the members of his/her family in Bulgaria and abroad;
3. the sources of income and the grounds for acquisition of the assets and for the maintenance of his/her family;
4. any transactions with corporeal immovable, movables, shares and interests in commercial companies and with other property effected by the person concerned and by the members of his/her family during the period of examination, as well as the sources of income used to effect the said transactions;
5. any debts to third parties when they have been reflected in the annual tax declarations.

(2) Should the person referred to in para 1 be deceased, his/her legal and testamentary heirs shall be invited to submit the declaration under para 1.

(3) The person so invited shall submit the declaration within 14 days from the date of receipt of the invitation and within 1 month from the date of receipt of the invitation if the said person is abroad.

(4) The standard form of the declaration shall be endorsed by the Commission and shall be published in the State Gazette.

Article 71. The authorities under art. 10, para 1 shall invite to submit the declaration under art. 70 also:

1. the third party who has acquired assets of the examined person and the person for which it is assumed that he/she has acquired assets with funds and on the account of the examined person;

2. the persons who represent, manage or control the legal person which has obtained or possesses assets acquired through or in connection with criminal or another illegal activity or assets acquired from criminal activity as well as all persons who represented, managed or controlled the said legal entity during the period of examination. The declaration shall state accordingly the circumstances covered under art. 70, para. 1, regarding the legal entity.

Article 72. Refusal to submit a declaration cannot be a reason for evidencing conclusions to the detriment of the person.

Article 73. (1) The Commission shall give possibility to the examined person to participate in the proceedings after imposition of the injunctions.

(2) The authorities referred to in art. 10, para. 1 shall notify the examined person, shall provide the materials relevant to him/her and shall grant him/her a 1 months period to appeal and to produce evidences.

(3) In the proceeding before the Commission the examined person may be represented by a lawyer or any other representative under the procedure established in the Civil Procedure Code possessing a written authorization with a signature certified by a notary.

(4) The statements made by the examined person may neither be a reason to commence criminal proceedings against him/her nor can be considered as evidence in support of criminal charges against him/her.

Article 74. (1) The director of the respective territorial directorate, after considering the objections of the examined person and the evidences brought by him/her, shall prepare a reasoned report for the Commission. The report shall contain:

1. description of the type and amount of the assets acquired through or in connection with criminal or other illegal activity;

2. existence of relation between the criminal or other illegal activity and the assets acquired;

3. the type and amount of the assets acquired from criminal activity since there is a substantial lack of correspondence between the value of the assets and the net income of the person and hi/her family members;

4. evidences on the existence or lack of encumbrances or other injunctions imposed on the assets.

5. other evidence whereon the request is based.

6. the final conclusion.

(2) With the conclusion the director of the respective territorial directorate shall propose to the Commission to:

1. terminate the proceedings if from the evidences collected it has not been established that the assets have been acquired as a benefit through or in connection with criminal or another illegal activity, or if it is not possible to make a reasonable assumption that the person has acquired assets from criminal activity since the lack of correspondence between the assets and the net income of the person and his/her family members, which has been established for the period of examination, is not substantial;
2. bring action for forfeiture in favour of the State of the assets acquired as a benefit through or in connection with criminal or another illegal activity or of assets for which it is possible to make a reasonable assumption that it has been acquired through or in connection with criminal activity since there is substantial lack of correspondence between the assets and the net income of the person and his/her family members for the period of examination.

Section III

Article 75. (1) Forfeited under the procedure of this Act shall be:

1. concrete assets acquired as a benefit through or in connection with criminal or another illegal activity;
2. assets acquired from criminal activity.

(2) It is considered that the assets have been acquired from criminal activity for a definite period of time where from the financial analysis and other evidential resources is has been established that the value thereof exceeds considerably the net income of the examined person and of his/her family members.

Article 76. (1) Forfeited shall be assets which are proportional to established lack of correspondence between the assets and the net income of the examined person and of his/her family members. Indivisible shares of assets or the monetary equivalent thereof, defined on the basis of the market value as at the moment of bringing action for forfeiture, shall be forfeited in case where it is not possible to forfeit self-contained assets.

(2) The lack of correspondence between the assets and the net income of the examined person and of his/her family members shall be defined through comparison between the value of the assets calculated as a number of minimum salaries as at the date of the acquisition thereof and the net income of the examined person and of his/her family members calculated as a number of minimum salaries for each year of the period of examination.

(3) The assets subject to comparison under para 2 shall comprise:

1. the personal assets of the examined person;
2. the assets acquired by the spouses;
3. the assets of the underage children, and
4. the assets of the spouse regardless of the property regime adopted by the spouses.

(4) The established lack of correspondence for the respective years cannot be compensated with revenue, income or sources of financing obtained in the following years.

Article 77. Any transactions effected in assets derived from criminal or another illegal activity shall be invalid in respect of the State and the benefit conferred shall be forfeitable where the said transactions are:

1. Gratuitous transactions with natural or legal persons;
2. onerous transactions with third parties, if the said parties were aware or could have supposed that the assets have been derived from criminal or another illegal activity, or where such third parties have acquired the assets for the purpose of disguising the illicit origin thereof or the actual rights associated with such assets.

Article 78. Subject to forfeiture shall be assets acquired as a profit through criminal or in connection with criminal or another illegal activity, or the assets acquired through criminal activity transferred in the period of examination by the person under examination to the spouse, a person who is the de facto cohabitee with the examined person, to a former spouse, to lineal relatives up to any degree of consanguinity and to collateral relatives up to the fourth degree of consanguinity and affines up to the second degree inclusive and assets transferred gratuitously to a third party during the period of examination.

(2) Until the reverse is established by evidence it shall be assumed that the persons under para 1 knew or could have supposed that the assets had been acquired through criminal or another illegal activity.

Article 79. (1) Subject to forfeiture shall also be the assets onerously incorporated or transferred by the examined person to a legal entity provided the persons controlling the legal entity knew or from the circumstances could have supposed that the assets had been acquired through criminal or another illegal activity.

(2) Subject to forfeiture shall be any assets acquired through criminal or another illegal activity, which are incorporated into the assets or acquired by a legal entity which is controlled by the person under examination, whether independently or jointly with another person.

(3) Subject to forfeiture shall be any assets acquired through criminal or another illegal activity which are incorporated into the assets or acquired by a legal entity which is not controlled by the examined person but the persons who manage or control the legal entity knew or could have supposed from the circumstances that the assets had been acquired through criminal or another illegal activity.

(4) The assets shall be forfeited also in cases of succession of the legal entity concerned.

Article 80. Subject to forfeiture shall also be the assets acquired through simulated transaction by a third party on the account of the examined person in order to avoid the forfeiture thereof, or to conceal the origin or the real rights on them.

Article 81. Until the reverse is established by evidence, for movables and cash belonging to the person under examination shall be considered also those found with him/her, in his/her home or in other owned or rented by him/her premises, motor vehicles, offices, cases or safes.

Article 82. (1) The value of the assets acquired or alienated from the examined person shall be defined as of the time of acquisition or alienation at its actual value.

(2) Actual value shall be the price stated in the document for the property except in cases where there's a lack of correspondence of more than 20% with the market value of the assets at the date of its transfer. In these cases the assets shall be estimated as follows:

1. corporeal immovable and limited real rights thereon – at the average market value;
2. foreign currency and noble metals - **according to the central exchange rate** of the Bulgarian National Bank;
3. securities – at the market price;
4. vehicles – at their average market value;
5. the remaining movables and rights – at their average market value;
6. enterprises or participating interests in commercial companies or cooperatives – at market prices, and where it cannot be identified - according to the accounting data.

(3) the value of the benefit referred to in Art. 75, para. 1, sub-para. 1 shall be defined at the market value as of the time of the claim.

Article 83. In cases where the assets acquired through criminal or other illegal activity has been partially or entirely transformed to another property subject to forfeiture are the transformed assets.

Article 84. Assets acquired through criminal or other illegal activity shall be forfeited from the legal and testamentary heirs thereof up to the amount received by the said heirs.

Article 85. In cases where the assets do not exist or is covered or its forfeiture is impossible subject to forfeiture shall be the monetary equivalent or the substitutionary assets.

Article 86. In cases where the established lack of correspondence do not exceed 250 minimum wage rates for the whole period of examination as well as where the assets are not subject to sequestration no forfeiture of such assets shall be executed.

Article 87. (1) The rights of the State under this Act shall be extinguished upon the lapse of a 20-year period of prescription.

(2) Prescription shall start running from the date of acquisition of the assets and shall cease with the institution of proceedings under this Act.

Section IV

Procedure before the court for forfeiture in favour of the State of assets acquired through criminal or other illegal activity

Article 88. (1) The Commission shall brings action for the forfeiture of assets acquired as benefit trough or in connection with criminal or other illegal activity, or of assets, acquired from criminal activity before the regional court at domicile address within three months from the imposition of injunctions.

(2) Where the assets include immovable property as well, the action shall be brought before the regional court at the location of the corporeal immovable, but where the property includes more than one immovable property – at the location of the property with the highest assessed value.

(2) The statement of claim and the relating effective decision shall be subject to recording in the Property Register held by the Registry Agency.

(3) In cases where the Commission has not brought evidences of the institution of an action within the time period prescribed by law the court shall revoke *ex officio* the injunction imposed.

Article 89. (1) A claim shall be brought against the examined person in order to forfeiture the assets.

(2) The Commission shall bring claims against third parties for the establishment of the criminal or illegal origin of the assets acquired and for declaring the voidance of transactions.

(3) The Commission may consolidate the claim for forfeiture with claims under art. 135 of the Law on obligations and contract, as well as with other claims in respect of the declared interests.

(4) Upon filing the action the Commission shall not be subject to stamp tax.

Article 90. (1) The regional court shall institute proceedings and shall publish in the State Gazette a notice containing: the number of the case, data for the received request, an inventory of the property and the date for which the first hearing is scheduled.

(2) The person under examination and the persons referred to in Art. 77, Art. 78, para. 1, Art. 79, Art. 80 and Art. 85 shall be constituted as respondent in the proceedings.

(3) Respondents are obliged to exhaust all their objections within these proceedings.

Article 91. (1) Within three months from the publication of the notice third parties claiming individual rights to separate objects of the property concerned, may bring claims within the framework of the initiated proceedings.

(2) No claims of third parties shall be brought in separate proceedings. Proceedings initiated before the claim of the Commission shall be terminated, the taken decisions invalidated, and the proceedings shall be joined to the proceedings under Art. 89.

Article 92. (1) The Court shall sit in an open session.

(2) The Commission shall be represented by the Chairperson or legally capable officer authorized by him/her.

(3) Any evidence admissible under the Civil Procedure Code shall be submitted in the proceedings.

(4) The court shall appoint experts between the persons legally capable under the Independent Assessors Act.

(5) The Commission shall provide evidences for:

1. the type and value of the assets acquires by the examined person and his/her family members during the examination period;
2. the type and value of the benefit and its connection to the criminal or other illegal activity;
3. the lack of correspondence between the assets of the person and of his/her family members for the period of examination;
4. the knowledge or assumption of third parties that the assets may have been acquired through criminal or other illegal activity;
5. other circumstances relevant for the establishment of the origin of the assets and the methods of its acquisition by the examined person, his/her family members and third parties;
6. the existence of encumbrances and injunctions on the assets except those imposed during proceedings under this Act.

(6) In the course of the proceedings before the court the Commission shall prove the prerequisites referred to in Art. 75, and in cases under Art. 75, para. 1, sub-para. 2 the examined person shall challenge the presumption under Art.75, para. 2.

(7) In cases where the law requires the proof to be made with a written document, no evidentiary findings can be made in prejudice of the examined person if the document has not been kept due to expiration of the term for its safe-keeping.

Article 93. The court may not apply the presumptions established by law where there's a serious risk of breach of justice.

Article 94. In consideration of the case the court establishes examination of the obligations of the examined person, the encumbrances or writs subject to claim. In cases where the property is encumbered and as such can make difficult the enforcement against the property or its disposal the court may forfeiture its monetary equivalent.

Article 95. (1) Upon termination of the proceedings the Court shall deliver its decision which is subject to appeal by the general procedure.

(2) With the decision the Court pronounces on the stamp duty and the costs made depending

on the outcome of the proceedings.

Article 96. (1) Until conclusion of the oral arguments in first instance the parties to the proceedings may sign an agreement whereby it is provided for forfeiture of 80% of the assets or its monetary equivalent.

(2) Agreement may be concluded if the value of the assets acquired as benefit through or in connection with criminal or other illegal activity or assets acquired from criminal activity do not exceed BGN 300 000 and provided the examined person deposits the amount specified in para 1 to the special account of the Commission within the term fixed by the Commission.

(3) The agreement shall be approved by the court if not contradictory to the law and good morals.

(4) The agreement shall have the effects of an enforced judgment from the day of the approval thereof and shall not be subject to revocation.

(5) The costs for the proceedings shall be born by the parties as they have been incurred.

Article 97. For other cases not regulated by this Act the general rules of the Civil Procedure Code shall apply

Chapter Seven

MANAGEMENT OF PROPERTY WHEREUPON INJUNCTIONS HAVE BEEN IMPOSED. MANAGEMENT OF FORFEITED PROPERTY

Section I

Management of the property under injunction

Article 98. The property whereupon injunction has been imposed may be left for safe-keeping to the examined person, the person holding the property as at the moment of imposing injunction or other person, appointed by a decision of the Commission between the persons included in the list referred to in Art. 655, para. 1, sub-para, 7 of the Commercial Act.

Article 99. (1) The person referred to in art. 98 shall have obligations, other than the obligations under art. 469-471 of the Civil Procedure Code, to:

1. inform the Commission about any damages of the property;
2. inform the Commission about any proceedings affecting the property;
3. inform the Commission in writing about any steps relating to the transfer or rise of third persons' rights to the property or to a change in the identity of the property and shall provide copies of the documents establishing the transfer or creation of the rights;
4. inform the Commission in case of a risk of destroying or damaging of the property;

(2) The person referred to in art. 98 shall be obliged to grant the authorities referred to in art. 10, para 1 access in order to check the state of the property.

(3) If the examined person or the person holding the property as at the moment of imposing injunction fails to fulfill his/her obligations, the Commission may request from the public enforcement agent to transfer the property under injunction to another person for safe-keeping.

(4) The expenses related to the use and maintenance of the property shall be covered by the Commission only where it has appointed the safe-keeper itself.

Article 100. (1) Movable of historical value shall be given for safe-keeping to the National Historic Museum or another museum.

(2) Movable of scientific value shall be given for safe-keeping to the National Library, the relevant institute of the Bulgarian Academy of Sciences or to a university.

(3) Movable of noble metals, precious stones or art crafts made thereof shall be given for safe-keeping to the Bulgarian National Bank.

(4) Movable things of artistic, antiquarian or numismatic value shall be given for safe-keeping to the Ministry of Culture.

(5) Exotic animals and herbals shall be given to zoological gardens or other relative institutes.

(6) In cases referred to in paras 1-5 the expenses related to the use and maintenance of the property shall be covered by the Commission.

Article 101. (1) The Commission may decide exceptionally on the sale of movables which:

1. can be subject to substantial devaluation during the period of safe-keeping or the preservation thereof is related to great expenses;
2. are perishable.

(2) Movable shall be sold by the public enforcement agent on a public auction conducted within a month from the date of receipt of the request or shall be given to a salesperson in a store, commodity mart or board of trade, defined by the Commission upon written consent of the acceptance of the movable by the salesperson.

(3) Delivery of the movable shall be proved by a record of proceedings signed by the public enforcement agent and the salesperson. The salesperson shall receive a commission for the sale.

(4) In cases where there's a lack of documentary for conducted sanitary control or lack of information about the origin, ingredients or the best before date, the sale shall be exercised upon decision of the respective authorities under art. 28 of the Law on Food.

(5) Animals from the national genetic fond, seeds and seedlings with certified origin shall be sold by the public enforcement agent only to other agriculture manufacturers upon authorization of the minister of agriculture and food or officer authorized by him/her.

(6) The competent authority referred to in paras 4 and 5 shall consider the request in three days from its receipt.

Article 102. The transfer of proceeds from the sale of property received according to the provisions of art. 101 shall be made by the public enforcement agent to a bank account of the Commission, opened on special conditions and procedure.

Article 103. (1) The Commission shall keep a public register where the following shall be recorded:

1. the person against who the proceedings are initiated;
2. the property whereupon injunction has been imposed;
3. data for the owner and the person holding the property as at the moment of imposing injunction;
4. other data required for the identification of property whereupon injunction has been imposed;

(2) The standard form of the register shall be endorsed by the Chairperson of the Commission.

(3) The disposal of property or its encumbrance or undertaking of any obligations by the examined person that may make it difficult to exercise the rights under the court's decision for forfeiture of assets acquired through criminal or other illegal activity shall have no effect in respect of the State.

(4) The Commission shall issue a certificate stating the existence of injunction on the property imposed under this Act within a month from the date of the request from the court, public enforcement agents, National Revenue Agency authorities and other public authorities.

Section II

Management of the forfeited assets

Article 104.(1) Interdepartmental Board for management of the forfeited assets, hereinafter referred as "the Board" shall be set up.

(2) Members of the Board shall be deputy ministers of the Ministry of Justice, Ministry of Finance, the Ministry of Regional Development and Public Works, the Ministry of Labour and Social Policy, the Ministry of Economy, Energy and Tourism, appointed by the respective Ministers.

(3) A Deputy Minister of Finance shall act as Chairperson.

(4) The administration of the Ministry of Finance shall ensure the technical support of the activity of the Fund.

Article 105. (1) The Commission shall inform monthly the Board about the enforced judicial acts for forfeiture of assets acquired through criminal or other illegal activity.

(2) The court decisions for forfeiture entered into force, the writs of execution issued on the basis thereof as well as any other documents required for the enforcement of the decision for forfeiture shall be forwarded by the Commission to the Board within 3 days from the completion of the file.

(3) For the meetings of the Board the Commission shall prepare a separate report on each particular case.

Article 106. (1) The Board shall propose to the Council of Minister to leave for management the assets forfeited under the procedure established by this Act, to grant them for humanitarian purposes or to entrust the sale thereof.

(2) The Board shall sit at least once in two months.

(3) Representatives of the National Association of Municipalities *in the Republic of Bulgaria, of NGOs*, branch and professional organizations may be invited at the Board meeting.

(4) The Board shall endorse rules for the organization of its work

Article 107. (1) The property for which decision for sale has been obtained shall be turned into cash by a public enforcement agent appointed by the Minister of Finance.

(2) The public enforcement agent shall be obliged upon his appointment to immediately proceed with the turning into cash under the procedure of Section IV of the Tax and Social Insurance Procedure Code.

(3) Immovable property and movables cannot be sold at a price lower than the initial sale price. If the sale is not made in the course of two proceedings, the assets could be granted for humanitarian purposes.

(4) Receivables of the state under this Act shall be public receivables which shall be satisfied under the procedure of public receivables.

Article 108. (1) Management of the proceeds from forfeited assets acquired through criminal or other illegal activity fund, hereinafter referred to as "the Fund" shall be set up.

(2) The Fund is a legal entity with head office in Sofia, a second-level spending unit under the Minister of Finance.

(3) The organization of the activity of the Fund shall be regulated with rules adopted by the Managing Board.

(4) The administration of the Ministry of Finance shall ensure the technical support of the activity of the Fund.

Article 109. (1) The managing body of the Fund shall be the Managing Board, which shall consist of a Director, a Deputy Director and three members, appointed by the Minister of Finance.

(2) The term of office of a member of the Board shall be 5 years.

(3) The Director, the Deputy Director and a member of the Board may be dismissed before the expiry of the term of office:

1. at his own request;
2. in case of long-term inability to perform *de facto* the duties for more than one month;
3. waiver of the ground for his appointment;
4. after a verdict for intentional crime becomes final;
5. in case of death.

Article 110. (1) The Managing Board of the Fund shall:

1. adopt rules for the organization of its activity;
2. propose the budget of the Fund for endorsement by the Minister of Finance;
3. decide on the necessary costs for managing the forfeited assets as well as the amount and methods of payment of other costs in connection with law enforcement;
4. approve the annual financial statements in accordance with the Accountancy Act;

(2) The Board holds meetings in the presence of two thirds of its members. Decisions shall be taken by a majority of more than a half of the total number of its members.

(3) The Managing Board shall draw up the annual report on the activities of the Fund by March 1, which shall be submitted for consideration to the Council of Ministers.

Article 111. (1) The Director of the Fund shall:

1. organize the activity and chair the sessions of the Managing Board;
2. represent the Fund;
3. be entitled, pursuant to a decision of the Board, to dispose of amounts of up to BGN 3,000 per month within the operating expenses, approved with the annual budget of the Fund.

Article 112. The revenues of the Fund shall be collected from:

1. revenues obtained from sale of corporeal immovable forfeited;
2. revenues obtained from sale of movables forfeited;
3. resources raised to the special accounts under Art. 104;
4. income from the sale of the forfeited noble metals – raw or processed ingots and precious stones or the art crafts thereof;
5. receivables, awarded by a court decision, from third persons;
6. resources, awarded by the decision, from bank accounts and money deposited and the revenues from the sold movables from safe-deposit vaults;
7. money and securities (shares, bonds, coupons thereof, etc.)
8. revenues from cheques, bills of exchange, promissory notes, credit letters and others
9. revenues from the sale of shares in commercial companies, cooperatives and others;
10. grants from the national budget;
11. fines and property sanctions collected under this Act;
12. revenues from interests;
13. other.

Article 113. (1) The assets of the Fund shall be disbursed to cover the costs for the management of forfeited assets and other costs related to the enforcement of the Act.

(2) The excess of revenues over expenses shall be transferred to the Fund for Social Assistance under the Minister of Labour and Social Policy or for financial assistance of small and medium enterprises for the implementation of the projects and measures included in the national strategy for encouragement of small and medium enterprises and the annual programs for its implementation.

Article 114. (1) The Agency for Public Financial Inspection and the National Audit Office will exercise control over the revenues and the expenditures of the Fund.

(2) The Agency for Public Financial Inspection and the National Audit Office shall submit annually by March 31 of the following year reports on the activities under para. 1 to the Council of Ministers and the National Assembly.

Chapter Eight

LIABILITY

Article 115. Each person who has sustained damages from illegal acts or omissions of the authorities and officials referred to in this Act committed in the course of or on occasion of exercising their powers or duty may bring an action under the terms and according to the procedure established by the Liability of the State and the Municipalities for Damages Act.

Chapter Nine

INTERNATIONAL COOPERATION

Article 116. The Commission for Establishing Property Acquired through Criminal or other Illegal Activity shall exchange, for the purposes of this Act, information with the competent

authorities of other States and international organizations based on international instruments and international treaties in force for the Republic of Bulgaria.

Chapter Ten

ADMINISTRATIVE PENAL PROVISIONS

Article 117. (1) For the violation of the obligation under Article 41, para 2 the officials found guilty shall be fined with BGN 1000 up to BGN 5000, if the act does not constitute a criminal offence.

(2) Where a breach of Article 41, para 2 was committed by a company, bank or other credit institution, the property sanction amounting from BGN 2000 to BGN 20000 shall be imposed.

Article 118. (1) Acts establishing violation shall be drawn up by officials appointed by the Chairperson of the Commission, and the penal decrees shall be issued by the Chairperson of the Commission.

(2) The drawing up of the acts, the issuance, appeal and enforcement of the penal decrees shall be made under the procedure established by the Administrative Violations and Sanctions Act.

SUPPLEMENTARY PROVISIONS

§ 1. Under this Act:

1. "Assets" shall mean money, assets of any kind, tangible or intangible, movable or immovable, documents or instruments evidencing title to such assets or other rights associated with them.

2. "Controlling of a legal person" shall be present where:

a) a natural person possesses, directly or indirectly, more than 25 percent of the shares or of the capital of the legal entity and controls it, directly or indirectly;

b) a natural person exercises controlling functions in terms of § 1c of the Additional provisions of the Commercial Act;

c) 25 percent or more of the assets of a non-profit organization are managed or allocated in favour of a natural person;

d) a non-profit organization has been set up or is functioning in favour of a group of natural persons.

3. "Family members" shall mean a spouse and the non-married children under age.

4. "Market value" shall be the value of the immovable or movable without any taxes and fees calculated which would be paid on the same conditions for a similar immovable property or movable.

5. "Income" shall be remuneration obtained: by a person under employment, income from services performed in person, income from practicing of liberal professions, the net income from entrepreneurial activity, dividends and other income from movable and immovable property, income from agricultural activity and retail sale, other income from lottery and sport bet, interests, license and commission remunerations, income from sale of property, bank credits and loans from individual persons, as well as any other revenue, income and sources of financing.

6. "Net Income" shall be revenues, income and sources of financing after deduction of customary and extraordinary expenditures made by the examined person and his/her family members.

7. "Customary expenditure" shall be the expenses for maintenance of the person and his/her family members according to data provided by the National Statistical Institute.
8. "Significant lack of correspondence" shall be a lack of correspondence between the assets and the net income of the person and his/her family members exceeding 250 minimum wage rates for the whole period of examination.
9. "Defendant in injunction" shall be the examined person, the members of his/her family, legal entities under control of the examined person, third parties who have acquired assets from the examined person.
10. "Illegally acquired assets" shall be assets which do not correspond to the examined person's or his/her family income and for which no legal source is established.
11. "Criminal or other illegal activity" shall be all activity effected in the territory of the Republic of Bulgaria or abroad which is constituted as criminal offence or administrative violation under the Bulgarian law.
12. "Market value" shall be the value of the immovable or movable without any taxes and fees calculated which would be paid on the same conditions for a similar immovable property or movable.
13. "Benefit" shall be all economic benefit acquired through or in relation with criminal offence or administrative violation.
14. "Substitutionary assets" shall be assets which were acquired without a lack of correspondence between the assets and the net income of the person and his/her family members, but which substitute other assets acquired through or in relation with criminal or other illegal activity or from criminal activity.

TRANSITIONAL AND FINAL PROVISIONS

§ 2. Within three months from the enactment of this Act the members of the Commission, the authorities referred to in Art. 10, para. 1 and the officers in the administration of the Commission shall cease their membership in a political party or an organization with political aims.

§ 3. The requirements of Art. 5, para. 1, sub-paras. 2 and 5 shall not apply to inspectors appointed before the enactment of this Act.

§ 4. Proceeding under this Act shall be also conducted for assets acquired through or in relation with criminal or other illegal activity or for assets acquired from criminal activity before the enactment of this Act.

§ 5. (1) Proceedings before the Commission for Establishing of Assets Acquired through Criminal or other Illegal Activity instituted before the enactment of this Act for which no claim for forfeiture has been submitted to the court shall be completed under the procedure of this Act.

(2) Within a year from the coming into force of this Act the Commission for Establishing of Assets Acquired through Criminal or other Illegal Activity may request changes in the injunctions imposed before the enactment of this Act with a view to bring them in conformity with the provisions of the Act, where necessary.

(3) Within the period referred to in para. 2 the Commission for Establishing of Assets Acquired through Criminal or other Illegal Activity shall bring actions for forfeiture for proceedings, initiated before the enactment of this Act.

§ 6. (1) Within six months from the entry into force of this Act the pre-trial authorities notify the authorities referred to in Art. 10, para. 1 about persons against whom criminal charges have

been brought for crimes under Art. 21, para. 1, and for assets for which the prerequisites of Art. 21, paras. 2 and 3 are present.

(2) Within the period under para. 1 the courts shall notify the authorities referred to in Art. 10, para. 1 for effective sentences for crimes under Art. 21, para. 1 for a 5-year period before the enactment of the Act.

§ 7. The Commission for Establishing of Assets Acquired through Criminal or other Illegal Activity shall continue its activity until expiry of its term of office.

§ 8. The Commission adopts the Regulation referred to in Art. 19 within two months from the enactment of the Act.

§ 9. The instruction referred to in Art. 32, para. 2 shall be issued within six months from the enactment of the Act

§ 10. The Forfeiture in Favour of the State of Assets Acquired through Illegal Activity Act (published, SG No 19 of 2005, amend., No. 86 and 105 of 2005, SG 33 and 75 in 2006 , No. 52, 59 and 109 of 20.12.2007, SG No 16 of 2008, SG No. 12, 32 and 42 of 5.06.2009) shall be repealed.

§ 11. In the Measures Against the Financing of Terrorism Act (Promulgated, State Gazette No. 16/18.02.2003, amended, SG No. 31/4.04.2003, amended and supplemented, SG No. 19/1.03.2005, amended, SG No. 59/21.07.2006, effective as from the date of entry into force of the Treaty of Accession of the Republic of Bulgaria to the European Union - 1.01.2007, amended and supplemented, SG No. 92/13.11.2007, SG No. 109/20.12.2007, effective 1.01.2008, SG No. 28/14.03.2008, SG No. 36/4.04.2008) Art. 3, para. 2 and Art. 12 the words „the Commission for identification of criminal assets” shall be replace by “The Commission for Establishing of Assets Acquired through Criminal or other Illegal Activity”.

§ 12. In the Markets in Financial Instruments Act (Promulgated, SG, No. 52/29.06.2007, effective 1.11.2007, amended, SG No. 109/20.12.2007, effective 1.01.2008, SG No. 69/5.08.2008, amended and supplemented, SG No. 24/31.03.2009, effective 31.03.2009, amended, SG No. 93/24.11.2009, effective 25.12.2009, SG No. 95/1.12.2009, effective 1.12.2009, amended and supplemented, SG No. 43/8.06.2010) in Art. 35, para. 6, sub-para. 4, the words „the Commission for identification of criminal assets” shall be replace by “The Commission for Establishing of Assets Acquired through Criminal or other Illegal Activity”.

**REASONS
TO THE DRAFT LAW
ON FORFEITURE IN FAVOUR OF THE STATE OF ASSETS ACQUIRED THROUGH
CRIMINAL OR ANOTHER ILLEGAL ACTIVITY**

According to World Bank data, funds totalling between USD 1 and 1.6 trillion received from corruption or other criminal activities and as a result of non-payment of taxes are exported annually in different countries. This is indicative of the enormous scale and significance of the problem.

The Republic of Bulgaria is not an exception to this global tendency. The gravity of the problem is seriously exacerbated if certain specific circumstances are taken into account. On the one hand, the insufficient effectiveness of the law enforcement bodies over the so called “transition years” has allowed for a great deal of state and municipal property to be taken hold of through various illegal acts. These acts have been committed in violation of regulatory provisions and have been a necessary condition (*condition sine qua non*) for the privatisation of state and municipal assets but have not always been criminalised in the Criminal Code. On the other hand, the feeling of untouchability and impunity is the reason why a large part of the assets acquired through criminal or another illegal activity never leave the state boundaries at all. Hence, they are not included in the World Bank estimate referred to above. Some of these assets stay flagrantly before public eyes as “inexplicable wealth;” they are the external manifestation of the great property differentiation among the Bulgarian citizens that has come about in a short period of time.

Processes of forfeiture of public assets have taken place even after the adoption of the Constitution of the Republic of Bulgaria and they can hardly be found to be in harmony either with the general human values such as equality and fairness it enshrines or with the decisiveness declared to create a social state with rule of law.

However, the property damages to the society are not the only result of these processes. A direct consequence is the confidence lost in government institutions which poses a threat to statehood; the seriously deteriorating investment climate which hampers the economy’s timely recovery and development (especially in a period of a global economic and financial crisis); the growing number of problems the social security system faces – most of all the danger of a crash in health care, the pension system, education. It would not be an exaggeration to summarise that this threatens basic elements of the national security.

The serious problem defined requires a proportionate reaction from the public and the state. It consists in the creation of an effective mechanism of protection of the public interests by means of forfeiture of assets acquired through criminal or another illegal activity and preventing and limiting the possibilities for gaining benefits from such assets.

The forfeiture of the income gained from criminal or another illegal activity is deemed an efficient means for combating organised crime and corruption. The civil forfeiture of assets acquired through criminal or illegal activity allows the state to achieve significant progress in the fight against crime because it deprives it of profits which is the main reason for its existence. Procedures that are different from criminal proceedings are applied in civil forfeiture and the origin of the assets is challenged with the tools and standards provided for in the civil process. The creation of such a kind of legislation in Bulgaria also meets the needs of the society and, at the same time, the obligations arising from international instruments to which the Republic of Bulgaria is a party. These include the 1988 United Nations (UN) Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (promulgated State Gazette (SG) issue 60/1992); 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (promulgated SG issue 31/1993); 2000 UN Convention against Transnational Organized Crime (promulgated SG 42/2001); 2003 UN Convention against Corruption (promulgated SG issue 66/2006); and the secondary European Union acts which relate to the forfeiture of assets acquired through criminal activity. The main

ones are: Council Framework Decision 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime; Council Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence; Council Framework Decision 2005/212/JHA on confiscation of crime-related proceeds, instrumentalities and property; Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition of confiscation orders.

The analysis of the effectiveness of the implementation of these framework decisions in the Communication from the European Commission to the European Parliament and the Council of 20 November 2008 stresses on the need for a change in the regulatory framework in this area at the European Union level. The Communication summarises that current problems have been found in the area of mutual recognition of freezing or confiscation orders based on the civil confiscation and it emphasises the importance of the result aimed at – co-existence of fast and effective mechanisms of freezing and confiscating property abroad. The results of the analysis of the application of the Criminal Assets Forfeiture Act adopted in 2005 provide grounds for the conclusion that there is a need to elaborate on a new matter related to the forfeiture of assets acquired through criminal activity which has not been laid down until now and to reformulate the concept of forfeiture of assets so that it corresponds in principle to the concept of civil forfeiture developed in the legislation of other countries as well. The draft law aims to increase the effectiveness of the work of the Commission as a specialised body which is the only government body to check the sources of the acquisition of assets. A proposal is made to shorten the time for conducting proceedings to establish assets acquired through criminal or another illegal activity. At the same time, additional grounds for holding such proceedings are included in the law's application scope in order to achieve better results in combating crime and meeting the goals pronounced in the law in public interest protection.

The act provides in detail for the conditions and the procedure for forfeiture of assets acquired through criminal or another illegal activity. Unlike the existing law, the forfeiture of assets acquired through criminal activity is not preceded by a conviction that has entered into force which is what is identified with the civil forfeiture mechanism. The application of civil forfeiture is another form of protection of the public interests which is different from criminal prosecution and imposition of sanctions.

What is decisive in civil forfeiture is not the author of the criminal act or the perpetrator's guilt. The forfeiture of assets is not a punishment of a guilty person but a measure of public interest protection. It acts as a restraint for offenders and turns the principle of "crime does not pay" from a declaration into reality. Without the application of the principle that no one may benefit from criminal or another illegal activity, there is no rule-of-law state. The forfeiture of assets will cut off the possibility to use them as a resource to commit new crimes and other offences. The comparative legal analysis shows that the concept of civil forfeiture is familiar to the law of other states (Ireland, United Kingdom, USA and others). Each of them has provided for terms and procedures to apply it in view of the traditions and rules of its domestic law. The common features of the different models of civil forfeiture come down to the fact that the proceedings develop and are finalised before there is a conviction in force for a crime and it is targeted at the property and not the person who owns it.

The procedure laid down within which the origin of property is established is not meant to ensure evidence for the criminal and administrative-criminal procedure. Therefore, it is not a hidden form of coercion to confession within the meaning of Article 32, paragraph 2 of the Constitution. The procedure of forfeiture of assets outside the criminal process is "comparable to the civil legal procedure for restoration of unjustified enrichment" and forfeiture is not a "penalty" within the meaning accorded to the term in Article 7, § 1, sentence 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms. This allows for a shift in the burden of proof through reasonable legislative presumptions. The creation of a presumption in accordance with which the person examined proves the legal origin of the property is not contrary to the presumption of innocence within the meaning of Article 31,

paragraph 3 of the Constitution or Article 6, § 2 of the Convention. The presumption of innocence relates only to cases of criminal prosecution. On the same grounds, the prohibitions for retroaction of the criminal laws and a repeated conviction/repeated serving of punishment (*ne bis in idem*) do not relate to the civil forfeiture proceedings.

The draft provides that the civil forfeiture proceedings will take place in two stages:

- Proceedings conducted by the Commission for Establishing of Property Acquired from Criminal or Another Illegal Activity – they encompass an examination of the sources of acquisition of the assets and the taking of action to impose precautionary measures;
- Proceedings of forfeiture of the assets held before the court.

The Commission initiates an examination to identify the sources of acquisition of the assets of a person who has been constituted as an accused party for a crime set out in the law. The approach adopted is not a deviation from the idea of “civil forfeiture” and a return to the mechanism of forfeiture of assets in view of the specific person’s guilt for a specific crime but pursues the following goals:

- It introduces a guarantee that the procedure under this law will not be targeted at every Bulgarian citizen with respect to whom a significant non-correspondence in the assets has been found¹ but only those people with respect to whom the conditions provided for in the Penal Procedure Code (PPC) for constituting them as accused parties for a crime set out in the law are in place. These crimes are a limited number, of high public danger and they generate property benefits. Therefore, not every citizen who has failed to declare their income and pay their taxes will be under threat but only a person against whom there is sufficient evidence (argument from Article 219, paragraph 1 PPC) that the person has guiltily committed some of the grave crimes listed exhaustively in the law;
- To respond to the concerns about abuse and arbitrariness on the part of the Commission by tying the initial moment of the proceedings with an act of a government body which is completely independent of the Commission, issued in accordance with terms and procedure set out in law.

There is also a possibility provided for proceedings to be initiated even when the criminal proceedings for the crimes listed in the law have not been initiated or have been terminated or suspended on limited grounds listed. This is how the essence of civil forfeiture is embodied to the maximum as it is applied where the mechanisms of criminal proceedings may not be applied.

Proceedings may also be initiated to identify the origin of assets acquired through or in connection with another person’s criminal activity, regardless of whether the perpetrator’s criminal liability is sought. Any assets received as a benefit through or in connection with illegal activity are also examined if the benefit’s value exceeds BGN 60, 000 and is not subject to forfeiture or may not be forfeited in accordance with another procedure because special requirements set in law are not fulfilled.

The purpose of the examination is to perform a financial analysis of the person’s economic activity and collect evidence about the person’s income, expenditure and obligations during the period examined and the correspondence of the assets with the net income of the person examined and their family members. The draft law expressly provides that the examination is bound in time – ten months – which can be extended once by not more than six months.

¹ According to a survey of May 2010 conducted by the Open Society Institute – Sofia and the Center for Liberal Strategies, it is possible that a significant non-correspondence between the property owned and the income declared will be found in several hundred Bulgarian households.

The draft proposes that the circle of people who may be examined under this law be expanded. In addition to the person with respect to whom there are grounds under Article 21 and the following, the examination also encompasses the person's spouse, children, former spouse or person with whom they co-habit. The examination covers as well the third parties with whom the assets can be found and for the examination to include them, they must have known or should have been able to presume from the circumstances that the assets had been acquired through illegal activity. The examination may be targeted at a legal entity as well. A separate section on *Action after Precautionary Measures Have Been Imposed* provides for when the person examined may take part in the proceedings and how this happens. The possibility for the person to be represented by an attorney or a representative with a Power of Attorney has expressly been laid down which is in complete harmony with the comments in this regard made in the Venice Commission's interim reports on the draft law.

In all cases when the Commission decides to start proceedings, it notifies the respective other government bodies – Ministry of the Interior, State Agency for National Security, Prosecutor's Office, National Revenue Agency – which, on their part, are to take action together with it with respect to the person examined in view of their competence. This mechanism is meant to create legislative conditions to unite the efforts of the government bodies with powers in the various aspects of the activity and guarantee the effectiveness of the end result aimed at – identification of assets acquired through criminal or another illegal activity and their forfeiture in favour of the state.

The proceedings before the court in accordance with the procedure laid down in this draft law start with the action to impose precautionary measures. A significant progress in the development of the provisions for forfeiture of assets acquired through illegal activity is the solution proposed that the action to impose precautionary measures may be filed before there is a conviction in force for a crime set out in the law. This solution corresponds entirely to the civil nature of the proceedings under this law. The consequence from this is that the time in which the proceedings will be finalised will be seriously shortened. The specificity of the proceedings also necessitates the creation of different and more detailed provisions for the procedure for allowing and imposing precautionary measures and the subsidiary application of the general procedure under the Civil Procedure Code is preserved. These rules will achieve speed and they offer guarantees against the frustration of any disposal of the belongings and receivables of the respondent to the precautionary measures. The concept is defined in the Additional Provisions.

Shorter terms have been provided for both the court's ruling on the action for precautionary measures and the registry judges and the public enforcement agents when precautionary measures are imposed. It is proposed that public enforcement agents will exercise the indemnity in accordance with the procedure under the law because the proceedings will be exempt from stamp duty and impartiality will be required which can be achieved with the principle of random allocation of public enforcement agents and the lack of a property interest in the enforcement on the part of the public enforcement agents.

The draft law accords a significant place to the subject of forfeiture.

Subject to forfeiture may be:

1. Specific assets acquired as a benefit through or in relation to criminal or another illegal activity;
2. Assets which constitute a benefit from criminal activity.

A legislative presumption is set that assets acquired over a certain period of time constitute a benefit from criminal activity when it has been established with the financial analysis and other evidentiary sources that their value exceeds significantly the net income of the person examined and their family members.

In accordance with the comments in the Venice Commission's interim opinions, the draft law provides that only those assets may be forfeited from third parties about which they have known or from the circumstances they could have presumed that they had been acquired through illegal activity.

Assets are forfeited in proportion to the non-correspondence found between the assets and the net income of the person examined and their family members. When it is impossible for a piece of property to be forfeited, then an ideal part of it or its cash equivalent determined in view of the market price as of the time the forfeiture claim was filed is forfeited. The lack of correspondence between the assets and the net income of the person examined and their family members is determined by comparison of the assets' value calculated in number of minimum work salaries as of the day of their acquisition and the net income of the person examined and their family members calculated in number of minimum work salaries for every year of the period examined. The draft law envisages forfeiture of the benefit acquired through criminal activity and assets with respect to which a significant non-correspondence is established. The act defines "significant" as non-correspondence whose amount exceeds 250 minimum work salaries for the whole period examined.

Subject to forfeiture under the law is also property which is a benefit from illegal activity that constitutes an administrative violation if the benefit exceeds BGN 60, 000 and is not subject to forfeiture or may not be forfeited in accordance with another procedure.

To effect forfeiture of assets acquired through criminal or another illegal activity, the Commission submits a convicting claim against the person examined as well as actions against third parties to establish the criminal or illegal origin of the assets acquired and to have legal transactions declared null and void. In the proceedings before the court, the Commission must prove the prerequisites under Article 75 and, in the cases under Article 75, paragraph 1, item 2, the person examined must refute the presumption under Article 75, paragraph 2. The court may decide not to apply the presumptions set out in the law if a serious risk of unfairness exists.

An additional guarantee to achieve the forfeiture is the possibility laid down for a settlement between the Commission and the person examined. It is admissible if the non-correspondence does not exceed BGN 300, 000 and is subject to approval by the court.

In relation to the management of assets on which precautionary measures have been imposed, special rules have been created for the different types of objects on which such measures have been imposed to ensure to the maximum degree prevention of any damage to them, their scattering or destruction. The law obligates the Commission to maintain a public register with content expressly set out which, on its part, guarantees transparency of the management activity. With respect to the management of assets forfeited, it is proposed that an Interdepartmental Council be created and a special fund for the management of any proceeds from the sale of assets forfeited.