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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

SIXTH REVISED DRAFT LAW

**ON FORFEITURE OF ASSETS ACQUIRED
THROUGH CRIMINAL ACTIVITY
AND ADMINISTRATIVE VIOLATIONS**

OF BULGARIA

AND

EXPLANATORY REPORT

FORFEITURE OF ASSETS ACQUIRED THROUGH CRIMINAL ACTIVITY AND ADMINISTRATIVE VIOLATIONS

Chapter One GENERAL PROVISIONS

Article 1. (1) This Act regulates the rules and procedure for forfeiture in favour of the state of assets acquired as proceeds of criminal activity and administrative violations.

(2) Assets acquired as proceeds of criminal activity shall be established through a financial investigation into the sources of acquisition thereof.

(3) Proceedings under this Act shall be carried out independently of the criminal proceedings [against the persons concerned].

Article 2. (1) The objective of this Act shall be to protect the interests of society by preventing and limiting the possibilities to generate proceeds of criminal activity or administrative violations.

(2) To accomplish the objective under paragraph 1 restrictions may be imposed on ownership while respecting the right to defence of the persons affected and preventing the risk of injustice.

(3) The restrictions on ownership provided for in this Act shall be applied to the extent required to accomplish the objective of this Act.

Chapter Two AUTHORITIES [IN CHARGE OF] ESTABLISHMENT OF ASSETS ACQUIRED THROUGH CRIMINAL ACTIVITY AND ADMINISTRATIVE VIOLATIONS

Article 3. (1) The Commission for Establishment of Assets Acquired through Criminal Activity and Administrative Violations, hereinafter referred to as "the Commission", shall be a specialized standing public body which, following the procedure and the rules set out in this Act, shall carry out examination to establish assets as proceeds of criminal activity and administrative violations.

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

(3) The Commission shall be assisted by an administration.

(4) The Commission shall have local units – territorial directorates, headed by directors.

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

(2) The Chairperson of the Commission shall be a person who has a university degree in Law 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 five years. A member of the Commission shall be limited to two successive terms of office.

(4) The term of office of the Commission shall commence as from the election or, respectively, appointment of all of the members thereof.

(5) New members shall be elected or appointed, respectively, not later than one month prior to the expiry of the Commission's term of office.

Article 5. (1) Legally capable Bulgarian citizens are eligible to sit on the Commission provided that they:

1. Have a university degree in Law or Economics and at least five years of experience in their field;

2. Have not been convicted of an intentional criminal offence indictable by the State, regardless of rehabilitation;

3. Have not been exempted from criminal liability for an intentional criminal offence indictable by the State;

4. Have not been deprived of the right to hold public office or practise a particular occupation or activity;

(2) The members of the Commission may not:

1. Hold public office in central or local government;
2. Be involved in business activities or be partners, managing directors or members of supervisory, management or control bodies of any company, cooperative, State-owned enterprise or non-profit legal entity;
3. Receive remuneration for activities carried out under a contract or a civil-service relation with any State or public organization, company, cooperative or non-profit legal entity, natural person or sole trader, save for research, teaching or exercise of copyright;
4. Exercise liberal professions or other forms of paid professional activity;

(3) Any incompatibility under Paragraph (2) must be eliminated within one month after the election or appointment, as the case may be.

Article 6. (1) The legal relation with a member of the Commission shall be terminated prior to the expiry of the term of office of the said member upon:

1. Death;
2. Tendering resignation;
3. Objective inability to perform the duties thereof for a period exceeding six months;
4. Conviction of or exemption from criminal liability for an intentional criminal offence indictable by the State;
5. Incompatibility under Article 5 (2) herein, unless the said incompatibility has been eliminated within one month after the occurrence thereof;
6. Serious breach of or repeated failure to discharge official duties;
7. Entry into force of an act whereby a conflict of interest is established under the Conflict of Interest Prevention and Detection Act.

(2) The Commission shall notify the relevant selection or appointment authority upon occurrence of any circumstances under Paragraph (1).

(3) In the event of release from office of a Commission member prior to the expiry of the term of office a new member from the respective quota shall be appointed within a period of one month following the said release.

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

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

(3) The rest of the Commission members shall receive a basic monthly salary equivalent to 85 per cent of the Commission's Chairperson's salary.

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

1. Institution of proceedings for establishment of assets acquired as proceeds of criminal activity and the length of the period subject to examination;
2. Initiation of proceedings for establishment of assets acquired as proceeds of administrative violations;
3. Extension of the time limit for the examination under Article 26;
4. Termination of proceedings for establishment of assets acquired as proceeds of criminal activity and administrative violations;
5. Submission to the court of a motion for precautionary measures;
6. Bringing actions for forfeiture of assets acquired as proceeds of criminal activity and administrative violations;
7. Conclusion of a settlement under Article 91 herein;
8. Other matters provided for in this Act;

(2) The decisions of the Commission shall be adopted by a majority of more than one-half of all members and shall have to be reasoned. The reasons shall state the facts, the evidence on the basis of which the facts have been established, as well as the legal conclusions drawn.

(3) Minutes shall be taken of the meetings of the Commission.

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;
6. Sign, modify and terminate labour and civil service relations with administration staff members.

Article 10. (1) The directors of territorial directorates and the inspectors with the said directorates shall be authorities of the Commission.

(2) Eligibility for appointment as directors and inspectors at the territorial directorates shall be limited to persons who meet the requirements set out in Article 5.

Article 11. (1) Control over the operation of the Commission shall be exercised by the National Assembly.

(2) The members of the Commission shall be obliged to appear, upon invitation, before the National Assembly and to provide the information requested.

Article 12. (1) Annually, not later than the 31st day of May, the Commission shall present a report on the activity thereof to the National Assembly.

(2) The said report shall furthermore be presented to the President of the Republic and the Council of Ministers and shall be published on the web-site of the Commission.

Article 13. (1) The information that has become known to the members of the Commission, the directors and inspectors with the territorial directorates and the members of the administration in the course of or in connection with the execution of their official duties shall constitute an official secret.

(2) Upon taking office the persons under paragraph 1 above shall sign a declaration pledging not to divulge the information while holding office as well as after leaving it.

Article 14. The members of the Commission, the directors and inspectors with the territorial directorates shall not bear liability for damage caused in exercise of the powers conferred upon them by this act save for where such damage has resulted from an intentional criminal offence indictable by the State.

Article 15. The members of the Commission, the directors and inspectors with the territorial directorates shall be covered by life insurance and accident insurance paid by the executive budget for accidents occurring in the course of the exercise of official duties.

Article 16. (1) The period of service of the members of the Commission and the directors and inspectors with the territorial directorates, as well as the members of the administration the positions of which require a university degree in law and capacity to exercise a legal profession, shall count as experience under Article 164, paragraphs 1 – 7 of the Judiciary Act.

(2) The period of service of the persons under paragraph 1 appointed on positions requiring a university degree in economics shall count as relevant experience.

Article 17. (1) The structure and operation of the Commission and the administration thereof shall be regulated by Rules of Procedure.

(2) The Rules of Procedure shall be adopted by the Commission and published in the *State Gazette*.

Chapter Three
ESTABLISHMENT OF ASSETS ACQUIRED AS PROCEEDS OF CRIMINAL ACTIVITY AND ADMINISTRATIVE VIOLATIONS

Article 18. (1) Proceeding before the Commission shall be instituted in the cases provided for in this Act where a reasonable assumption can be made that assets have been acquired as proceeds of criminal activity under **Article 19, Articles 20 and 21 or administrative violations under Article 22.**

(2) In the course of the proceeding, an examination of the sources of the assets shall be carried out and relevant actions shall be brought to secure a future asset forfeiture claim.

Article 19. (1) Proceedings for establishment of the origin of assets shall be initiated by the Commission where a person has been constituted as an accused of the following criminal offences under the Criminal Code that are of the nature to generate assets:

1. Article 108a, paragraph 1 (terrorism); Article 108a, paragraph 2 (financing of terrorism); Article 108a, paragraph 3 (recruitment of or training individuals or groups of individuals to carry out terrorist attacks); Article 109 (setting up, leadership of and membership in an organised crime group operating for the purpose of committing the criminal offences under Article 108a, paragraphs 1, 2 and 3); Article 110 (preparation of terrorism); Article 308, paragraph 3, item 1 (counterfeiting an official document to aid terrorism);
2. Article 116, paragraphs 1, items 7 and 10;
3. Articles 155, 156, 158a, paragraph 2 and Article 159
4. Articles 159a to 159d;
5. Articles 194 to 196a (stealing a motor vehicle);
6. Articles 198 – 200 (stealing a motor vehicle by assault);
7. Articles 201 – 203, Article 208, paragraphs 3 – 6;
8. Articles 209 - 211, Article. 212, Article. 212a, Article 213;
9. Articles 213a to 214;
10. Item 1 of Article 215 paragraph 2;
11. Article 220, Article 224, Article 225 b, Article 225c, Article 226;
12. Article 227c and Article 227d
13. Article 229, Article 232, paragraphs 1 and 2, Article 233, Article 234, Article 234b, Article 235;
14. Articles 242 – 242a;
15. Articles 243 – 246, Article 248a; Article 249.

(2) The Commission shall institute Proceedings for establishment of the origin of the assets of a person who has not been constituted as an accused of a criminal offence under paragraph 1 due to a refusal to initiate criminal proceedings or a termination of the criminal proceedings by reason of:

1. An amnesty;
2. The period of prescription provided for in the law has elapsed;
3. The perpetrator has lapsed in a sustained mental derangement which precludes sanity;
4. The perpetrator has died;
5. In respect of the person, a transfer of criminal proceedings to another State has been admitted.

(3) The Commission shall furthermore institute proceeding in the cases where the criminal proceedings for a criminal offence under paragraph (1) has been suspended and the person may not be constituted as an accused by reason of:

1. Short-term mental derangement precluding sanity or another grave disease;
2. Immunity enjoyed by the person;
3. Unknown address of the said person and the ensuing impossibility for the person to be found.

Article 20. (1) The Commission shall institute proceedings for establishment of the assets owned or controlled by a natural with respect of which a reasonable assumption can be made that they have been acquired through the criminal activity of another person who has been constituted as an accused under Article 19, paragraph 1.

(2) The Commission shall institute proceedings for establishment of the assets owned or controlled by a legal person with respect of which a reasonable assumption can be made that they have been acquired through the criminal activity of another person constituted as an accused under Article 19, paragraph 1.

Article 21. Proceedings under this Act shall be initiated also in the cases where a decision of a foreign court concerning any of the criminal offences under Article 19, paragraph 1 has been recognized pursuant to the Penal Procedure Code.

Article 22. The Commission shall institute proceedings for establishment of assets in respect of which a reasonable assumption can be made that they have been acquired through an administrative violation of the nature to generate proceeds, provided that the said proceeds' value exceeds BGN 150,000¹ as at the time of acquisition and may not be forfeited following another procedure.

Article 23. (1) In the cases under Article 19, proceedings shall be instituted acting upon a notification by the pre-trial proceeding authorities.

(2) Any such notification shall contain information on:

1. The person in respect of whom the relevant ground under Article 19 exists;
2. The criminal offence which has been committed;
3. The assets of the person, where information about such assets is available.

(3) The Ministry of Justice shall inform the Commission of any criminal proceedings instituted in another State or any final conviction delivered by a foreign court against a Bulgarian national for criminal offences similar to the offences under Article 19, paragraph 1.

(4) The Supreme Cassation Prosecution Office and the Ministry of Justice shall inform the Commission in the event of a transfer of criminal proceedings.

(5) In the cases under Article 20, proceedings shall be instituted on the basis of notifications by the judicial authorities or communications by public bodies and organisations.

(6) Proceeding under Article 22 shall be instituted on the basis of a notification of final administrative acts establishing administrative violations by the relevant administrative body or official.

(7) Central and local authorities or officials who, in the course of discharge of official duties, have learnt about proceeds of administrative violations the value of which exceeds BGN 150.000² as at the time of acquisition thereof, and which may not be forfeited pursuant to another procedure, shall inform the Commission immediately and refer the case-file to the Commission.

(8) Where the sources of information do not contain sufficient data for the Commission to institute, the Commission shall collect additional information on the facts and circumstances subject to establishment. Where necessary, the Commission may request assistance by other authorities and institutions.

(9) Proceedings may not be instituted by the Commission on the basis of an anonymous signal only.

¹ Modification communicated by the Bulgarian authorities on 19/05/2011

² Modification communicated by the Bulgarian authorities on 19/05/2011

Chapter Four

POWERS OF COMMISSION AUTHORITIES DURING THE EXAMINATION

Article 24. (1) Upon initiation of proceedings an examination shall be launched that may not exceed one year.

(2) The Commission may extend this time limit on a single occasion by not more than six months.

Article 25. In the course of the examination a financial analysis shall be made of the business operations of the legal persons and of the maintenance expenses of the natural persons and their family members and information shall be collected regarding the assets, income, expenses and liabilities over the period under examination.

Article 26. (1) The authorities under Article 10 (1) shall collect information on:

1. The assets, the location thereof, the value and the legal grounds for the acquisition thereof;
2. The transformation of the assets;
3. The revenue and costs in the course of the usual operation and the extraordinary revenue and costs of legal persons;
4. The usual and extraordinary income and maintenance expenses of natural persons and their family members;
5. The financial obligations at public law to the State and the municipalities, paid;
6. transactions in the assets of legal persons;
7. The transactions in the assets of the natural person under examination and of the family members thereof;
8. The overseas trips of the natural person under examination and of the family members thereof as well as such trips of the representatives of the legal person;
9. The injunctions and encumbrances imposed on the assets and the liabilities assumed;
10. The type and value of the proceeds and the administrative violation in the cases under Article 22.
11. Any other circumstances relevant to the clarification of the origin of the assets and of the manner of acquisition and transformation thereof.

Article 27. The Commission and the directors of territorial directorates may request the court to lift the bank secrecy or trade secret under Article 35 paragraph 1 of the Markets in Financial Instruments Act and under Article 133, paragraph 2 of the Public Offering of Securities Act, should this be necessary to accomplish the objective of this Act.

Chapter Five

INTERACTION WITH OTHER PUBLIC BODIES

Article 28. (1) For achievement of the purposes of this Act, the authorities under Article 10 (1), the police authorities, the State Agency for National Security, the revenue authorities, the National Customs Agency and the prosecutor's office, acting *intra vires*, shall carry out jointly an examination of the sources of the assets. The purpose of the said examination shall be to make a comprehensive profile of the activity of the person under examination.

(2) The procedure for the joint operations shall be set out in a joint instruction of the Commission, the Chairperson of State Agency for National Security, the Minister of Interior and the Prosecutor General, the Directors of the National Revenue Agency and the National Customs Agency.

Article 29. (1) The authorities under Article 10 paragraph 1 shall exchange information with the police authorities regarding:

1. The assets of the persons which are presumed to have been acquired through criminal activity in Bulgaria or overseas;
2. The transport vehicles belonging to the persons under examination;

3. Establishment of the location of persons and motor vehicles, where this is necessary for the purposes of proceedings under this Act;
 4. Other facts and circumstances relevant to proceedings under this Act.
- (2) The exchange of information under Paragraph (1) shall observe the requirements of the Ministry of Interior Act.

Article 30. (1) The authorities under Article 10 (1) shall exchange information with the authorities of the State Agency for National Security regarding:

1. The assets of the persons under examination and the transformation of the said assets;
2. The import and export of assets, Bulgarian levs and foreign currency in cash, precious metals, precious stones and articles made therewith and thereof;
3. Bank accounts of the persons in Bulgaria or abroad;
4. Participation of the persons in commercial companies or other legal persons;
5. Other facts and circumstances relevant to Proceedings under this Act.

(2) The exchange of information under Paragraph (1) shall observe the requirements of the State Agency for National Security Act.

Article 31. After a person has been constituted as an accused of a criminal offence under Article 19 paragraph 1, the investigative body shall forthwith inform the director of the relevant territorial directorate. A notification shall furthermore be submitted upon new constitution as an accused, as well as upon suspension and termination of the criminal proceeding.

Article 32. The prosecutors tasked with the supervision of the case files or pre-trial proceedings for the criminal offences under Article 19 paragraph 1 shall forthwith notify the director of the relevant territorial directorate of:

1. The pre-trial proceedings instituted in connection with the criminal offences under Article 19 paragraph 1;
2. The decrees whereby criminal proceedings are suspended or terminated, as well as the decrees whereby suspended criminal proceedings for a criminal offence under Article 19 paragraph 1 are resumed, on the grounds under Article 19, paragraphs 2 and 3;
3. The submission of an indictment to the court;
4. The precautionary measures imposed on the assets of the accused.

Article 33. The authorities under Article 10 paragraph 1 shall exchange information with the National Revenue Agency and the National Customs Agency regarding:

1. The assets of the person under examination;
2. The sources of income and the amount of the said income;
3. The usual and extraordinary expenses;
4. The obligations at public law paid;
5. The tax returns and the annual financial statements submitted;
6. The transformation of the assets;
7. The import and export of assets, including Bulgarian levs and foreign currency in cash.

Article 34. (1) The directors of territorial directorates may request the competent revenue authorities to provide full tax and social-insurance information on the persons under examination and to conduct a tax check or audit to establish the sources of the assets.

(2) Upon completion of the examination or audit, the revenue authorities shall notify the directors of the territorial directorates concerned.

Article 35. The directors of territorial directorates shall provide the authorities of the National Revenue Agency with information on the assets forfeited to the Exchequer and on the location of the said assets.

Article 36. (1) In the execution of the powers conferred under this Act, the authorities under Article 10, paragraph 1 may request assistance and information from all state and municipal bodies, companies, credit institutions, as well as from other legal persons, notaries and enforcement agents.

(2) The authorities and persons referred to in Paragraph (1) shall be obligated to provide the information within one month after being requested to do so.

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

(5) Personal data shall be processed in accordance with the Personal Data Protection Act.

Article 37. The administrative authorities and the judicial authorities shall forthwith notify the Commission in the cases where the conditions under Article 24 are in place and forward the case file to the Commission.

Article 38. All public bodies and other institutions shall grant, pursuant to the laws regulating their operation, the Commission access to the databases and registers thereof following the procedures set out in joint instructions.

Article 39. The authorities under Article 10, paragraph 1 shall draw up reports on each action taken under this Act, unless the said action has been recorded in another document.

Article 40. Persons who in the course of exercise of their official duties have had access to information about an examination in progress may not divulge the said information.

Chapter Six PRECAUTIONARY MEASURES AND FORFEITURE OF ASSETS ACQUIRED THROUGH CRIMINAL ACTIVITY AND ADMINISTRATIVE VIOLATIONS

Section I Precautionary Measures

Article 41. (1) The Commission shall make a decision to file an action with the court to secure a future claim for forfeiture of assets on the basis of a report by the director of the relevant territorial directorate where the examination has produced sufficient information to make a reasonable assumption that:

1. Proceeds have been acquired directly or indirectly through criminal or an administrative violation; or that

2. The assets of a natural person have been acquired as proceeds of criminal activity as the value thereof as at the time of acquisition substantially exceeds the net income of the natural person under examination and of their family members over the period subject to examination and no other legal source thereof has been established;

3. The assets of the legal person have been acquired as proceeds of criminal activity as the value thereof reported in the annual balance sheet under Articles 22a and 22b of the Accountancy Act substantially exceeds the liabilities under the balance sheet reduced by the funding raised and the balance sheet value of the loan management expenses and no other legal source thereof has been established;

(2) The decision under paragraph (1) shall specify the encumbrances and injunctions on the assets imposed as at that time.

(3) The Commission shall submit a motion for imposition of an injunction on assets acquired as proceeds of criminal activity and administrative violations to secure future claims for forfeiture of the assets to the district court exercising jurisdiction over the permanent address of the [natural] person or over the registered office of the legal person, as the case may be. Where the assets include immovable property, the motion shall be submitted to the competent court exercising *ratione materiae* jurisdiction over the location of the said immovable property.

(4) The claim shall be reasoned and all evidence available in the case file shall be enclosed therewith.

(5) The Commission may not move for precautionary measures on any assets of natural persons which are not subject to coercive enforcement according to Article 444 of the Code of Civil Procedure on any money of legal persons or sole traders intended for the payment of salaries or social security contributions of employees, provided that such money is accounted for in a separate analytical account.

Article 42. (1) Where no sufficient information is available to make a reasonable assumption that proceeds have been acquired through criminal activity or administrative violations the Commission shall decide to terminate the proceedings.

(2) The Commission may reopen proceedings that have been terminated should new circumstances of relevance for the case become known and add the materials collected in the terminated case [to the reopened case].

Article 43. (1) The court shall immediately issue a ruling granting or refusing the precautionary measure.

(2) The injunction shall be granted:

1. Where it would otherwise be impossible or difficult to exercise the rights arising from the court judgment in favour of forfeiture, and

2. Where the motion of the Commission is supported by sufficient evidence to make a reasonable assumption that the person owns or controls assets acquired as proceeds of criminal activity and administrative violations;

(3) The ruling whereby the precautionary measure is granted shall be subject to immediate enforcement.

(4) The court ruling securing the claim shall be subject to appeal by an interlocutory appeal within seven days. This period shall begin to run, in respect of the appellant, as from the date of service of the said ruling and, in respect of the respondent, as from the date of service of the communication of the precautionary measure imposed by the public enforcement agent, by the Registry Service or by the court.

(5) Acting on a motion by the Commission and on the basis of the court ruling, separate injunction orders shall be issued for the immovable and movable property respecting the *ratione loci* competence of the public enforcement agent.

Article 44. (1) The court may impose the following precautionary measures:

1. preventive attachment of an immovable property;

2. preventive attachment of movable property, receivables, securities and shares in a commercial company;

3. other appropriate measures determined by the court on a motion by the Commission.

(2) The precautionary measures shall extend to the interest as well as to the acquisition of other civil fruits from the assets in respect of which the measures have been imposed.

(3) The court may grant several types of precautionary measures up to the amount of the value of the claim.

(4) Should there be a risk of the assets being squandered, destroyed, concealed or disposed of, acting on a motion by the authorities under Article 10 paragraph, the court may order the sealing of premises, equipment and transport vehicles wherein the said assets are stored regardless of the ownership of the said premises, equipment and means of transport.

Article 45. (1) After the ruling imposing precautionary measures becomes final, the court, acting on a reasoned application by the interested person or on a motion by the Commission, may, within 48 hours following receipt of the application, 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 or of a family member of theirs;

2. payment of child support or maintenance;

3. payment of liabilities at public law to the State or liabilities to third persons the receivables of which have been established by a judgment prior to the initiation of proceedings before the Commission;

4. payment of remunerations for work performed;

5. mandatory social security contributions and health insurance;

6. payment of expenses necessary to preserve and maintain the assets in respect of which precautionary measures are imposed;

7. payment of remuneration to the trustee in insolvency proceedings;

8. payment of costs and the fee of one lawyer in relation to the proceedings under this Act.

(2) The court shall immediately deliver a ruling following receipt of any such application, the ruling being subject to appeal.

(3) The lifting of the preventive attachment and of other precautionary measures shall be carried out on the basis of a final court ruling.

Article 46. (1) The precautionary measures shall be enforced acting by assignment from the Commission by the competent recordation judge and by the public enforcement agents according to the *ratione loci* competence rules under Article 427 (1) of the Code of Civil Procedure.

(2) The recordation of preventive attachment shall be made immediately.

(3) No stamp duty shall be due for actions related to imposition of precautionary measures.

Article 47. (1) Preventive attachment of immovable property shall be made on the motion of the authorities under Article 10, paragraph 1 through recordation of the injunction following an order given by the competent recordation judge.

(2) The recordation judge shall dispatch a communication:

1. on the recording effected: to the owner of the assets in respect of which the preventive attachment has been imposed;

2. on the preventive attachment imposed: to the Special Pledges Registry, where the immovable property is owned by a commercial company.

(3) A special pledge of a commercial company in the assets of which the immovable property under paragraph (1) is incorporated may not be opposed to the State.

Article 48. (1) Preventive attachment of movable property shall be imposed forthwith by the public enforcement agent upon request by the authorities under Article 10, paragraph 1 by means of a communication to the respondent under the injunction.

(2) The preventive attachment shall be considered effective as from the receipt of communication to this end. As from this moment the respondent under the injunction shall be deprived of the right to dispose of the property and may not modify, damage or destroy the property.

(3) Upon request by the authorities under Article 10 paragraph 1, the public enforcement agent shall take an inventory, conduct an appraisal and deliver the movable property for safekeeping to the respondent under the injunction or to a third party or shall seize the movable property and shall deliver the said movable property for safekeeping to the authorities under Article 10, paragraph 1. A preventive attachment mark (sticker) may be affixed to the movable property.

(4) Where the assets are owned by a commercial company, the public enforcement agent shall also dispatch a communication on the preventive attachment imposed to the Special Pledges Registry.

Article 49. (1) Upon preventive attachment of a ship or another water-craft, the public enforcement agent shall dispatch a communication to the Maritime Administration Executive Agency for recording of the preventive attachment in the relevant registers.

(2) Upon preventive attachment of a means of transport, a communication shall be dispatched to the authorities of the Ministry of Interior.

(3) Upon preventive attachment of a civil aircraft, the public enforcement agent shall dispatch a communication to the Directorate General of Civil Aviation Administration for recording in the register of civil aircraft.

(4) Upon preventive attachment of agricultural or forestry machinery subject to registration pursuant to the Agricultural and Forestry Machinery Registration and Control Act, the public enforcement agent shall dispatch a communication to the Control and Technical Inspectorate with the Ministry of Agriculture and Food.

Article 50. (1) Preventive attachment under Article 48 shall be considered imposed as from the date of receipt of the preventive attachment notification by the authorities responsible for the relevant registers.

(2) A communication on the preventive attachment imposed shall be dispatched to the respondent under the injunction after the preventive attachment notification is served upon the official with the relevant register.

(3) Alteration of the registration of the means and machinery specified in Article 54 shall be inadmissible before lifting of the preventive attachment.

(4) The public enforcement agent may approach the authorities of the Ministry of Interior with a request for suspension from operation of a motor vehicle in respect of which preventive attachment has been imposed for a period not exceeding three months.

Article 51. (1) Preventive attachment of receivables which the respondent under the injunction is owed by a natural or legal person shall be imposed by the public enforcement agent by means of despatch of a preventive attachment notification to the garnishee and to the bank wherewith the said garnishee holds accounts.

(2) Preventive attachment shall be considered imposed as from the date and hour of receipt of the preventive attachment communication by the garnishee or by the bank wherewith the said garnishee holds accounts.

(3) A communication on the preventive attachment imposed shall be dispatched to the respondent under the injunction after the preventive attachment notification is served upon the garnishee.

(4) Where the receivable, in respect of which preventive attachment is imposed, is secured by a pledge, the pledgee shall be ordered to surrender the movable property pledged to the public enforcement agent who shall deliver the said movable property for safekeeping to a person designated by the authority under Article 10 paragraph 1.

(5) Where the receivable, in respect of which preventive attachment is imposed, is secured by a mortgage, the preventive attachment shall be noted in the relevant book at the Registry Service.

(6) Where a writ of execution has been issued for the receivables under paragraph 1, the public enforcement officer shall seize the said writ from the person who holds it and shall deliver the said writ for safekeeping to the authority under Article 10 paragraph 1, the said delivery being attested by a take-over note.

(7) The extinctive prescription shall cease to run from the time of service of the preventive attachment notification on the garnishee.

Article 52. (1) In cases under Article 50, paragraph 6, the authorities under Article 10, paragraph 1 shall have the right to move for the receivable to be collected by the Commission and for the initiation of separate enforcement proceedings against the debtor under the writ of execution.

(2) The amounts collected under the enforcement case shall be transferred by the public enforcement agent to an account of the Commission.

Article 53. (1) Preventive attachment of cash in national or foreign currency shall be imposed by means of taking an inventory, seizure and depositing of the said cash to the account of the Commission. When translating the exchange rate of the foreign currency, the exchange rate of the Bulgarian National Bank for the relevant currency as at the date of the inventory shall apply.

(2) Preventive attachment of all types of bank accounts of the respondent under the injunction in national or foreign currency shall be imposed by means of dispatch of the preventive attachment notification to the bank.

(3) Preventive attachment may furthermore be imposed on all types of movable property deposited in safe-deposit vaults or boxes, as well as on amounts provided for trust management by the respondent under the injunction.

(4) Preventive attachment under paragraphs 2 and 3 shall be considered imposed as from the time of receipt of the preventive attachment notification by the bank. A notification of the preventive attachment imposed shall be dispatched to the respondent under the injunction after receipt of the notification by the bank.

(5) The server shall record the hour and date of receipt. Where the notification has been dispatched by post, the competent official shall record the hour and date of receipt.

Article 54. (1) Preventive attachment of physical securities shall be imposed by means of taking an inventory at the nominal value thereof and seizure of the said securities by the public enforcement agent.

(2) Upon the imposition of preventive attachment of physical registered shares or bonds, the public enforcement agent shall notify the commercial company. The preventive attachment shall have effect in respect of the commercial company as from the receipt of the preventive attachment notification.

(3) The public enforcement agent shall deliver the physical securities for safekeeping at a bank, the said delivery being attested by a memorandum.

Article 55. (1) Preventive attachment of dematerialized securities shall be imposed by means of dispatch of a preventive attachment notification to the Central Depository, the company being notified simultaneously.

(2) The preventive attachment shall have effect as from the time of service of the preventive attachment notification upon the Central Depository.

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

(4) Within three days after receipt of the preventive attachment notification, the Central Depository shall be obligated to provide the public enforcement agent with information about the securities owned by the respondent under the injunction and on the other preventive attachments imposed under other claims.

(5) The public enforcement agent shall notify the authorities under Article 10 (1) of the information received under Paragraph (4).

Article 56. (1) Preventive attachment of government securities shall be imposed by means of despatch of a preventive attachment notification to, the Central Depository, or the Bulgarian National Bank, predepository or overseas institution with which security accounts have been registered.

(2) The preventive attachment shall be considered imposed as from the date of receipt of the preventive attachment notification by the person who keeps a register of the government securities.

(3) Within three days after receipt of the preventive attachment notification, the person who keeps a register of government securities shall be obligated to provide the public enforcement agent with information about the securities owned by the respondent under the injunction and about the preventive attachments imposed under other claims.

(4) The public enforcement agent shall notify the authorities under Article 10 paragraph 1 of the information received under paragraph 3.

Article 57. (1) Preventive attachment of securities shall extend to all property rights conferred by the security.

(2) Any disposition of the securities after the preventive attachment notification shall have no effect in respect of the State.

(3) The management bodies of joint-stock companies shall refuse to record the transfer of registered shares by the respondent under the injunction after imposition of the preventive attachment.

Article 58. (1) Preventive attachment of shares in a commercial company shall be imposed by means of despatch by the public enforcement agent of a preventive attachment notification to the Registry Agency.

(2) The preventive attachment shall be recorded according to the procedure applicable to the recording of a pledge of shares in a commercial company and shall be considered imposed as from the recording thereof in the Business Register. The Registry Agency shall notify the commercial company of the preventive attachment recorded.

Article 59. The transfer of the right to ownership, the creation and transfer of rights *in rem* and the creation of encumbrances relating to immovable property in respect of which preventive attachment has been imposed, as well as the disposition of movable property, securities, shares and receivables in respect of which preventive attachment has been imposed, effected after the time as from which the preventive attachment is considered valid, shall have no effect in respect of the State.

Article 60. The assets whereupon precautionary measures have been imposed pursuant to this Act shall be excluded from the bankruptcy estate or from the property subject to liquidation, as the case may be, in the cases where the bankruptcy proceedings or the proceedings for dissolution of the merchant through liquidation have commenced after the precautionary measures have been imposed.

Article 61. The Commission may bring an action for performance against the person who holds the assets should the said person refuse to surrender them voluntarily.

Article 62. Coercive enforcement under the Code of Civil Procedure and the Special Pledges Act shall be inadmissible against any assets and receivables whereupon precautionary measures have been imposed pursuant to this Act.

Article 63. Precautionary measures may furthermore be imposed pursuant to this Act on assets within the territory of the Republic of Bulgaria which have been acquired through criminal or other illegal activity where this is provided for in an international treaty the Republic of Bulgaria is a party to.

Article 64. The general rules of the Code of Civil Procedure shall apply to any cases unregulated by this Section.

Section II

Steps after Imposition of Precautionary Measures

Article 65. (1) After a precautionary measure has been imposed, the authorities under Article 10, paragraph 1 shall invite the natural person under examination to present a declaration in writing regarding:

1. the immovable property and motor vehicles, ships and aircraft, limited real rights to immovable property, cash deposits, securities, works of art, movable archaeological valuables, shares in commercial companies, receivables, patents, trademarks and industrial designs and any other assets owned by the said person and by the family members thereof;
2. a list of the bank accounts in Bulgaria and abroad held by the person under examination and by the family members thereof;
3. the sources of means and the grounds for acquisition of the assets and for maintenance of the family thereof;
4. any transactions in immovable and movable property, the shares and participating interest in commercial companies, sale of commercial companies or other commercial or legal transactions made by the persons and their family members during the period under examination, as well as the sources of means for effecting the said transactions;
5. any debts to third parties, where those have been declared in the annual tax returns;
6. statements of all money available as at the first day of the period under examination;
7. any other circumstances relevant to the assets of the person examined.

(2) Where the person examined is deceased, the legal and testamentary heirs thereof shall be invited to present the declaration referred to in paragraph 1.

(3) The person shall present the declaration within 14 days after receipt of the communication and, if the said person is abroad, within one month.

(4) The standard form of the declaration shall be endorsed by a decision of the Commission and shall be promulgated in the *State Gazette*.

Article 66. (1) The authorities under Article 10 paragraph 1 shall furthermore invite the following to present a declaration:

1. the third parties under Article 72, 73 and 75;
2. the persons who represent, manage or control a legal person under Article 74 paragraph (1);
3. the persons who used to represent, manage or control legal persons under item 2 over the period under examination.

(2) The standard form of the declaration shall be endorsed by a decision of the Commission and shall be promulgated in the *State Gazette*.

Article 67. A refusal to present a declaration may not be grounds for drawing conclusions against the person and their family members.

Article 68. (1) After a precautionary measure has been imposed, the Commission shall provide the person under examination with an opportunity to participate in the proceeding.

(2) The authorities under Article 10 paragraph 1 shall notify the person under examination, provide them the materials concerning them, and allow them a period of one month to lodge objections and to present evidence.

(3) Legal persons shall be represented before the Commission by the persons entitled to represent them by law or pursuant to their articles of association. Where no rules relating to representation exist, the legal person shall be represented by two of the management members.

(4) In the proceeding before the Commission, the person under examination may be represented by a lawyer or by another person pursuant to the Code of Civil Procedure having a written authorization bearing a notarized signature.

(5) The statements made by the person under examination may not be used to initiate criminal prosecution against the said person, nor can they be used as evidence against them.

Article 69. (1) After considering the objections of the person under examination, the director of the territorial directorate concerned shall submit a reasoned report to the Commission. The said report shall specify:

1. the type and value of the assets acquired;
2. the existence of a link between the criminal activity or administrative violation and the assets acquired, where the establishment of such a link is required;
3. significant lack of correspondence between the value of the assets and the net income of the person and their family members where the establishment thereof is required;
4. significant lack of correspondence between the value of assets reported in the annual balance sheet under Articles 22a and 22b of the Accountancy Act and the value of liabilities under the balance sheet reduced by the funding raised and the balance sheet value of the loan management expenses;
5. evidence to the third persons' awareness or inference regarding the criminal origin of the assets.
6. evidence of the existence or non-existence of encumbrances or other injunctions imposed on the assets;
7. other evidence whereon the motion is based;
8. final conclusion.

(2) At the proposal of the director of the relevant territorial directorate the Commission may decide:

1. to terminate the proceeding under the case file if the evidence collected does not establish or is insufficient to make a reasonable assumption that the assets have been acquired through criminal activity or administrative violations;
2. to bring an action for forfeiture in favour of the Exchequer of assets acquired through criminal or administrative violations.

Section III Forfeitable Assets

Article 70. (1) Assets acquired through criminal activity or administrative violations shall be forfeited according to the procedure set out in this Act.

(2) Subject to forfeiture shall be specific assets for which it is established that they have been acquired directly or indirectly through criminal activity or administrative violations.

(3) Subject to forfeiture shall also be assets for which a substantial lack of correspondence has been found over the period subject to examination that makes probable the acquisition of such assets through criminal activity.

(4) Assets shall not be forfeited where a financial source has been found that makes probable the acquisition of such assets through legal means.

Article 71. (1) Assets commensurate to the lack of correspondence established between the assets and the net income of the person under examination and of the family members thereof shall be forfeited. Where it is not possible to forfeit self-contained assets, an undivided interest in the said assets or the money equivalent of such assets, determined at a market price at the time of bringing the action for forfeiture, shall be forfeited.

(2) The lack of correspondence under paragraph 1 shall be established by comparing the value of the assets, calculated in terms of a certain number of minimum [monthly] wages as at the date of acquisition of the said assets, and the net income of the person under examination and of the family members thereof, calculated in terms of a certain number of minimum [monthly] wages for each year of the period subject to examination.

(3) The assets in respect of which the comparison under paragraph 2 is made shall include:

1. the personal assets of the person under examination;
2. the assets acquired by the two spouses;
3. the assets of the children who have not attained majority, and
4. the assets of the spouse, regardless of the regime of property relations chosen by the spouses.

(4) The established extent of the lack of correspondence for each of the years within the period under examination may not be offset by revenue, income and sources of financing accruing in the succeeding years.

(5) In the cases under Article 22, subject to forfeiture shall be specific assets acquired as proceeds of administrative violations, the value of which as at the time of acquisition exceeds BGN 150 000³.

Article 72. Transactions effected in assets acquired through criminal activity shall be null and void in respect of the State and the consideration given under such transactions 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 knew or could have presumed that the assets had been acquired through criminal activity or if the said parties acquired the assets for the purpose of concealing the illegal origin thereof or the actual rights related thereto.

Article 73. (1) Subject to forfeiture shall be assets acquired as proceeds of criminal activity which the person under examination has transferred during the period under examination to a spouse, a person wherewith the person under examination is a *de facto* cohabitee, a former spouse, lineal relatives up to any degree of consanguinity, collateral relatives up to the fourth degree of consanguinity and affines up to the second degree of affinity inclusive, and to the assets which the person under examination has transferred gratuitously to a third party during the period under examination.

(2) Until otherwise proven, the persons referred to in paragraph 1 shall be presumed to have known or presumed that the assets have been acquired through criminal activity.

Article 74. (1) Subject to forfeiture shall also be assets which the person under examination has transferred or imported as a contribution in kind or in cash to the capital of a legal person provided that the persons who manage or control the legal person have known or, judging from the circumstances, could have presumed that the assets had been acquired through criminal activity.

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

(3) In the cases under Article 20, subject to forfeiture shall be the difference between the balance sheet values of the assets and liabilities reduced by the funding raised and the balance sheet value of the loan management expenses. Such assets shall be forfeited provided that the persons who manage or control the legal person have known or, judging from the

³ Modification communicated by the Bulgarian authorities on 19/05/2011

circumstances, could have presumed that the assets had been acquired through criminal activity.

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

Article 75. Subject to forfeiture shall also be assets which have been colourably acquired by a third party for the account of the person under examination in order to avoid the forfeiture of the said assets or to conceal the origin or the actual rights to the said assets.

Article 76. Until otherwise proven, the movable property and cash found on the person under examination, in the dwelling thereof or on other premises, means of transport, offices, strong boxes or safes, whether owned or rented thereby, shall also be considered movable property and cash belonging to the person under examination.

Article 77. (1) The value of the assets acquired as proceeds of criminal activity or administrative violations shall be determined as at the time of acquisition or disposal.

(2) Where it has not been established that the price stated in the document attesting the ownership of the assets is the actual price agreed upon, the assets shall be appraised as follows

1. the immovable property and the limited real rights thereto: at average fair market value;
2. the foreign currency and the precious metals: at the central exchange rate of the Bulgarian National Bank;
3. the securities: at fair market value;
4. the transport vehicles: at average fair market value;
5. the rest of the movable property and rights: at average fair market value;
6. enterprises or shares in commercial companies or cooperatives: at average fair market value, and where such value cannot be determined, according to accounting data.

(3) The value of proceeds of administrative violations shall be determined at fair market value as at the time the claim has been filed.

Article 78. In the cases where the assets acquired as proceeds of criminal activity or administrative violations, have been transformed, in part or in whole, into other assets, subject to forfeiture shall be the transformed assets.

Article 79. Assets acquired through criminal or other illegal activity shall furthermore be forfeited by legal or testamentary heirs up to the amount received by the said heirs.

Article 80. In case the assets no longer exist or have been disposed of, the money equivalent thereof or substitute assets shall be forfeited.

Article 81. Assets acquired as proceeds of criminal activity shall not be forfeited where the established lack of correspondence under Article 70 paragraph (3) is insignificant and also where such are unseizable.

Article 82. (1) The rights of the State under this Act shall be extinguished upon the lapse of a 15⁴-year period of prescription.

(2) The prescription shall begin to run as from the date of acquisition of the assets and shall be interrupted by the institution of the proceedings under this Act.

⁴ Modification communicated by the Bulgarian authorities on 19/05/2011

Section IV
**Proceeding before Court for Forfeiture of Assets Acquired through Criminal Activity
and Administrative Violations**

Article 83. (1) The Commission shall file a claim for forfeiture of assets acquired as proceeds of criminal activity or administrative violations with the district court exercising jurisdiction over the permanent address of the person under examination within three months after the precautionary measures has been imposed.

(2) Where the assets incorporate, *inter alia*, immovable property, the action shall be brought before the district court exercising jurisdiction over the location of the said immovable property, and where the assets incorporate multiple immovable properties, the action shall be brought before the district court exercising jurisdiction over the location of the immovable of the highest tax assessed value.

(3) The statements of claim and the final court judgment shall be subject to recordation in the Property Register of the Registry Agency.

(4) Should the Commission fails to present evidence that it has filed the claim within the statutory time limit, the court shall lift the precautionary measures *ex officio*.

Article 84. (1) An action for performance against the person under examination shall be brought for forfeiture of the assets acquired as proceeds of criminal activity.

(2) The Commission shall bring declaratory actions against third parties to establish that the assets have been acquired as proceeds of criminal activity and to have the relevant transactions declared null and void.

(3) The claim for forfeiture of the assets may be joined with actions under Articles 134 and 135 of the Obligations and Contracts Act, as well as with other actions where such an interest exists.

(4) Upon submission of the statement of action, the Commission shall not pay stamp duty.

Article 85. (1) The district court shall institute a case and shall promulgate in the *State Gazette* a notice stating: the number of the case, particulars of the motion received, a list of the assets and the date for which the first hearing is scheduled.

(2) The person under examination and the persons referred to in Article 71, paragraph 1, Article 72, Article 73, Article 75 and Article 79 shall be constituted as respondents in the proceeding.

(3) The respondents shall be obligated to exhaust all requests and objections within that proceeding.

Article 86. (1) Third parties, who claim individual rights to separate items of the assets, may bring actions within the framework of the proceeding instituted within six months after the promulgation of the notice. It shall be inadmissible for third parties to bring actions in separate proceedings.

(2) The proceedings instituted before bringing the action under Article 83, paragraph 1 shall be terminated, the non-final judgments rendered shall be invalidated, and the proceedings terminated shall be joined to the proceeding under Article 84 paragraph 1.

Article 87. (1) The Court shall sit in public.

(2) The Commission shall be represented by its Chairperson or by an official with the Commission entitled to practice a legal profession designated by the Chairperson.

(3) All evidence admissible under the Code of Civil Procedure shall be presented in the proceeding.

(4) The court shall appoint expert witnesses from amongst the persons possessing licenses under the Independent Appraisers Act to assess the assets.

(5) In the court proceedings the Commission shall present evidence on:

1. the type and value of the assets acquired over the period under examination;
2. the type and value of the proceeds under Article 22;
3. the type of criminal activity of the persons under Articles 19, 20 and 21;
4. the type of administrative violation and the existence of a causal link between the violation and proceeds acquired;

5. the existence of a substantial lack of correspondence relating to the assets of a natural person;
 6. the existence of a lack of correspondence relating to the assets of a legal persons;
 7. knowledge or inference of the third parties that the assets may have been acquired through criminal or other illegal activity;
 8. other circumstances relevant to clarification of the origin of the assets and the manner in which the person under examination, the family members thereof and the third parties acquired the said assets;
 9. the existence of encumbrances and injunctions on the assets, other than those imposed in the proceedings under this Act as well as the availability of replacement assets.
- (6) Based on the evidence under paragraph 5 the Commission shall prove to a reasonable degree of substantiation that the assets have been acquired as proceeds of criminal activity.
- (7) In the proceeding before the court, the respondent shall prove to a reasonable degree of substantiation that the assets have been acquired through legal sources.
- (8) In the cases where proof by means of a written document is required, conclusions may not be made against the respondent if it is proven that the document has been lost or destroyed not through the fault of the party concerned.
- (9) The facts for which this Act introduces a presumption and the existence of a causal link between the proceeds and the criminal activity of the person under examination shall not be subject to proving.

Article 88. The court shall check the respondent's liabilities and the existence of any encumbrances or receivables against the assets. In the event of encumbrances that may hinder enforcement against or the peaceful enjoyment of immovable property, the court may order forfeiture of the money equivalent thereof.

Article 89. (1) Having examined the case the court shall deliver a judgment that is subject to appeal following the general procedure.

(2) By the judgment, the court shall award stamp duty and the costs incurred depending on the outcome of the case.

Article 90. The court shall order forfeiture where the acquisition of assets as proceeds of criminal activity or administrative violations has been proven to a higher degree of probability than the degree to which the contrary has been proven.

Article 91. (1) Until conclusion of the oral arguments in the court of first instance, the parties to the case may conclude a settlement whereby 80 per cent of the assets or the money equivalent thereof is forfeited.

(2) A settlement may be concluded if the value of the assets acquired as proceeds of criminal activity or administrative violations does not exceed BGN 1 000,000 and the respondent deposits that amount to the Commission's account before the settlement is endorsed.

(3) The settlement shall be endorsed by the court if it is not contrary to the law and to good morals.

(4) The settlement shall have the effect of a final judgment as from the day of the endorsement thereof and shall be non-rescindable.

(5) The stamp duty shall be determined on the basis of the amount for which a settlement has been reached and shall be shared equally by the parties.

(6) The costs of the proceeding shall be awarded against the parties as incurred.

Article 92. The rules of the Code of Civil Procedure shall apply to matters not regulated by this Section.

Chapter Seven
MANAGEMENT OF ASSETS IN RESPECT OF WHICH PRECAUTIONARY MEASURES
HAVE BEEN IMPOSED. MANAGEMENT OF FORFEITED ASSETS

Section I
Management of Assets under Injunction

Article 93. (1) The assets whereupon an injunction has been imposed may be left for safekeeping to the person under examination, or to the person who holds the assets at the time of imposition of the injunction

(2) At the Commission's request the court shall appoint another safe keeper while fixing their remuneration. The remuneration shall be paid by the Commission.

(3) The remuneration shall be paid by the Commission.

(4) The safe keeper shall be selected *intuitu personae* and with a view to the type of items, the location and storage place thereof.

(5) The item shall be handed over for safe keeping upon signing [a take-over note].

Article 94. (1) In addition to the obligations under Articles 469 to 471 of the Code of Civil Procedure, the person under Article 93 shall be under the following obligations:

1. to notify the Commission of any damage to the assets;

2. to notify the Commission of any proceedings affecting the assets;

3. to notify the Commission in writing of any steps related to transfer or arising of rights of third parties to the assets or to a change in the identification of the immovable, presenting copies of the documents establishing the transfer or creation of the rights;

4. to notify the Commission of any action resulting in a change in the assets' identification;

4. to notify the Commission if there is a risk of the assets being destroyed or damaged.

(2) The person under Article 93 shall be obligated to ensure the authorities under Article 10 paragraph 1 access in order to check the state of the assets.

(3) If the person under examination or the person who holds the assets at the time of imposition of the injunction fails to fulfil the obligations thereof, the Commission may request the public enforcement agent to deliver the assets under injunction for safekeeping to another person.

(4) The costs incidental to the use and maintenance of the assets shall be paid at the expense of the assets secured.

Article 95. (1) Movable property of historical value shall be provided for safekeeping to the National Museum of History or another museum.

(2) Movable property of scientific value shall be provided for safekeeping to the National Library, the relevant institute of the Bulgarian Academy of Sciences, or to a university.

(3) Movable property of precious metals, precious stones and articles made therewith or thereof shall be provided for safekeeping to the Bulgarian National Bank.

(4) Movable property of artistic, antiquarian or numismatic value shall be provided for safekeeping to the Ministry of Culture.

(5) Exotic animals and plants shall be provided to zoological gardens and other institutes.

(6) In the cases under Paragraphs (1) to (5), the costs incidental to the safekeeping and maintenance of the assets under injunction shall be paid by the Commission.

Article 96. (1) By way of exception, the Commission may make a decision on the sale of movable property which:

1. may be substantially diminished in value during the period of safekeeping or else the preservation thereof requires disproportionate costs;

2. are perishable.

(2) In the cases under paragraph (1) the Commission shall offer that the owner buy the Movable property at a price set by the court. The amount paid shall be transferred to the account of the person under examination and the court shall immediately freeze such money.

(3) Any such movable property shall be sold by a public enforcement agent at an open-bidding auction which shall be conducted within a period of seven days upon receipt of the request or

shall be left for sale by a merchant at a retail establishment, a wholesale market or a commodity exchange designate by the Commission.

(4) The delivery of the movable property shall be attested by a take-over note signed by the public enforcement agent or by the merchant. The merchant shall receive a commission fee for the sale effected.

(5) If no documents are available about sanitary control carried out and if there are no data about the origin, composition and expiry date, the sale shall be effected after authorization by the Bulgarian Food Safety Agency and the regional health inspectorates with the Ministry of Health.

(6) Animals belonging to the national genetic pool, plant-variety seeds and planting stock of a guaranteed origin shall be sold by the public enforcement agent with the authorization of the Minister of Agriculture and Food or a person empowered thereby solely to other agriculture producers.

(7) The authorities under in paragraphs 4 and 5 shall decide on the request within three days after the receipt thereof.

Article 97. The proceeds of the assets sold according to the procedure set out in Article 96 shall be transferred by the public enforcement agent to a bank account of the Commission opened according to a special procedure and terms.

Article 98. (1) The Commission shall keep a register wherein the following shall be recorded:

1. the person against whom proceedings have been instituted;
2. the assets upon which an injunction has been imposed;
3. particulars of the owner and of the person who holds the assets at the time of imposition of the injunction;
4. other data required for the identification of the assets in respect of which an injunction has been imposed;

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

(3) Disposition of immovable property or encumbering the said immovable property by charges or the assumption of any obligations whatsoever by the person under examination, which would result in impediments to the enjoyment of the rights arising from the court judgment on forfeiture of assets acquired as proceeds of criminal activity or administrative violations, shall have no effect in respect of the State.

(4) The Commission shall issue certificates of the existence of precautionary measures imposed under this Act within seven days following the receipt of a request from the court, the public enforcement agents, the authorities of the National Revenue Agency and other state bodies.

Section II Management of Forfeited Assets

Article 99. (1) There shall be established an Interdepartmental Board for Management of Forfeited Assets, hereinafter referred as "the Board".

(2) The Board shall be a collegial body which shall consist of deputy ministers designated by the Minister of Justice, the Minister of Finance, the Minister of Economy, Energy and Tourism, the Minister of Labour and Social Policy, and the Minister of Regional Development and Public Works.

(3) The Board shall be chaired by a Deputy Minister of Finance.

(4) The administration of the Ministry of Finance shall ensure the technical support for the operation of the Board.

Article 100. (1) On a monthly basis, the Commission shall notify the Board of the final court judgments on forfeiture of assets acquired as proceeds of criminal activity or administrative violations.

(2) The enforceable judgments of courts on forfeiture, the writs of execution issued on the basis of the said judgments and all other documents required for the enforcement of the judgment on

forfeiture shall be transmitted by the Commission to the Board within three days after the case file is completed.

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

Article 101. (1) The Board shall propose to the Council of Minister to allocate for management the assets forfeited according to the procedure established by this Act, to donate the said assets for humanitarian purposes, or to order the sale thereof.

(2) The Board shall meet at least once every two months and shall make decisions by a simple majority.

(3) Representatives of the National Association of Municipalities in the Republic of Bulgaria, of non-profit organizations, branch and professional organizations may be invited to the meetings of the Board.

(4) The Board shall endorse rules of organization of the operation thereof.

Article 102. (1) The assets for which a decision for sale has been made shall be sold by the National Revenue Agency following the procedure provided for in the Tax and Social Security Procedure Code.

(2) The immovable and movable property may not be sold at a price lower than the initial selling price. If the assets are not sold after the conduct of two sales, the said assets may be donated for humanitarian purposes.

(3) The receivables of the State under this Act shall be State receivables which shall be satisfied according to the procedure of public State receivables.

Article 103. (1) A Fund for Forfeited Assets Acquired as Proceeds of Criminal Activity or Administrative Violations shall be established, hereinafter referred to as "the Fund".

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

(3) The organization of the operation of the Fund shall be regulated by rules adopted by the Management Board.

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

Article 104. (1) The managing body of the Fund shall be the Management Board, which shall consist of a Director, a Deputy Director and three members, designated by an order of the Minister of Finance.

(2) The term of office of the Management Board of the Fund shall be five years.

(3) The Director, the Deputy Director or a member of the Management Board may be released before the expiry of the term of office thereof:

1. at his or her own request;
2. in case of a sustained *de facto* inability to perform the duties thereof for a period exceeding six months;
3. if the grounds for the designation thereof lapses;
4. when a sentence for an intentional criminal offence indictable by the State becomes enforceable;
5. upon death.

Article 105. (1) The Management Board of the Fund shall:

1. adopt rules of procedure thereof;
2. propose the budget of the Fund for endorsement by the Minister of Finance;
3. make decisions on the necessary costs of management of the assets under injunction, as well as regarding the amount and manner of payment of other costs incurred in connection with the application of the law;
4. approve the annual financial statement according to the requirements of the Accountancy Act.

(2) The Management Board shall meet if two-thirds of the members thereof are present. Decisions shall be made by a majority of more than one-half of the total number of members thereof.

(3) Annually, not later than the 1st day of March, the Management Board shall prepare an annual report on the operation of the Fund and shall lay the said report before the Council of Ministers for consideration.

Article 106. (1) The Director of the Fund shall:

1. organize the operation and preside over the meetings of the Management Board;
2. represent the Fund;
3. have the right to dispose of amounts not exceeding BGN 3,000 monthly within the resources for current expenses, endorsed by the annual budget of the Fund by decision of the Management Board.

Article 107. The resources of the Fund shall be raised from:

1. proceeds of the sale of forfeited immovable property;
2. proceeds of the sale of forfeited movable property;
3. the funds raised in the account under Article 97;
4. proceeds of the sale of forfeited precious metals: crude or processed bullion and precious stones, or articles therefrom;
5. income accruing from receivables from third parties, as awarded by the judgment of the court;
6. income accruing from resources on bank accounts and money deposited and proceeds of the sale of movable property in safe-deposit vaults, as awarded by the judgment of the court;
7. money and securities (shares, bonds, coupons thereof etc.);
8. income from cheques, bills of exchange, promissory notes, letters of credit and other such;
9. proceeds of the sale of forfeited shares in commercial companies, cooperatives and others;
10. subsidies from the executive budget;
11. fines and pecuniary penalties collected under this Act;
12. income accruing from interest;
13. other.

Article 108. (1) The resources of the Fund, save for the executive budget subsidies, shall be expended as follows:

1. 40 per cent to cover the costs of management of the assets under injunction and the other costs incidental to the application of this Act;
2. 30 per cent for the Social Assistance Fund under the Minister of Labour and Social Policy;
3. 30 per cent for promotion of small and medium-sized enterprises in implementation of the projects and measures included in the national strategy for small and medium-sized enterprise promotion and the annual programs for the application of the said strategy.

(2) The funds under paragraph 1, items 2 and 3 shall be transferred on a quarterly basis before the 5th day of the month following the quarter to the Social Assistance Fund under the Minister of Labour and Social Policy and the to the budget of the Minister of Economy, Energy and Tourism and shall be use as per their designated purpose. The funds from the last quarter of the financial year shall be transferred before the 25 December of the respective calendar year.

(3) The funds transferred under paragraph 1, items 2 and 3 that have been transferred but not expended in the course of the respective financial year shall be transferred to the following year and used according to their designated purpose.

Article 109. (1) Control over the raising and expending of the resources of the Fund shall be exercised by the Public Financial Inspection Agency and the Bulgarian National Audit Office.

(2) Annually, not later than the 31st day of March of the next succeeding year, the Public Financial Inspection Agency and the Bulgarian National Audit Office shall present a report on the activity referred to in Paragraph (1) to the Council of Ministers and the National Assembly.

Chapter Eight LIABILITY

Article 110. Any person, who has sustained detriment as a result of legally non-conforming acts or omissions by the authorities and officials under this Act, committed in the course of or in connection with the execution of the powers or the service of the said authorities and officials, may bring an action for compensation against the State under the terms and according to the procedure established by the Act on the Liability of the State and the Municipalities for Detriment.

Chapter Nine INTERNATIONAL COOPERATION

Article 111. For the purposes of this Act the Commission for Establishment of Assets Acquired through Criminal Activity and Administrative Violations shall exchange information with the competent authorities of other States and international organizations on the basis of international instruments and treaties in force for the Republic of Bulgaria.

Chapter Ten ADMINISTRATIVE PENALTY PROVISIONS

Article 112. (1) Any official guilty of a violation of the obligation under Article 36 shall be liable to a fine from BGN 1,000 to BGN 5,000, unless the act constitutes a criminal offence.

(2) Where the violation of Article 36 has been committed by a commercial company, bank or another credit institution, a financial penalty from BGN 2,000 to BGN 20,000 shall be imposed.

Article 113. (1) The written statements ascertaining the violations shall be drawn up by officials designated by the Chairperson of the Commission, and the penalty decrees shall be issued by the Chairperson of the Commission.

(2) The drawing up of the written statements, the issuance, appeal and enforcement of the penalty decrees shall follow the procedure established by the Administrative Violations and Sanctions Act.

SUPPLEMENTARY PROVISIONS

§ 1. Within the meaning of this Act:

1. "Assets" shall be money, assets of any type, whether tangible or intangible, movable or immovable, documents or instruments evidencing a right of ownership to such assets or other rights associated therewith.

2. „Proceeds from crime" shall be any assets that are not likely to have been acquired through any manner but a criminal offence.

3. "Control of a legal person" shall exist place where:

(a) A natural person holds, whether directly or indirectly, more than 25 per cent of the shares in or of the capital of the legal person and controls the said legal person, whether directly or indirectly;

(b) A natural person exercises control within the meaning of § 1c of the Supplementary Provisions of the Commerce Act;

(c) 25 per cent or more of the assets of a non-profit organization are managed or distributed to the benefit of a natural person;

(d) A non-profit organization has been established or functions to the benefit of a group of natural persons.

4. "Family members" shall be a spouse and the children who have not attained majority and are not married.
5. "Fair market value" shall be the price of the immovable or movable property, net of any taxes and fees charged, which would have been paid under the same terms for similar immovable or movable property.
6. "Income" shall be remuneration accruing to a person under an employment relation, income from services provided through work done in person, income from the practice of liberal professions, the net income from entrepreneurship, dividends and interest, other income from movable and immovable property, income from agricultural activity and retail trade, other income from betting in lotteries and on sports events, interest, licence royalties and commission fees, proceeds of the sale of assets, from insurance, from litigation, bank credits and loans extended by natural persons, as well as any other revenue, income and sources of financing.
7. "Net income" shall be revenue, income and sources of financing net of the amount of the customary and extraordinary expenditures incurred by the person under examination and the family members thereof.
8. "Customary expenditures" shall be the expenditures on maintenance of the person and the family members thereof according to data provided by the National Statistical Institute.
9. (1) "Substantial lack of correspondence in the assets of a natural person" shall be the value of the lack of correspondence between the assets and the net income of the natural person and their family members that exceeds 400⁵ minimum salaries for the overall period subject to examination.
(2) "Substantial lack of correspondence in the assets of a legal person" shall be the value of the lack of correspondence equal to the difference between the value of assets of the legal person as reported in the annual balance sheet under Articles 22a and 22b of the Accountancy Act and the value of the liabilities under the balance sheet reduced by the funding raised and the balance sheet value of the loan management expenses, that exceeds 500 minimum salaries for each of the years within the period subject to examination.
10. "Respondent under the injunction" shall be the natural or legal person under examination, the family members of the natural person under examination, the legal persons owned or controlled by the person under examination, third parties who have acquired assets from the person under examination.
11. "Fair market value" shall be the price of the immovable or immovable property, net of any taxes and fees charged, which would have been paid under the same terms for similar immovable or movable property. 13. "Benefit" shall be any economic advantage gained through or in connection with a criminal offence or an administrative violation.
12. "Substitute assets" shall be assets which have not been acquired in the presence of a substantial lack of correspondence between the assets and the net income of the person and their family members but substitute other assets of equal value which have been acquired through criminal activity.

⁵ Modification communicated by the Bulgarian authorities on 19/05/2011

TRANSITIONAL AND FINAL PROVISIONS

§ 2. The Commission for the Establishment of Assets Acquired through Criminal Activity shall continue to operate under the title “Commission for the Establishment of Assets Acquired through Criminal Activity and Administrative Violations” pursuant to the rules and procedure provided for in this Act until the expiry of its term of office.

§ 3. (1) The members of the Commission and the authorities under Article 10 paragraph 1 and the Commission administration staff members shall eliminate any incompatibility under Article 5, paragraph 2, items 1, 2 and 5 within three months following the entry into force of this Act.

(2) The requirements of Article 5, paragraph 1, item 1 shall not apply to the inspectors appointed prior to the entry into force of this Act.

§ 4. (1) Proceedings instituted before the Commission for Establishing Property Acquired through Criminal Activity before the entry into force of this Act shall be completed following the hitherto existing procedure.

(2) Within one year after the entry into force of this Act, the Commission for Establishment of Assets Acquired through Criminal Activity and Administrative Violations may request modification of the precautionary measures imposed prior to the entry into force of this Act for the purpose of bringing the said measures into conformity with this Act, where necessary.

§ 5. This Act shall be applicable to any assets acquired through criminal activity and administrative violations prior to the entry into force of this Act.

§ 6. (1) Within six months after the entry into force of this Act, the pre-trial proceeding authorities shall notify the authorities under Article 10 paragraph 1 of any persons who have been constituted as accused of criminal offences under Article 21 (1) herein.

(2) Within the time limit under paragraph 1, the courts shall notify the authorities under Article 10, paragraph 1 of all final judgments for criminal offences under Article 19, paragraph 1 delivered over a period of 5 years prior to this Act's entry into force.

§ 7. The Commission for Establishing Property Acquired through Criminal Activity and Administrative Violations shall adopt the Rules of Procedure under Article 17 within two months following this Act's entry into force.

§ 8. The instruction under Article 28, paragraph 2 shall be issued within six months after this Act's entry into force.

§ 9. The Forfeiture to the Exchequer of Assets Derived from Criminal Activity Act (promulgated in the *State Gazette* No. 19 of 2005, amended in Nos. 86 and 105 of 2005, Nos. 33 and 75 of 2006, Nos. 52, 59 and 109 of 20 December 2007, No. 16 of 2008, Nos. 12, 32 and 42 of 2009, No. 18 of 2010) is hereby repealed.

§ 10. In the Measures against the Financing of Terrorism Act (promulgated in the *State Gazette* No. 16 of 2003, amended in No. 31 of 2003, amended and supplemented in No. 19 of 1 March 2005, amended in No. 59 of 21 July 2006, effective as from the day of entry into force of the Treaty concerning the Accession of the Republic of Bulgaria to the European Union – 1 January 2007, amended and supplemented in No. 92 and 109 of 2007, and No. 36 of 2008), in Article 3, paragraph 2 and Article 12, the words “the Commission for Establishing Property Acquired through Criminal Activity” shall be replaced by “the Commission for Establishment of Assets Acquired through Criminal Activity and Administrative Violations”.

§ 11. In the Markets in Financial Instruments Act (promulgated in the *State Gazette* No. 52 of 2007, amended in No. 109 of 2007, No. 69 of 2008, amended and supplemented in Nos. 24, 93 and 95, amended and supplemented in No. 43 of 2010), in Item 4 of Article 35 (6), the words “the Commission for Establishment of Property Acquired through Criminal Activity” shall be

replaced by “the Commission for Establishment of Assets Acquired through Criminal Activity and Administrative Violations”.

§ 12. In the Publicity of the Property of Persons on Senior Public Positions Act (Promulgated in the *State Gazette* No. 38 of 2000, amended in No. 28 of 19 March 2002, No. 74 of 30 July 2002, amended and supplemented, No. 8 of 28 January 2003, effective 1 March 2003, No. 38 of 11 May 2004, amended, No. 105 of 29 December 2005, effective 1 January 2006, No. 38 of 9.05.2006, amended and supplemented, No. 73 of 5 September 2006, effective 1 January 2007, supplemented, No. 109 of 20 December 2007, effective 1 January 2008, amended, No. 33 of 28 March 2008, No. 69 of 5 August 2008, amended and supplemented, No. 94 of 31 October 2008, effective 1 January 2009, amended, No. 93 of 24 November 2009, effective 25 December 2009), Paragraph 7 shall be amended in Article 7:

„(7) In case the persons under Article 2 (1) fail to submit a declaration as well as in case statement finding lack of correspondence has been issued, or in case when the assets value obviously exceeds the incomes-revenue declared, the Audit Office’s Chairperson shall inform the National Revenue Agency’s Executive Director to take action under Chapter Fourteen or Fifteen of the Tax and Social Security Procedure Code, the State Agency for National Security’s Chairperson and the Supreme Prosecutors Office of Cassation to examine the assets of the persons concerned. Within 14 days after the check or audit are completed the National Revenue Agency’s Executive Director and the Prosecutor General shall inform the Audit Office’s Chairperson and the Chairperson of Commission for Establishment of Assets Acquired through Criminal Activity and Administrative Violations with the purpose of undertaking the necessary action in pursuance to the Law on Forfeiture of Assets Acquired through Criminal Activity or Administrative Violations.

§ 13. In the Accountancy Act (Promulgated in the *State Gazette* No. 98 of 2001, amended, in No. 91 of 2002 **in Art. 42 paragraph (1)** following amendments have been made:

1. in it. 2 the figures „10” shall be read „20”.
2. in it. 3 the figure „5” shall be read „10”.

§ 14. In the Social Security Procedure Code (Promulgated in the *State Gazette* No. 105 of 2005, **in Art. 38, paragraph (1)** following amendments have been made:

1. in it. 2 the figures „10” shall be read „20”.
2. in it. 3 the figure „5” shall be read „10”.

EXPLANATORY REPORT
TO THE DRAFT FORFEITURE
OF ASSETS ACQUIRED THROUGH CRIMINAL
ACTIVITY AND ADMINISTRATIVE VIOLATIONS ACT

I. Socioeconomic factors that necessitate a new mechanism to curb the possession of proceeds acquired through criminal activity and administrative violations that are of the nature to generate assets:

The radical social, political and economic change, which stormed Bulgarian society in the early 90s of the 20th century, resulted in a new historical situation and called for the establishment of democratic values in all domains of public life. A system of institutions had to be built so as to ensure the functioning of society in line with the principles of democracy and national law.

Positive social change went hand in hand with negative trends. The dynamics of social relations on the one hand and, on the other, the absence of clear rules to be followed by a well organised system of public institutions in line with the principles of democracy, as well as the inadequate capacity of law-enforcement and judiciary bodies, brought forth multiple violations of law. Large-scale misappropriation of state and municipal property occurred, in breach of the existing legal provisions.

Thus, gaining a fast economic advantage, organised crime structures found it easier to obstruct the democratic ways of society and to exert negative influence on the social environment by imposing corruption practices in breach of the laws of the country. The perception of untouchability and impunity seriously undermined the feeling of justice and the rule of law. Such assets are viewed by the public as 'inexplicable wealth'. Possessing such wealth infringes the principle of the rule of law, which is enshrined in the Constitution of the Republic of Bulgaria (CRB) and is, thereby, binding for all Bulgarian nationals.

The financial damage suffered by society is only one of the effects of those processes. Another immediate consequence is the loss of trust in public institutions and the deteriorated investment climate, which block the way to economic recovery and viability, especially in times of global economic and financial crisis.

The criminal assets accumulated in the country are also being transferred overseas. According World Bank data, proceeds of corruption, crime and tax evasion worth between USD 1 and 1.6 trillion are exported from different countries to overseas destinations on an annual basis. This is illustrative of the vast scope and significance of the problems.

The Corruption Monitoring System of the Centre for the Study of Democracy points to a steady corruption rate increase among the population of Bulgaria. Ultimately, Bulgarian citizens identify corruption as the most serious problem faced by the country.

Countering corruption and organised crime remains a key challenge to Bulgaria, even after its accession to the European Union.

It is essential to adopt an institutional approach to counteract corruption networks and practices effectively. In order to explore and identify appropriate anti-corruption solutions, Bulgaria resorts to the various institutional initiatives for countering corruption on a European scale.

The proposed Draft Act makes a decisive step in the effort to overcome the shortage of anti-corruption measures, so as to prevent organised crime from breeding various corruption practices.

The serious nature of the problems concerned calls for a proportionate reaction on behalf of the state and the public. Consolidated and adamant political will is required across the full political spectrum. An effective legal mechanism is needed to curb the opportunities to generate proceeds from criminal activity and administrative violations, so as to safeguard the interests of society.

The confiscation of proceeds of crime and administrative violations in Europe and across the world is considered to be an effective instrument against organised crime and corruption. The forfeiture of criminal assets in civil proceedings, or the so-called 'civil confiscation' of assets, will advance considerably the state in its fight against crime by depriving criminals of profit – the driving force of crime.

Civil confiscation employs procedures and rules different from those in criminal proceedings, and challenges the legitimate origin of the assets with the tools of and following the standards of proof applicable to civil procedure law. Another reason why the institute of civil confiscation is appropriate is that within civil proceedings only the means and the transactions through which the assets have been acquired can be examined.

Passing a legal instrument to that end will satisfy both the needs of Bulgarian society and the international commitments undertaken by the state under international legal instruments to which the Republic of Bulgaria is a party: the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (promulgated SG, issue no. 60/1992); the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (promulgated SG, issue no. 31/1993); the United Nations Convention against Transnational Organized Crime of 2000 (promulgated SG, issue no. 42/2001); the United Nations Convention against Corruption of 2003 (promulgated SG, issue no. 66/2006), and a multitude of secondary legislation of the European Union, which are relevant to the confiscation of criminal assets: 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 to confiscation orders.

In analysing the effective application of the above framework decisions, the European Commission, in its **Communication of 20 November 2008** to the European Parliament and the Council, emphasises the need for the Member States to change the legal framework in that field. It concludes that topical problems were identified as regards the mutual recognition of freezing and confiscation orders in civil proceedings and underlines the importance of the effect pursued: the availability of a speedy and effective mechanism for freezing /injunction/ and confiscation of assets abroad.

II. Socioeconomic factors for the creation of legal framework for civil confiscation:

The results of the analysis of the Criminal Assets Forfeiture Act adopted in 2005 justified the need to elaborate a fairly different concept of forfeiture, which corresponds in principle to the concepts of civil confiscation in the legal systems of other states, and to introduce new institutes of law aimed at improving the effectiveness of assets forfeiture.

The key problem in the practice of the Commission for Establishing Property Acquired through Criminal Activity (CEPACA), which was set up by virtue of the Criminal Assets Forfeiture Act, was the lengthy period from the time of imposing the precautionary measures until the examined person was effectively convicted for a criminal offence indictable by the state, as the Commission had powers to file a forfeiture claim with the civil court only after the conviction had entered into force. The interdependence between convictions for specific criminal offences and

subsequent civil forfeiture claims frequently made it impossible for the public authorities to forfeit on time.

From the perspective of comparative legal analysis, there are national systems which have been applying civil confiscation for almost a decade. Separate proceedings are initiated to prosecute the offender and to forfeit criminal assets. The two proceedings are independent, all the more that criminal proceedings may be suspended or the evidence to uphold the charges may be found insufficient. The common features of the different approaches to civil confiscation are the possibility to complete the forfeiture proceedings before the conviction of a criminal offence indictable by the state becomes final and to target the assets rather than the owner.

Civil confiscation is a form of safeguarding the interests of the public, which is different from criminal prosecution. The person of the perpetrator and their guilt are not decisive for civil confiscation. Assets forfeiture is not a sanction against the person found guilty, but a measure to protect the public interest. It is a deterrent that implements the principle "crime don't make richer". The rule of law may not be sustained unless the key principle that no one is allowed to get wealthy as a result of criminal or other illegal activity is implemented.

The proceedings pursuant to the Draft Act are aimed at establishing the origin of the assets and are not meant to produce evidence for either the criminal or the administrative proceedings. Non-conviction based forfeiture of assets is very similar to the civil law institute of unjust enrichment where anyone who have enriched themselves without legal grounds shall make a restitution.

Filing a civil forfeiture claim before any conviction for a criminal offence indictable by the State has entered into force does not contradict the presumption of innocence in the meaning of Article 31, para 3 of the Bulgarian Constitution and Article 6, § 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The presumption of innocence applies only to cases of criminal prosecution. For the same considerations the prohibition for retroactive application of criminal law and the *ne bis in idem* principle are irrelevant to civil confiscation.

Civil confiscation is applied with a view to the balance between the need to protect public interest through the forfeiture of criminal assets and the respect for fundamental human rights. The proportionality in the restriction of fundamental rights is a key principle of the legal status of persons. The restriction of rights is admissible in the following cases: where a specific wrongful act of the person constitutes a violation of the effective law, Article 30, para 1 CRB, concerning personal inviolability; Article 31, para 4 CRB, on restricting the fundamental rights of the defendant; Article 31, para 5 CRB, on restricting the fundamental rights of convicts; Article 32, para 2 CRB, on restricting the inviolability of private life; Article 33, para 1 and 2 CRB on restricting the inviolability of the home; Article 34, para 2 CRB, on restricting the freedom and the confidentiality of correspondence; Article 35, para 1, on restricting the right to choose a place of residence and the right to freedom of movement in the territory of the country and to leave the country.

Certain fundamental rights of citizens may be restricted by virtue of a law, which provides for the relevant proceedings and judicial decision establishing the illegal origin of assets, so as to protect a value of superior standing: the interest of the public.

The newly elaborated Draft Forfeiture of Assets Acquired Through Criminal Activity and Administrative Violations Act is in line with the requirements and provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms. The right to property is a fundamental economic human right. According to Article 1 of the Optional Protocol to the European Convention on Human Rights and Fundamental Freedoms *'every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law ...'*

The domestic law provides for depriving a natural or a legal person of their property upon the fulfilment of two conditions. The first condition is that such deprivation of property shall be set forth by the law. The Draft Act proposed hereby shall be subject to a parliamentary debate and a vote by the National Assembly. The second condition is that deprivation of property shall be in the public interest. Civil confiscation is a form of deprivation of property and its introduction is definitely in the interest of the public, as it is a powerful instrument to fight corruption, crime and administrative violations, which allow for the accumulation of huge proceeds in breach of domestic law.

III. General outline of the Draft Forfeiture of Assets Acquired Through Criminal Activity and Administrative Violations Act:

The Draft Act is intended to improve the effectiveness of the Commission for Establishment of Assets Acquired through Criminal Activity and Administrative Violations as the only specialised public body entitled to examine the sources of the assets acquired. The scope of application of the law and the grounds for forfeiture proceedings account for the current social conditions and aim at achieving better results in the fight against crime and serving the purpose of protecting public interest.

The Draft Act details the terms and procedure for forfeiture of assets acquired through criminal activity and administrative violations that are of the nature to generate assets. Unlike the existing legislation, forfeiture of assets acquired through criminal activity is not made conditional on a final conviction, which is the key feature of civil confiscation. The concept of civil confiscation does not imply require the establishment of a causal link between the offence for which a person is convicted and the assets subject to examination in the civil proceedings. Therefore, a final conviction may not be a prerequisite for filing a confiscation claim.

According to the Draft Act, the civil asset forfeiture proceedings have two phases:

- proceedings before the Commission for Establishment of Assets Acquired through Criminal Activity and Administrative Violations, in the course of which the origin of the assets acquired is examined and actions for precautionary measures are brought;
- assets forfeiture proceedings before the civil court.

Proceedings for the establishment of assets acquired through criminal activity and administrative violations shall be instituted before the Commission in the cases expressly set forth in the Draft Act. Subject to examination shall be the assets of three groups of persons:

1. persons who have been constituted as accused of a criminal offence indictable by the State of the nature to generate assets, as well as persons who have not been constituted as accused of a criminal offence listed in Article 19, para 1 by reason of Article 24 of the Penal Procedure Code;
2. natural or legal persons who own or control assets, with respect of which a reasonable assumption can be made that they have been acquired through the criminal activity of another person constituted as an accused under Article 19, paragraph 1;
3. persons who have acquired proceeds worth over BGN 150 000 as a result of an administrative violation of the nature to generate assets, regardless of whether such violation has been committed by the person benefiting from the proceeds or by another person.

The Draft Act clearly targets the persons who can be reasonably assumed to own or control assets acquired as proceeds of criminal activity or another unlawful act. The stipulated opportunity for initiating proceedings before the Commission even in the cases of refusal to initiate criminal proceedings or where the criminal proceedings were terminated or suspended fully reflects the concept of civil confiscation which is, as a rule, applicable to matters falling outside the scope of criminal procedure.

The inclusion, in the scope of the Draft Act, of a possibility to forfeit assets acquired through administrative violations that are of the nature to generate assets is in compliance with both the constitutional guarantee for the right to property, provided that such property is of legal origin, and with the general rules of Article 21 of the Administrative Violations and Sanctions Act providing for forfeiture to the exchequer of proceeds of violations, and Article 83a providing for forfeiture of criminal proceeds through which a legal person has been enriched.

In the course of the proceedings initiated before the Commission, a financial investigation shall be conducted so as to collect evidence concerning the persons' assets and the origin of the means to acquire such assets, over a certain period of time within 15 years of statutory limitation.

The Draft Act lays down the interaction between the Commission and other public bodies in conducting joint examinations so as to make a comprehensive profile of the examined person's business operations. The scope of the examination covers also the income of persons closely related to the person under examination, as well as the transactions of third natural and legal persons who have acquired assets through the person under examination. Forfeiture of the assets acquired by such third parties is foreseen in the Draft Act only where the criminal origin of such assets is established and where such persons have known or could have inferred that the assets have been acquired through criminal activity.

After the Commission's examination is finalised, the Commission adopts a decision to establish that:

1. there are assets acquired directly or indirectly through criminal activity or administrative violations;
2. there are assets of a natural person, which have been acquired as proceeds of criminal activity, as the value thereof as at the time of acquisition substantially exceeds the net income of the natural person under examination and of their family members over the period subject to examination and no financial sources have been found that might have pointed to acquisition through legal means;
3. there are assets held by a legal person, which were acquired as proceeds of criminal activity, where the book value of the legal person's assets reported in the annual balance sheet under Articles 22a and 22b of the Accountancy Act exceeds considerably the value of liabilities in the balance sheet after the deduction of borrowed capital and the estimate book value of the loan management liability, and no financial sources have been found that might have pointed to acquisition through legal means.

The Commission's conclusion under Articles 41, para 1, items 1, 2 and 3 has to be supported by sufficient information to make a reasonable assumption that the assets have been acquired as proceeds of criminal activity or administrative violations. Based on the outcomes of the examination the Commission may decide to terminate the proceedings or to file an action with the court to secure a future claim for forfeiture of assets.

Unlike the existing legal framework, the Draft Act provides for filing a motion for precautionary measures with the court prior to the entry into force of any criminal conviction for an offence committed by a person under Article 19. That possibility fully corresponds to the civil confiscation concept and will substantially reduce the periods for completion of proceedings under this Act.

Since no stamp duty will be payable for the proceedings pursuant to this Draft Act, public enforcement agents will be enforcing the precautionary measures.

The Draft Act gives detailed rules for the forfeitable assets. Subject to forfeiture shall be assets which have been acquired as proceeds of criminal activity or administrative violations. Subject to forfeiture shall be specific assets for which it is established that they have been acquired directly or indirectly through criminal activity or administrative violations (Article 70, paragraph 2). In such a case, the Commission is required to prove the causal link between the assets acquired and the criminal offence or administrative violation from which the proceeds have arisen.

Also, subject to forfeiture shall be assets held by natural or legal persons for which a substantial lack of correspondence has been found over the period subject to examination that makes probable the acquisition of such assets through criminal activity.

In view of the considerable difficulty in proving beyond doubt the movement of criminal cash flows, which is a globally recognised concern and one of the main reasons why many states have opted for civil confiscation, the Bulgarian Draft Act also bases the proof of the arguments of each party to the proceedings on the balance of probabilities. The Commission shall prove to a reasonable degree of substantiation that the proceeds have been acquired through criminal activity, whereas the respondent shall prove to a reasonable degree of substantiation that the assets have been acquired through legal sources. The Commission shall have to prove the presence of the relevant circumstances to a degree higher than the degree to which the contrary has been proven, so that the court may form an inner conviction and rule in favour of or against asset forfeiture.

The main principles governing the operation of law-enforcement and judiciary bodies are laid down in the General Provisions of the Draft Act. The interference of the state in proprietary matters has to be in compliance with the objective proclaimed and within reasonable frameworks seeking the balance between social justice and justice for the individual.

IV. Standard of Proof

Proceedings before the Commission are launched on the grounds of Articles 19, 20, 21 and 22 where a reasonable assumption can be made that the assets have been acquired as proceeds of criminal activity or administrative violations of the nature to generate assets. In the cases under Articles 19, 20 and 21 the person must have been constituted as an accused of a criminal offence indictable by the State, which is of the nature to generate assets. So as to constitute a person as an accused, the pre-trial proceedings authorities should have collected sufficient evidence that the person is guilty of committing a specific criminal offence according to Article 219 of the Criminal Procedure Code (CPC).

The standards for constituting a person as an accused pursuant to the CPC are higher than the statutory standards for initiating criminal proceedings. Articles 207 and 211 CPC are applicable to the initiation of criminal proceedings: proceedings can be initiated where information exists that a criminal offence has been committed.

In the course of the examination conducted by the Commission together with other law enforcement bodies, sufficient data should be collected so that a reasonable assumption can be made that specific proceeds have been acquired (Article 41, paragraph 1) or that a substantial lack of correspondence has been established with respect to assets acquired by a natural or legal person (Article 41, paragraph 1, item 2 and 3).

The court shall make a freezing order under the following conditions:

1. Where it would otherwise be impossible or difficult to exercise the rights arising from the court judgment in favour of forfeiture, and
2. Where the motion of the Commission is supported by sufficient evidence to make a reasonable assumption that the person owns or controls assets acquired as proceeds of criminal activity and administrative violations.

In the court proceedings the Commission shall prove to a reasonable degree of substantiation that the assets have been acquired as proceeds of criminal activity where a substantial lack of correspondence exists with respect to the assets concerned.

Where specific proceeds have been acquired through a criminal offence or administrative violations, the Commission shall follow the full standard of proof and satisfying the court that a direct causal link exists between the proceeds and the criminal offence or the administrative violation.

The court shall order forfeiture where the acquisition of assets as proceeds of criminal activity or administrative violations has been proven to a higher degree of probability than the degree to which the contrary has been proven.

V. Guarantees for the Protection of Fundamental Rights:

The Bill provides for the following guarantees for the protection of fundamental rights:

1. Proceedings before the Commission shall be initiated on the grounds expressly provided for in the law where a reasonable assumption can be made that assets have been acquired as proceeds of criminal activity or administrative violations – Article 18;
2. A motion for precautionary measures shall be filed with the court only where the examination has produced sufficient data allowing for a reasonable assumption about certain circumstances to be made (Article 41, paragraph 1);
3. The court shall grant an injunction where the motion of the Commission is supported by sufficient evidence to make a reasonable assumption that the person owns or controls assets acquired as proceeds of criminal activity or administrative violations. The court shall not grant an injunction where it has not been satisfied as to the quality of the evidence collected. (Article 43);
4. Participation of the person under examination in the proceedings before the Commission accompanied by a defence counsel, in person or through other authorized representatives. The person shall familiarize him/herself with the evidence against him/her and have the right to lodge objections and to present other evidence refuting the Commission's findings. The opportunity provided to the person to familiarise himself/herself with the evidence to be produced in a future trial is a statutory opportunity not available to respondents in future civil cases according to Bulgarian civil procedure law (Article 68);
5. A possibility to terminate the proceedings before the Commission without filing a forfeiture claim with the court where the evidence produced by the person [under examination] rebut the Commission's findings; or where the relevant administrative body decides that no reasonable assumption can be made that the assets have been acquired as proceeds of criminal activity or an administrative violation (Article 69, paragraph 2, item 1);
6. No assets will be forfeited:

- where the established value of the lack of correspondence under Article 70, paragraph 3 or the value of the proceeds of an administrative violation do not exceed the value laid down in the law;
- where the assets are not subject to forfeiture, the only dwelling of the person, for example.

7. Straightforward instructions as to the circumstances where the court shall grant or reject a forfeiture claim (Article 70, paragraphs 3 and 4);

8. The court shall not order forfeiture where the Commission fails to prove that the assets have been acquired as proceeds of criminal activity or an administrative violation to a higher degree of probability than the degree to which the contrary has been proven (Article 90);

9. The right to defence is guaranteed both in the injunction proceedings and the forfeiture proceedings;

10. The decision to forfeit is made by an independent body – the court;

11. Forfeiture will be granted following a three instance court procedure – the respondent is entitled to appeal the forfeiture decision delivered by the first instance court before two higher courts.

As the European Commission for Democracy Through Law (The Venice Commission) recommended, it would be most useful with future constitutional changes to provide for qualified majority for the election of persons for high state positions like those at the Commission for Establishing Property Acquired through Criminal Activity and Administrative Violations.