

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

CHAPTER I

General provisions

Article 1. Purpose and nature.

The purpose of this Royal Decree is to regulate the operation of Office for Asset Recovery and Management, which is configured as a body within the General State Administration and as an adjunct to the Judicial Administration, with competencies to locate, recover, safeguard, manage and dispose of items, assets, instruments and proceeds resulting from criminal activity perpetrated within the framework of a criminal organisation, along with any other competencies assigned to it, in the terms envisaged in criminal and procedural law.

The Office for Asset Recovery and Management shall act when so entrusted by a competent Judge or Court, *sua sponte* or at the behest the State Prosecutor's Office or the Office itself.

The Office for Asset Recovery and Management shall also proceed with locating assets at the behest of the State Prosecutor's Office, in the exercise of its competencies within the context of investigation measures, international legal cooperation, an independent seizure procedure or in any other acts in the terms envisaged in criminal or procedural law.

Article 2. Objectives.

The Office for Asset Recovery and Management shall employ the product of the management and disposal of the items, assets, instruments and proceeds of crime for the purposes envisaged in the Law of Criminal Procedure for the following priority objectives:

a) Support for programmes to provide assistance to victims of crimes, including programmes set in motion by Public Administrations and non-governmental organisations and private non-profit bodies, with particular focus on the victims of terrorism, gender-based violence, human trafficking, violent crimes and offences against sexual freedom, along with victims with disabilities who require special protection and victims who are minors.

b) Providing impetus and resources to Victim Support Offices.

c) Support for social programmes aimed at preventing crime and treating offenders.

d) The intensification and improvement of actions to prevent, investigate, prosecute and enforce the law, including the following:

1. The expenditure required to obtain evidence during investigations, which includes the cost of the expert reports of the Institute of Legal Medicine and Forensic Science or the National Toxicology and Forensic Science Institute.

2. The purchase of material resources for the competent bodies for law enforcement, investigation and the gathering of expert evidence.

3. Specialised training within the bodies charged with preventing and repressing organised crime.

4. The reimbursement of the expenses lawfully incurred by private individuals or the services of Public Administrations whilst collaborating with the competent bodies during investigations.

e) International cooperation to combat serious crimes.

f) Payment of the operating and management costs of the Office itself, including expenses arising in the exercise of the functions outlined in the next article.

Article 3. Functions.

1. The functions of the Office for Asset Recovery and Management are to locate and recover items, assets, and proceeds resulting from criminal activity, and to safeguard, manage and dispose of these assets.

2. The Office for Asset Recovery and Management is also charged with determining, in accordance with the stipulations of legislation and regulations, the allocation of items subject to precautionary seizure and the measures for their safeguarding that are to be adopted.

3. Another basic function of the Office for Asset Recovery and Management is to provide technical advice to the Courts and the State Prosecutor's Office when required, in relation to the enforcement of seizures and confiscations, in order to avoid actions that prove uneconomical and to guarantee, whilst adhering to the law and complying with all procedural guarantees, the maximum possible economic benefit.

CHAPTER II

Structure

Article 4. Scope and organisational dependency.

The Office for Asset Recovery and Management is a dependency of the Ministry of Justice and is assigned to the State Secretariat for Justice, as a General Directorate.

Article 5. Director General.

1. The Director General of the Office for Asset Recovery and Management shall be appointed from among State, Autonomous Region or local civil servants pertaining to the A1 group, in accordance with the classification system established by law for public employees, or from among members of the Judiciary or the State Prosecutor's Office or the Body of Judicial Administration Clerks.

2. The Director General of the Office for Asset Recovery and Management shall be appointed and dismissed via a Royal Decree issued by the Cabinet, subsequent to the proposal of the Ministry of Justice.

3. The Director General of the Office for Asset Recovery and Management is assigned the following functions:

a) Planning the activity of the Office and approving the annual action plan.

b) Overseeing the activity of the Office for Asset Recovery and Management.

c) Representing the Office within institutional relations at both national and international levels and before the Courts and the State Prosecutor's Office that make use of its services, and before the State Security Forces charged with fighting organised crime.

d) As part of the objective of this Royal Decree, exercising any functions assigned via delegation by the corresponding contracting body, in accordance with the regulations governing contracting within the public sector.

e) Signing agreements with other institutions in order to carry out the functions and pursue the objectives of these institutions, where such competencies have been delegated.

f) Coordinating the preparatory work of the Commission for the Allocation of the Proceeds of Crime.

g) Encouraging coordination between the Office and the Judiciary, the Office of the Director of Public Prosecutions, the judicial police and affected Ministries, and with other private and public institutions, in the exercise of their functions.

h) Coordinating the efforts of the Office with other departments, bodies and public institutions, within the scope of their competencies, where necessary.

i) Delivering the annual report on activities to the Ministry of Justice.

j) Drawing up statistical data on the activity of the Office for Asset Recovery and Management.

k) Any other functions in keeping with the objective of the Office that might be assigned in other regulations.

Article 6. Subdirectorates.

1. Internally, the Office is divided into two Subdirectorates in accordance with the functions assigned to each:

a) The Subdirectorate for locating and recovering assets, which is charged with the functions of identifying and searching for the items, assets, instruments and proceeds resulting from crime that are located within or outside the national territory and with placing these assets before the legal authorities.

To carry out this function, the personnel of the Office for Asset Recovery and Management shall coordinate with the central units of the Security Forces and may call for the collaboration of any public or private bodies that it deems necessary.

b) The Subdirectorate for the safeguarding, management and disposal of assets, which is assigned the following functions:

1. Safekeeping and managing items, assets, instruments and proceeds resulting from crime, irrespective of their nature, along with the profits, yield and income produced by these assets. Its functions include the destruction of assets when ordered by the competent authority, in the terms envisaged in law.

The management function is governed by regulations relating to public contracting and assets, notwithstanding the applicability of other regulations.

2. The drawing up of reports on the status and circumstances of the managed assets, which shall be forwarded to the competent authority, *proprio motu* or where requested, in order to avoid actions that prove uneconomical and to guarantee, whilst adhering to the law and complying with all procedural guarantees, the maximum possible economic benefit.

3. The disposal of assets, which shall include actions to sell assets, items, proceeds and instruments handed over to the Office for Asset Recovery and Management, where judicially ordered, subsequent to their seizure.

This function also takes in the advance sale of seized assets, subsequent to judicial authorisation.

4. The function deriving from the provision of the necessary support for the development of the activity of the Commission for the Allocation of the Proceeds of Crime.

5. The necessary administrative processing to ensure that any money that is seized or produced as a result of the advance disposal envisaged in the Law of Criminal Procedure is paid into the deposits and payments account.

2. The Office for Asset Recovery and Management may sign collaboration agreements with competent bodies within the Ministry of the Interior in order to regulate relations between its personnel and the Office. Such agreements may include a clause for the secondment of personnel, who may go on to be incorporated into the Office on a *pro tempore* basis.

Article 7. Office Personnel.

The Office shall be staffed by the personnel determined in the corresponding list of employment positions.

Judges, State Prosecutors and clerks may also be assigned to the Office in accordance with Law 38/1988 of 28 December, on Jurisdictional Boundaries and Judicial Bodies.

Article 8. The Commission for the Allocation of the Proceeds of Crime.

1. The Commission for the Allocation of the Proceeds of Crime is set up as a collegiate body that is a dependency of the Ministry of Justice via the State Secretariat for Justice, which is assigned the functions of distributing the economic resources obtained by the Office, under the terms envisaged in article 15.

2. The Commission for the Allocation of the Proceeds of Crime shall be presided over by the Secretary of State for Justice, and the Vice-Presidency shall be held by the Director General of the Office for Asset Recovery and Management. The Commission shall be made up of six members, who shall be assigned by the Ministry of Justice, the Ministry of the Interior, the Ministry of the Treasury and Public Administrations and the Ministry of Health, Social Services and Equality, respectively, from amongst Deputy Director Generals or whose holding a similar rank, and by the General Council of the Judiciary and the Prosecutor General's Office, in accordance with the collaboration agreement signed for this purpose.

The post of secretary, entitled to speak, but with no vote, shall be assigned to a civil servant within the Office for Asset Recovery and Management.

A representative of the State Legal Service, a dependency of the Ministry of Justice, shall also form a part of the Commission for the Allocation of the Proceeds of Crime.

3. The operation of this Commission shall adhere to the stipulations governing collegiate bodies in the legislation on the legal system applicable to the Public Sector.

CHAPTER III

Procedure

Article 9. Commencement.

Procedures shall commence upon receipt of a record of the judicial ruling or resolution issued by the State Prosecutor's Office requesting the intervention of the Office for Asset Recovery and Management.

In the event that the Office for Asset Recovery and Management urges the judicial body or the State Prosecutor's Office to act, a procedure shall be opened as a result of this request. Where the Office's proposal is upheld, the procedure shall follow the stages outlined in this chapter. In the event of rejection, the procedure shall be closed upon reception of the judicial ruling or resolution issued by the State Prosecutor's Office wherein the rejection is recorded.

Article 10. Registration and inventory of assets.

All assets that are affected by a case within the Office for Asset Recovery and Management shall be recorded in an inventory of seized assets, which shall indicate their nature and value and include a description of any actions in relation to these assets. This information shall be provided to the judicial authority and the State Prosecutor's Office and, where applicable, the judicial police.

Article 11. Processing of cases.

1. Upon receipt of the record of the judicial ruling or resolution issued by the State Prosecutor's Office requesting its intervention, the Office for Asset Recovery and Management may set in motion, in the terms therein outlined, the corresponding asset investigation activities in each case to determine the whereabouts and recover the assets of the defendant or individual under investigation.

2. Once the assets have been located and recovered, or where judicial authorisation so stipulates, the Office shall take charge of safeguarding and managing these assets.

To this end, the Office for Asset Recovery and Management may enter into any contracts or carry out the assignation of duties that prove necessary in order to manage or dispose of the assets placed into its keeping.

3. The Office for Asset Recovery and Management, within the context of its management activities, may, where authorised by a competent Judge or Court, dispose of seized assets and items in advance or employ them on a provisional basis.

In such cases, subsequent to the authorisation of the competent Judge or Court, it shall determine the use to which the seized assets are to be put and the measures for safeguarding that are to be adopted, in accordance with the stipulations envisaged in this regard in the Law of Criminal Procedure, informing the Judge or Court of the decision in question.

Article 12. International cooperation.

1. Where the assets to be located or recovered lie outside the national territory, attention shall be afforded to European Union Law and the international treaties signed and ratified by Spain in this area.

2. The stipulations of Law 23/2014 of 20 November, on the mutual recognition of criminal decisions within the European Union, or the corresponding agreements, where applicable, shall apply where the ruling of the competent judge or the resolution of the State Prosecutor's Office indicates that the actions requested of the Office derive from a request issued by an overseas authority, subject to the stipulations of the Law of Criminal Procedure in terms of the assignation of the portion of the proceeds that corresponds to the Spanish authorities.

3. The Office for Asset Recovery and Management may exchange information with the bodies of other States with competencies that include the recovery of assets where, in the exercise of its duties, this proves advisable.

CHAPTER IV

The economic system governing the Office and the distribution of proceeds

Article 13. The economic system.

1. The resources assigned to the Office for Asset Recovery and Management prior to the issue of a final ruling to seize can be managed via the judicial deposits and payments account where this involves money that has been seized or is the result of the advance disposal of items.

With regards to the remaining assets, in accordance with the circumstances and with adherence to the principles of efficiency and transparency, the Office may manage them in any of the manners envisaged in the legislation applicable to Public Administrations.

Monetary interests and the yields and income produced by the assets shall be employed to pay for management costs, including those generated by the Office, and the remainder shall be safeguarded until such time as a final ruling to seize has been issued.

2. Once a final ruling to seize has been issued, the resources obtained shall be subject to disposal and the amount obtained shall be employed in the manner envisaged in article 367 quinquies of the Law of Criminal Procedure. The remainder and the proceeds arising from the management of the assets during the process shall be transferred to the Treasury as revenue, of which, having deducted the operational and management costs of the Office for Asset Recovery and Management, outlined in the Budget of the Ministry of Justice, up to 50 percent shall be employed for the ends outlined in article 2. This income shall generate credit in the budget of the Ministry of Justice, in accordance with the stipulations of the General Budgetary Law.

Article 14. Management costs and expenditure.

1. The Office for Asset Recovery and Management shall only cover the costs and expenditure corresponding to the assets it manages, and from the point at which they are assigned to it.

Exceptionally, it may bear the costs and expenditure prior to this point where such action is advisable for proper asset management or where ordered by the Director General.

2. The ordinary expenses of the Office for Asset Recovery and Management resulting from the undertaking of its duties are established as five percent of the value of the resources obtained. The percentage may be modified via a joint order issued by the Ministry of Justice and the Ministry of the Treasury and Public Administrations.

Article 15. The distribution of resources.

The distribution of resources among the beneficiaries shall take place via an order issued by the Commission for the Allocation of the Proceeds of Crime, within the framework of the criteria established by a Cabinet Resolution issued on a yearly basis.

Article 16. Beneficiaries.

1. The following bodies, institutions, public administrations and legal entities may be beneficiaries of the resources of the Office:

a) The Office for Asset Recovery and Management, which shall be assigned the necessary resources for its proper operation as a priority.

b) Any body, organisation or public entity that is a dependency of the General State Administration, for the purpose of setting in motion programmes or activities relating to the objectives envisaged in this regulation, which extends to Victim Support Offices.

c) Autonomous Regions and Local Bodies, under the following circumstances:

1. To develop and execute plans and programmes to provide support for victims of crime, including providing impetus to Victim Support Offices.

2. To provide the Institutes of Legal Medicine with the material resources to meet the expenses deriving from the expert reports drawn up in these Institutes.

3. To assign resources to the respective police forces with competencies in law enforcement and the prevention and investigation of crime and the prosecution of criminals.

4. For non-governmental organisations or private non-profit bodies, for the development of the programmes envisaged in the objectives of this regulation, providing its scope does not exceed the territory of the Autonomous Region in question.

d) Non-governmental organisations or private non-profit bodies operating at State level, or in two or more Autonomous Regions, that are partially or completely dedicated to the provision of support for victims of crime, in accordance with the distribution programmes and subsidies determined by the Office for Asset Recovery and Management.

e) State Security Forces.

f) The State Agency for Tax Administration.

g) The Prosecutor General's Office.

h) The National Toxicology and Forensic Science Institute and the Institutes of Legal Medicine and Forensic Science.

i) International organisations, supranational bodies and the Governments of other States, in order to develop programmes aimed at achieving the objectives outlined in this regulation, in accordance with the international instruments signed by the Government and subsequent to a favourable report issued by the Ministry for Foreign Affairs and Cooperation.

2. To facilitate the distribution of the resources obtained by the Office for Asset Recovery and Management, the Autonomous Regions and the remaining beneficiaries outlined in this article may lodge proposals for action that are in keeping with the objectives envisaged in article 2, before the Commission for the Allocation of the Proceeds of Crime, under the terms established for the enactment of this Royal Decree.

CHAPTER V

Mechanisms for reporting.

Article 17. Appearance before the Chamber of Deputies.

Each year, the Director General of the Office for Asset Recovery and Management shall appear before the Chamber of Deputies to provide an account of the management of the Office and the results of its activity.

Article 18. Annual report and statistics.

1. The Office for Asset Recovery and Management shall draw up an annual report on its activities that shall be presented to the Cabinet by the Ministry of Justice.

2. The actions carried out shall be recorded within a statistical system that can be accessed by the general public, thereby ensuring that the management activities of the Office are characterised by transparency.