

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

The first final provision of Organic Act 5/2010 of 22 June amending Organic Act 10/1995 of 23 November on the Penal Code, added Article 367 septies to the Code of Criminal Procedure, in which it was already provided the creation of an Office for the Recovery of Assets. Five years have elapsed from then and such provision has not been subject to subsequent regulatory development. The National Intelligence Centre against Terrorism and Organised Crime, reporting to the Secretary of State for Security of the Ministry of the Interior, with the operational support of law enforcement agencies, has been performing the task of tracing assets arising from crimes. However, given the lack of specialised management bodies, when such assets are confiscated they remain at the disposal of the courts which generally provide for their realization at the end of proceedings by means of the traditional mechanisms of sale through specialised person or public auction. This mechanism has proved to be inefficient in proceedings with greater complexity where the need of asset management usually exceeds the material possibilities of the jurisdictional bodies. These circumstances lead to reaffirming the need to put the above mentioned Office into operation.

To this end, Organic Act 1/2015 of 30 March, amending Organic Act 10/1995 of 23 November, on the Penal Code, maintains the provision of Article 367 septies of the Code of Criminal Procedure, although renaming it as Office for Asset Recovery and Management since to its initial task of tracing and recovering assets, it adds that of their management and administration. This provision establishes that the judge or the court, ex-officio or at the request of the Public Prosecutor or of the Office itself, may entrust the location, preservation and administration of assets, property, instruments and proceeds from criminal activities committed within the framework of a criminal organisation. Additionally, fifth final provision of Organic Act 1/2015 of 30 March authorizes the government to adopt the necessary regulations in order to define the structure, organisation, performance and activity of the Office for Asset Recovery and Management. The same organic act also introduces important modifications to the regulation of confiscation without conviction in exceptional circumstances, extended confiscation and third party confiscation, which although already provided for in previous normative texts were lack of practical application.

Act 41/2015 of 5 October amending the Code of Criminal Procedure in view of the acceleration of penal justice and strengthening procedural safeguards completes this regulation by providing for the appearance of third parties affected by the confiscation in the criminal proceedings and the inclusion of a new autonomous confiscation procedure. This last procedure may be initiated at the

request of the Public Prosecutor when there is a punishable act and the perpetrator is dead or not subject to prosecution being in default or unable to appear in court. It may also be employed when the prosecutor reserves the right to confiscation, when a final conviction is delivered for the offence from which the property object of the procedure comes from.

The reform in confiscation matters introduced in the above mentioned acts incorporates into the Spanish legislation Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union. In Article 10 of this regulation Member States are urged to take the necessary measures, for example by establishing centralized offices, "to ensure the adequate management of property frozen with a view to possible subsequent confiscation". All of this is intended to optimise efforts to prevent and fight against cross-border organised crime, neutralizing the proceeds of crime, in the understanding that the main motive of this form of crime is financial gain.

II

The above mentioned provisions are intended to provide legal instruments which are more effective for the recovery of assets arising from criminal sources and for their economic management. The aim, therefore, is giving asset investigation and confiscation the starring role they deserve in combating the economic side of serious crime developed by criminal organisations and networks, achieving thus their financial strangulation. To do so, it is essential that the competent judicial authorities have in place an effective system of tracing and managing assets arising from crime, with institutional support and the necessary financial and human resources that would help them in the task of freezing and confiscating assets within criminal proceedings. The Office for Asset Recovery and Management is therefore envisaged as an auxiliary of the Ministry of Justice intended to play a relevant role advising the bodies in charge of the investigation so as to ensure that freezing and confiscation procedures are effective and efficient.

The increasing number of criminal activities related with economic crime, frequently organised and operating beyond national borders, with particular concern on corruption, both in the public and the private sector, imposes on the State the need to direct its efforts not only to punishing those responsible for such crimes, once declared guilty, but also to achieve the recovery of assets arising from crime, because recovering those assets is as important as an accurate service of the sentence. The subsequent assignment of these assets to pay compensations to victims, to promote social projects and to fight against organised crime constitutes a relevant measure towards democratic regeneration and social justice.

The Office for Asset Recovery and Management shall, then, work as a tool at the service of judges and courts in the context of the criminal proceedings we have been discussing, and shall also do it as an auxiliary of public prosecutor's offices in the exercise of their functions in connection with the investigation of assets, among which we should at least include criminal investigation, the execution of international letters rogatory and asset investigation in autonomous confiscation procedure under the terms set out in the Code of Criminal Procedure and in Act 50/1981 of 30 December regulating the Organic Statute of the Spanish Prosecution Service.

The new regulations on confiscation and the start-up of the Office for Asset Recovery and Management shall provide greater effectiveness in the fight against economic crime, a type of crime usually involving powerful criminals, specially well-organised and that causes so much damage to democratic rule of law. This way the notion that "crime does not pay" shall become a reality.

III

International good practice guides and the different existing models in countries of our geographical and cultural environment, such as United Kingdom, Holland, Belgium or France, have been taken into account in the regulation provided for in this royal decree. France offers a highly positive experience in asset management matters through the *Agence de gestion et de recouvrement des avoirs saisis et confisqués* (AGRASC), which meant a radical change in the way confiscation was understood by French courts, directing it towards a more efficient assets management. This way, the property of persons convicted of serious offences is used to fulfil civil responsibilities, for the self-financing of the Office and to support the fight against organised crime with further resources. The different agency models in the European environment consist in a specialised office with a multidisciplinary staff coming from the areas of the administration, justice, and customs, as well as from the tax sphere and the judicial police, and have a main role advising and helping the Justice in criminal proceedings involving freezing and confiscation.

The creation of an Office equivalent to those of the countries of our environment shall certainly contribute to promote international cooperation in freezing and confiscation matters; which shall in turn be for the greater benefit of the State, since Act 23/2014 of 20 November on the mutual recognition of judicial decision in criminal matters in the European Union applies a rule of sharing of 50% of the proceeds obtained between the requiring and the requested countries, a rule that has spread outside European borders on the basis of the principle of reciprocity, in the recent reform of the Penal Code.

Finally, the experience built up by the Government Delegation for the National Plan on Drugs in application of Act 17/2003 of 29 May which regulates the Special Fund from Confiscated Assets arising from illegal trafficking in drugs and other related crimes, although related to the realization of confiscated assets subject to a final conviction, sets out a precedent that has been taken into account both for improving management efficiency and to avoid duplicities and encourage the necessary coordination between both institutions. This Royal Decree shall not apply to assets, proceeds or interests received from them that, according to the aforementioned Act 17/2003 of 29 May, are owned by the Special Fund from Confiscated Assets arising from illegal trafficking in drugs and other related crimes. However, the Office for Asset Recovery and Management may enter into a collaboration agreement with the Government Delegation for the National Plan on Drugs in order to channel different possible cooperation formulas in advice, and asset management and realisation tasks.

IV

This Royal Decree is structured in five chapters. Chapter I specifically addresses the general provisions defining object and nature, purposes and functions. Chapter II is focused on the structure of the office and defines its rank and the unit it is accountable to and addresses the Director General, the Sub-directorates general, the staff of the office and the Committee for the Allocation of the Proceeds of Crime. This Committee is responsible for the important task of distributing the economic resources obtained by the Office on the grounds of the criteria adopted each year by the Council of Ministers. Chapter III provides the basic rules of procedure to be followed in each case from the initiation of proceedings to their completion. It is also included a specific provision for the operation at the international level, including express authorisation to the Office for Asset Recovery and Management for the exchange of the necessary information for the successful conclusion of its tasks, without prejudice to the competences that other bodies such as the National Intelligence Centre against Terrorism and Organised Crime or the Public Prosecution Service may still have in this respect within the scope of their functions. Chapter IV refers to the economic regime of the Office and to the distribution of the proceeds obtained. It regulates a model of economic management associated with the judicial deposits and consignations account. Provisions with regard to the beneficiaries of the resources of the Office have also been made in view of the implementation of the Code of Criminal Procedure. Finally, Chapter V is devoted to explain the accountability mechanisms which ensure full transparency in the management of the assets that are administered. This Royal Decree also contains two additional provisions, two transitional provisions and seven final provisions.

This Royal Decree shall enter into force on the day after publication, although the setting up of the Office for Asset Recovery and Management shall be determined through Order of the Minister of Justice, after the entry into force of Act 41/2015 of 5 October, on the reform of the Code of Criminal Procedure, and shall be set up progressively in accordance with the plan of action approved by the Director-General of the Office.

This Royal Decree has been reported by the Ministry of Finance and Public Administrations, the Ministry of the Interior and the Ministry of Health, Social Services and Equality, as well as by the General Council of the Judiciary and the Prosecutor General's Office. The autonomous communities with responsibilities transferred in administration of justice matters have been given the opportunity to be heard.

By virtue of and on the initiative of the Minister of Justice, at the request of the Minister of Finances and Public Administrations, in agreement with the Council of State and following deliberation by the Council of Ministers at its meeting held on 23 October 2015,

IT IS HEREBY PROVIDED AS FOLLOWS:

CHAPTER I

General provisions

Article 1. Purpose and nature.

The purpose of this Royal Decree is to regulate the operation of the 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 realise any property, assets, instruments and proceeds 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 of the State Prosecutor's Office or the Office itself. Likewise, during the enforcement of judgment phase, the Office could act at the request of the Judicial Counsellor/Clerk of the Administration of Justice.

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, and 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 with 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 suppress crime, 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, 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, instruments and proceeds resulting from criminal activity, and to safeguard, manage and dispose of these assets.

The Office shall not be in charge of the location or management of assets whose exclusive purpose is to pay a fine.

2. The Office for Asset Recovery and Management shall also decide, in accordance with the stipulations of legislation and regulations, on the disposal of the use of items precautionary seized 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 the maximum possible economic benefit, whilst adhering to the law and complying with all procedural guarantees.

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 Community or local public officials 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 Council of Ministers, upon 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 an action plan with the temporal scope established in it.

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 Offices that make use of its services, and before the Law enforcement agencies 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 legislation on public procurement.

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

f) Coordinating the preparatory work of the Committee for the allocation of the proceeds of crime.

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

h) Coordinating the work 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) Deciding on the assignment of assets, as a result of their realisation and on the assignment of the temporary use of assets confiscated or seized by the Court.

l) Any other functions relating to the objective of the Office that might be assigned by other regulations.

4. The decisions issued by the Director General of the Office for Asset Recovery and Management mentioned in point K) of the above paragraph on assets

assignment as a result of their realisation, shall bring an end to the administrative proceedings.

Article 6. Subdirectorates.

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

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

To carry out these functions and within the framework of the court's or the Public Prosecution's management delegation, this Subdirectorate shall act in coordination with the law enforcement agencies and may call for the collaboration of any other public or private bodies.

It is also responsible for the exchange of proprietary information with similar offices at international level.

b) The General Subdirectorate for the conservation, administration and realisation of assets, which is assigned the following functions:

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

The Office shall manage assets in any of the forms provided for in the legislation applicable to Public Administrations, without prejudice to be subject to other applicable regulation.

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

3. The realisation of assets that shall include actions aimed at selling assets, items, proceeds and instruments, the management of which has been entrusted by the court to the Office for Asset Recovery and Management, subsequent to their seizure. Likewise, whenever entrusted by a judicial body, it shall be responsible for the realisation of confiscated assets allocated to the State, unless these assets are registered in the name of the State in the corresponding Property Register or in the Moveable Property Registry.

This function also takes in the advance sale of seized or confiscated assets, subsequent to judicial authorisation within the scope of action of the Office.

4. The disposal of the use of confiscated or seized items and assets provided that their temporary use has been authorised by the judicial body.

5. The function deriving from the provision of the necessary support for the development of the activity of the Committee for the allocation of the Proceeds of Crime.

6. The management of the Deposits and Consignments Account of the Office for Asset Recovery and Management.

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 from the corresponding list of employment positions.

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

Article 8. Committee for the Allocation of the Proceeds of Crime.

1. The Committee 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 Committee 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 Directors General or those 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 public official within the Office for Asset Recovery and Management.

A representative of the State Legal Service, a dependency of the Ministry of Justice, shall participate in the Committee for the allocation of the Proceeds of Crime but without the right to vote.

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 certified true copy of the court decision or public prosecutor's decree requesting the intervention of the Office for Asset Recovery and Management.

In the event that it is the Office for Asset Recovery and Management itself who urges the judicial body or the Public Prosecutor's Office the referral of procedures, 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 court decision or Public Prosecutor's decree wherein the rejection is recorded.

Article 10. Registration and inventory of assets.

All assets that are the subject of a file within the Office for Asset Recovery and Management shall be recorded in an inventory of seized and confiscated 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 public prosecutor and, where applicable, to the judicial police.

Article 11. Processing of files.

1. Upon receipt of the certified true copy of the court decision or public prosecutor's decree 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 trace and recover the assets of the person being investigated or charged.

2. Where the judicial empowerment so stipulates, the Office shall take charge of the preservation and management of these assets.

To this end, the Office for Asset Recovery and Management may conclude as many contracts or management delegations as deemed necessary.

3. The Office for Asset Recovery and Management, within the context of its management activities and with the prior authorisation of a competent Judge or Court, may proceed to the advanced realisation or temporary use of the assets seized.

In such cases, subsequent to the authorisation of the competent Judge or Court, the Office shall decide the use to which the seized assets are to be put and the preservation measures to be adopted, in accordance with the provisions to that effect contained in the Code 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 provisions 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 decision of the competent judge or the public prosecutor's decree indicates that the actions requested of the Office derive from a request issued by a foreign judicial authority.

3. Where this is appropriate for the performance of its duties, the Office for Asset Recovery and Management may exchange information with the bodies of the European Union and of third countries with powers including the recovery of assets.

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 before a final confiscation court order is delivered can be managed via the judicial deposits and consignations account of the Office in case of money resulting from the seizure or from the advanced realisation of property.

As for the remaining assets, depending on the circumstances and in line with the principles of efficiency and transparency, the Office may manage them in any of the manners set out in the relevant legislation for Public Administrations, without prejudice to any other regulation applicable.

The interests on the money and the yields and income produced by the assets shall be employed to pay for management costs, including those generated by the Office. The remaining amount shall be saved awaiting the provisions of the final confiscation court order.

2. Once a final confiscation court order has been issued, the resources obtained shall be subject to realisation and the amount obtained shall be employed as set out in Article 367 quinquies of the Code of Criminal Procedure. The remaining amount and the proceeds gained 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 specific purposes defined in article 2. This income shall generate credit in the budget of the Ministry of Justice, in accordance with the provisions of the General Budgetary Law.

Article 14. Management costs and expenditure.

1. The Office for Asset Recovery and Management shall only bear the costs and expenditure corresponding to the assets it manages, and from the moment these assets are assigned to the Office.

Exceptionally, the Office may bear former costs and expenditure whenever this seems advisable for a proper management of the assets and it is so agreed by the Director-General.

2. Ordinary expenses of the Office for Asset Recovery and Management resulting from the undertaking of its tasks shall be five percent of the value of the resources obtained. This percentage may be modified by joint order issued by the Ministry of Justice and the Ministry of the Treasury and Public Administrations.

Article 15. Distribution of resources.

The distribution of resources among the beneficiaries shall take place by agreement of the Commission for the Allocation of the Proceeds of Crime, within the framework of the criteria established by agreement of the Council of Ministers 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 given priority to receive the necessary resources for proper operation.

b) Any organisation, body 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 provided for in this provision, including the Offices for the Assistance to Victims.

c) Autonomous Communities and Local Entities, under the following circumstances:

1. To develop and execute plans and programmes to provide support for victims of crime, including the promotion of the Offices for the Assistance to Victims.

2. To provide the Institutes of Forensic Medicine with 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 concerned with the prevention, investigation, prosecution and suppression of criminal offences.

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

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

e) State Security Forces and Bodies.

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 international instruments signed by the Government and upon the favourable opinion of 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 Communities and the remaining beneficiaries mentioned in this article may submit before the Commission for the Allocation of the Proceeds of Crime proposed actions that are within the specific objectives of Article 2, and in the terms established for the implementation of this Royal Decree.

CHAPTER V

Accountability mechanisms

Article 17. Appearance before the Congress of Deputies.

Each year, the Director General of the Office for Asset Recovery and Management shall appear before the Congress of Deputies to report on 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 to be presented to the Council of Ministers by the Ministry of Justice.

2. The actions carried out shall be recorded within a statistical system available to the public at large, thereby ensuring transparency in the management activities of the Office.

CHAPTER VI

Management of assets by the Office

Article 19. Assets management field

1. The Office shall carry out the management of assets derived from criminal activities having been judicially seized, attached or confiscated within the scope of criminal activities committed in the framework of criminal organizations, as well as from criminal activities specific to the field of extended confiscation, as entrusted by the judicial authority.

2. The management of assets shall be made by the Office in accordance with the provisions included in Chapter II bis of Title V, Book II of the Code of Criminal Procedure, as well as in this Royal Decree.

3. When the Office acts entrusted by the judicial authority, further to a request from the Office itself, it shall do it based on opportunity grounds within the framework of any criminal activity and in the terms provided in the criminal and procedural rules, and regardless of the date of the seizure or confiscation.

4. The management tasks carried out by the Office shall not include the deposit of the assets placed to their care nor the management of societies, as long as the Ministry of Justice does not provide for these actions to be carried out.

5. In case of confiscated assets foreclosed to the State by judicial decision, the Office shall proceed to their realisation provided this has been so entrusted by the judicial authority and no registration has been entered in the corresponding public registers.

6. The Office in no case shall be the holder of assets or rights and no registration may be entered under the Office's name.

Article 20. Opening of the file

1. Once examined the court decision, the Office shall inform the judicial authority on the opening of the corresponding file. When the contents of the court decision clearly show that the case falls outside the management field of the Office in accordance with the terms described in Article 19.2 of this Royal Decree, the entrusting judicial authority shall be informed and the case will be closed.

2. In the event that the judicial authority is urged by the Office to undertake the management of the assets, a procedure shall be opened as a result of such request. If the request is upheld, the procedure shall follow the stages outlined in this Royal Decree. In the event of rejection, the procedure shall be closed upon reception of the court decision wherein the rejection is recorded.

The procedure shall also be closed if no answer is received from the judicial body within the term of six months, and both the judicial body and the public prosecutor shall be informed accordingly.

The case closed may be reopened if the judicial authority upholds the request submitted by the Office, after expiry of the period of six months.

Article 21. Information regarding the assets

1. The Office shall gather as much information as required in order to be able to manage the assets.

2. Where the Office finds insurmountable difficulties to identify the asset assigned, it shall inform the judicial authority.

3. Where an asset is not deposited in the place indicated by the judicial body, when it is found destroyed or if information becomes available on any other relevant aspect in that concern, the judicial authority shall be informed to the appropriate effects.

Article 22. Appraisal of goods

1. When no appraisal is available and it is required for the intervention of the Office, the Office shall assess the goods seized, attached or confiscated with whose management it has been entrusted.

In any case, during the appraisal of the property, the valuation of goods without or with negligible value shall be avoided, as well as that of useless objects or objects that, being part of another, are of no use by themselves, informing the judicial authority accordingly through a reasoned report.

2. For the appraisal of goods, the Office shall promote as many cooperation agreements, contracts and management delegations as required.

Article 23. Economic analysis

When the judicial assignment does not stipulate the use to be given to the goods, the Office shall carry out an economic analysis in which the necessary criteria shall be taken into account in order to avoid anti-economic actions and to ensure maximum economic profit. The economic analysis shall consider, among others, the following criteria:

- a) Status of the asset: seized, attached or confiscated
- b) Nature of the asset
- c) Appraisal value
- d) Expenses derived from deposit, preservation and maintenance of the asset
- e) Perishable nature
- f) Depreciation due to disuse or for mere passage of time
- g) Possessory situation
- h) Where appropriate, charges and encumbrances

Article 24. Action proposal

1. Upon completion of the economic analysis, the Office shall submit a written proposal of action before the judicial body in which, where appropriate, the information mentioned in the different sections of this article shall be included. The proposal may consist in, among others, one or several of the following actions:

a) In case of money seized, attached or confiscated, make a deposit to the Office's deposits and consignations account.

b) Where appropriate, adoption of measures for the preservation and management of assets

c) Authorisation for the temporary use of the assets seized or confiscated.

d) Realisation of goods, including advanced realisation of goods seized or confiscated.

e) Destruction of assets

2. For the purpose of proposing the realisation of assets, in case of immovable or registered movable property, the Office shall obtain information from the competent Register Office concerning ownership and charges. For the purpose of the property appraisal, all relevant formalities shall be carried out in order to verify whether the charges registered subsist or if they have been modified due to payments made after registration or for any other reason.

The existence of charges or voluntary prohibitions to dispose shall not constitute a bar to the realisation of the property, but the awardee shall subrogate to such charges and limitations. When charges or prohibitions to dispose are of administrative or judicial origin, they judicial body shall be informed so that it can assess its nature and the impact on the realisation procedure.

3. The Office shall inform the judicial body on the account-file of the Office's account corresponding to the procedure, in which deposits and, where appropriate, payments shall be made in accordance with the provisions of Article 44.2.

4. The Office shall inform the judicial authority on the existence of assets subject to a legal regime excluding them from trafficking or limiting their ownership, possession or trade. The same shall apply when the asset is subject to preferential rights so that those entitled to these rights are duly notified.

5. The Office shall notify the judicial body in the presence of any of the following circumstances:

a) When the value of charges and encumbrances equals or exceeds the estimated value of the good.

b) When, according to the appraisal of the goods, it is likely that realisation will not produce a sum of money enough to exceed the costs of such realisation.

c) Any other circumstance on which the Office feels the judicial body should decide.

Article 25. Prior actions to the realisation of assets or goods

Before initiating the realisation procedure, the Office shall inform the judicial authority about the form and the conditions on which realisation shall be developed, and that such process shall begin in the exposed terms unless it is otherwise provided by the judicial authority within the term of ten days. This term may be reduced on grounds of urgency, in case of perishable goods, or with regard to goods that by their nature, location or other circumstances involved require an expeditious realisation procedure.

The Office shall also inform about the appraisal value of the asset, its value for realisation purposes and the minimum awarding price, unless evaluation is not possible due to the nature of the asset.

Article 26. Forms of realisation

The realisation of assets or goods may consist in their delivery to non-profit organizations or public administrations, the realisation by means of specialised person or entity, or in public auction.

Article 27. Delivery to non-profit making entities or public administrations

1. The Office shall propose the judicial authority to deliver the assets to non-profit making bodies or public administrations when their value is negligible or when it can be expected that realisation by any of the other forms established will be uneconomical, in conformity with procedural regulations.

2. The delivery of the asset or assets to a non-profit making body or a specific public administration shall be carried out with prior judicial authorization, unless the judicial body agrees that the choice is to be made by the Office.

3. In case of assets or goods on which attachment or assignment to a public body or entity is applicable, the Office shall submit the corresponding proposal to the *Dirección General del Patrimonio del Estado* (Directorate-General of National Heritage) or, where appropriate, to the competent authority.

Article 28. Realisation by means of specialised person or entity

1. The Office may agree, contract or entrust the realisation of assets to a specialised person whenever it is appropriate due to the nature or the special circumstances of the assets.

To this end, the Office shall promote the conclusion of as many contracts, cooperation agreements or management delegations deemed necessary. Where there is a court decision determining the specialised entity that must undertake the realisation, the Office shall have to act as provided by that decision.

2. However, when the Office makes use of a specialised person or entity for the realisation of perishable assets or goods whose deposit expenses are so disproportionate that they require urgent action, such person or entity may be directly chosen by the Office requiring, whenever possible, at least three proposals.

The selection shall be duly reasoned and will be communicated to the judicial body under the terms set out in Article 25.

If the specialised person or entity acts free of charge the above mentioned three proposals shall not be required.

3. The realisation procedure shall fit with the specific management ways or methods of each specialised person or entity with which the realisation has been agreed, unless otherwise provided by court decision.

In any event, the Office shall set the minimum awarding price for each asset or lot of assets under the terms set out in the following article.

4. Once the procedure is completed, the provisions under Articles 33 and 34 regarding the awarding of assets or goods shall be followed.

Article 29. Public Auction

1. Public auction shall be aimed at selling one or several assets or lots of assets in the most convenient way, and may be either electronic or in-person (live auction).

2. The value of each asset or lot of assets for auction purposes shall correspond to the value resulting from deducing from the appraisal value the amount of all previous charges and encumbrances whose priority results from the Registration Certificate on ownership and charges or encumbrances

However, the value of the assets for auction purposes may be reduced following a reasoned report up to fifty percent in each new auction after the first call.

3. Movable property shall not be disposed of for a price under fifty percent of the value for auction purposes. When the assets to be realised are immovable property, such percentage shall be seventy per cent.

In any case, depending on the circumstances and the nature of the assets, such percentages may be reduced following a reasoned report with the prior authorisation of the judicial authority.

Article 30. Call for tender

1. The *Subdirección General de conservación, administración y realización de bienes* (Under-Directorate General for the preservation, administration and realisation of assets) shall resolve to call for tender that shall be regulated, in addition to the provisions of this royal decree, by general conditions and specific clauses.

2 The call shall be announced at the Official Gazette (BOE) and in the webpage of the Ministry of Justice, without prejudice to any additional publicity that may be deemed appropriate in each case.

3 The announcement of the tender shall include its date and identification number. Should it be an electronic auction, the announcement shall include the corresponding electronic address in the Auctioning Portal, in which all the information should be available for tenderers. Live auctions shall require basic information concerning date and venue, as well as the internet address where all the documentation concerning the procedure shall be available.

4 General conditions shall be approved by the incumbent of the Office subject to a prior report from the State's Legal Counsel.

5 Standard general conditions may be approved for each modality of auction.

6 The specific clauses approved by the incumbent of the Under-Directorate General for the preservation, administration and realisation of assets shall contain, at least, the following points:

a) File number of the Office corresponding to the assets or lots of assets to be auctioned.

b) Where appropriate, distribution in lots of the assets to be auctioned

c) Description and information available about the assets or lots of assets to be auctioned, indicating cadastral and registration details, appraisal value and charges and encumbrances that may remain and affect the assets.

d) Premises or enclosures where the assets are deposited and, where appropriate, possibility to be examined by those interested in acquiring them.

e) Value of each good or lot of goods for auction purposes, opening bid rate and bidding stages

f) Where appropriate, it should be revealed whether the legislation provides for any preferential acquisition right with regard to the assets or rights being auctioned.

g) Cost of the deposit following expiry of the period given for the collection of the assets.

h) Any other circumstance deemed of interest for possible tenderers.

Article 31. Requirements to participate in tenders

1 To be allowed to participate, tenderers shall have to meet the following requirements:

a) Be sufficiently identified

b) Have deposited five percent of the value of the immovable property and twenty percent of the value of movable property for auction purposes.

2 Personnel serving at the Office, asset appraisers and any other person involved in the seizure, attachment or confiscation of the assets or in the auction shall not be allowed to participate.

3 For the mere fact of their participation in the auction, it shall be understood that bidders accept the general conditions and specific clauses established therein. It shall also be understood that they accept as sufficient the titling recorded or the lack of titling, and that they also accept being subrogated to all charges or encumbrances, if any, the preference of which results from the cadastral certificate of ownership and encumbrances in case the final auction is in their favour.

4 The successful tenderer shall not be allowed to assign the final auction to third parties. However, bidders may bid for themselves or on behalf of a third party, a circumstance that must be duly established beforehand, without prejudice to the accreditation to be provided in case of becoming the winning bidder.

Article 32. Phases of the auction

1 Any of the goods included in the auction may be withdrawn, informing about this circumstance through the web of the Ministry of Justice and, in case of electronic auction, through the Auctioning Portal. The withdrawal of assets shall

entail the return of the deposit made but shall not imply any right to compensation for the bidders.

2 The *Subdirección General de conservación, administración y realización de bienes* (Sub-Directorate General for the preservation, administration and realisation of assets) shall agree by resolution that final auction is awarded to the best bidder and shall notify its approval in accordance with the provisions set out in Articles 40 and following of Act 39/2015 of 1 October, on the Common Administrative Procedure of Public Administrations

When the best bidder acts on behalf of a third party, it shall produce the corresponding accreditation before the approval of the final auction. Should accreditation not be registered at the Electronic Register of Powers of Attorney of the State General Administration, it shall be established through a copy of the power of attorney or supporting document.

3 The best bidder shall have a period of ten working days for movable property and of forty days for immovable assets, from the day after the notification of the resolution approving the final auction, to deposit at the Deposits and Consignations Account of the Office the difference between the amount already deposited and the total price of the final auction, and to inform the Office accordingly.

4 Where the auction involves assets or rights regarding which, according to the applicable legislation, there are people concerned entitled to preferential acquisition rights, they shall be duly notified once the final auction is agreed. No awarding resolution shall be rendered until the time period provided by the applicable legislation to the people concerned to exercise their right elapses or until the right is extinguished for whatever reasons.

5 From the day after the auction is held, the amounts deposited by the bidders shall be released or returned, except that corresponding to the best bidder which shall be kept in deposit by way of guarantee on the discharge of obligations and as part of the selling price. Likewise, the deposits made by bidders with the right to reserve their bids shall be kept so that, should the best bidder not deliver the corresponding amount in time, the auction may be awarded to the following bidders with such reserve, by order of their respective bids and, in case of tied bids, in the chronological order in which bids were made.

If none of the bid winners referred to in the previous paragraph consigns the price within the period prescribed or if they desist from their offer, they shall automatically have their right invalidated and their deposit lost, while having to compensate for damages that may have been caused in the amount exceeding the deposit and as provided by the Public Administration.

6 Deposits not returned shall be funded into the Deposits and Consignations Account of the Office and shall be considered as a product obtained from the management of the Office in the terms set out in Article 45.

Article 33. Auction decision

1 When the final auction is approved and once the difference between the deposit and the total price is consigned at the Deposits and Consignations Account of the Office, the incumbent of the Office shall issue an awarding decision stating, where appropriate, that the price has been consigned and, as required, the deadline for delivery or removal of the asset. This decision shall conclude administrative proceedings.

2 The successful tenderer shall be responsible for all the expenses, taxes and registration fees originated by the transfer of ownership of the foreclosed assets as well as for any other obligation upon the owner in accordance with specific applicable regulations.

Expenses generated by the deposit of the assets from the end of the collection term shall also be borne by the successful tenderer. To all appropriate effects, the Office shall inform the judicial and the depositary bodies on such closing date.

Article 34. Certificate of allocation.

Where appropriate and in the case of immovable or movable property with a similar publicity regime of registration, the incumbent of the Office shall issue a certificate of allocation which shall record the decision of the judicial body decreeing the management delegation for the realisation of the asset, declaring the allocation final (ends the administrative procedure), the identification of the tenderer, the description of assets disposed of, any charges or encumbrances they would be subject to and other circumstances necessary for the registration according to the current law.

This certificate shall be a legally sufficient title to register the acquisition by the tenderer pursuant to the provisions of the mortgage law.

In any case, it shall be issued the relevant order for the cancellation of registration of the confiscation or seizure that gave place to the asset realisation, as for the cancellation of further charges to the said entry in the register, that will be enough to carry out those cancellations without a judicial order unless a regulation with the force of law requires other procedures.

Article 35. Electronic auction.

1. The electronic auction shall be held on the web portal attached to the State Agency of the State Official Gazette and shall be developed under the provisions of Articles 648 and 649 of the Civil Procedure Act 1/2000, of 7 January, for the conduct of electronic judicial auctions.

2. In electronic auctions, notifications to the highest bidder or, as the case may be, to the tenderer, shall be made through e-mail to the address indicated in the Certificate of best bid of the State Agency of the Government Gazette or, when appropriate, to the address expressly given for this purpose.

Article 36. Live auction.

Live auction shall be held under the following rules:

1st.- The invitation to tender shall be announced in the Official Gazette at least one month prior to the date on which it is to be held.

2nd.- If provided for in the invitation to tender, bids may be accepted in a sealed envelope or be submitted online, within the terms established in the tender, which shall be included in two envelopes:

- The first envelope shall contain the documents proving that tenderers meet the requirements established to participate in the bidding.
- The second separate envelope shall contain the economic tender.

3rd.- At the specified date, the board for allotments will be constituted. It will be composed of the incumbent of the Sudirectorate General for preservation, administration and realisation of assets, acting as Chairman and, as members of the board, of the State's Attorney of the Ministry of Justice, a representative of the State Intervention Board in the Ministry of Justice and a public official of the said Subdirectorate General assigned by the incumbent of the Office who shall also act as Secretary. The board shall be governed according to this provision and to administrative operating rules of collegiate bodies.

4th.- Before the opening of the session, in the event that bids presented in closed envelope or submitted online are accepted, the board shall proceed to the opening of the first envelope to determine which tenders are invited to bid.

5th.- Tenderers may participate in person or through a representative. Tenderers who submitted bids in a close envelope or through electronic means may present bids higher than those initially offered.

Once the identity of tenderers has been proved, the time limit for the submission of bids shall be opened; those that are increasingly improving the opening bid rate shall be admitted and the auction shall be concluded in favour of the bidder that offers the highest bid for any of the assets or lots offered.

6^h.- In any case, the president of the board shall warn tenderers that there are bids in closed envelopes or submitted online and once bids presented face-to-face have finished, the board shall proceed to open envelopes or to read those bids submitted online:

-The Secretary shall read aloud before the board the bids submitted provided that they meet or exceed the maximum bid reached by any bidder face-to-face.

- If any of the bids submitted in this way is in line with or exceeds the highest bid offered by show of hands, a new bid shall be opened among the persons present. The tenderer that has submitted the highest tender shall be declared the successful bidder; in case of a tie, the tenderer that would have submitted the best bid on writing.

7th.- As a result of the auction held, the Secretary of the board shall record minutes with the development, incidences and the allotment outcome that shall be undersigned by the best bidder or his representative, if present.

8th.- If there were no bids for a property or properties in the first call for tenders, a second call could take place within the framework of the same auction. The second call for tenders shall be developed with the same formalities as the first

one and with the same minimum tendering price, unless different amounts were established in the auction terms.

Article 37. Simplified auction.

2. Notwithstanding the aforementioned articles, the Office may turn to the simplified auction in any of the following cases:

a) Generally speaking, when the auction is declared null and void.

b) When, from the specific characteristics of the particular good and other circumstances of its situation, it can reasonably be argued that the auction should be declared null and void.

c) When dealing with perishable assets or on the grounds of urgency, the realisation of such assets through a specialised entity should not be appropriate.

Auctioning should be carried out according to the following methods: submission of tenders in a closed envelope or by telematic means.

2. The procedure shall be developed in accordance with the following rules:

1st.- The call for tenders shall be published in the Ministry of Justice webpage. Additionally, the Office for Asset Recovery and Management may take the measures deemed appropriate for its dissemination.

2nd.- The deadline for submission of tenders shall be 10 working days, without prejudice to be reduced with a justified cause on the grounds of urgency.

3rd.- The call for tenders shall establish the closing date for the admission of tenders and, in any case, the term of their effective entry in the Minister of Justice's Registry, as well as the documentation identifying the tenderer, without prejudice to the remaining documents necessary for awarding the good should only be further requested to the best bidder. Stakeholders may be also required to make a deposit for the amount deemed appropriate.

Likewise, the place, day and time for the opening of envelopes containing tenders shall be established and an allotment board shall be constituted for that purpose which shall comprise the incumbent of the Subdirectorate General for preservation, administration and realisation of assets, acting as chairman and, as members of the board, shall participate two officials of the said Subdirectorate, appointed by the incumbent of the Office, one of those shall also act as Secretary. The board shall be governed according to this provision and to administrative operating rules of collegiate bodies.

4th.- The foreclosure of assets shall be made in favour of the proposal with the highest economic offer without prejudice to the minimum price which may be established for each particular case.

5th.- In case of a tie between two or more proposals, the sale shall be made in favour of the proposal submitted at an earlier date and in the event of a tie, in favour of that one whose entry in the Registry was first.

6th.- Once the price has been entered in the Deposit and Consignations Account of the Office, the foreclosure shall be made by decision of the incumbent of the Office for Asset Recovery and Management. This decision shall put an end to the administrative procedure.

Article 38. Non foreclosed assets.

1. Failure to allocate a seized asset whose realisation is entrusted to the Office by any of the proceedings foreseen in the previous articles and whether its use or destruction by the Administration is not deemed appropriate, it shall be notified to the competent judicial body in order to take a decision in respect thereof.

2. In the event of a confiscated asset that is to be allocated to the State and that for any reason is not subject to realisation, the Office shall inform the competent judicial body for the adoption of the pertinent decision on the asset's destination. Such notification shall be accompanied by the report of the Directorate General for State Patrimony that must be previously requested to this body by the Office.

The same shall apply to business establishments situated in buildings property of third persons, not subject to disposal.

Article 39. Temporary use of assets.

1. The Office's incumbent shall decide on the disposal of the use of seized or precautionary confiscated assets provided that the judicial body has authorised their temporary use.

Likewise, the Office may propose to the Judge the temporary use of seized or precautionary confiscated assets in the terms foreseen in Article 367 sexies of the Code of Criminal Procedure.

2. Once authorised by the Judge, the Office shall decide on the disposal of the use of seized or precautionary confiscated assets and on the preservation measures to be adopted.

The Office shall inform the Judge or Court and to the Public Prosecution about the decision taken.

3. In case of confiscated assets put under the management of the Office and whose temporary use had been authorised, the Public Administrations that are temporarily using the asset shall ask the Office its definitive assignment within the term of thirty days following the date of notification of the final decision issued by the Office. The lack of request within the term established shall empower the Office to proceed with the realisation of assets.

Once a specific request is made, it shall be referred by the Office to the Directorate General of State Patrimony so that the permanent assignment of assets

to the Administration may be processed, if deemed appropriate, under the terms established in the assignment agreement. This communication shall put an end to the management of the Office regarding such asset.

Article 40. Destruction of assets.

1.- The asset management by the Office shall include the destruction of licit trade assets when previously decreed by the court.

In the case of assets of low value due to obsolescence, impairment or perishable nature, the Office shall decree their destruction, disablement or abandonment, prior authorisation from the Court.

Likewise, in case of assets that should be removed or subject to treatment for environmental reasons, the action to be taken shall be agreed by the Office prior authorisation of the competent judicial body.

2. The destruction shall be made in accordance with the applicable regulations depending on the type of asset.

3. The onerous destruction of property shall be carried out by a specialised person or entity under the provisions of Article 28.1.

However, when the destruction of property does not involve a cost for the Office, the latter shall directly select the specialised entity performing this action and shall request, whenever possible, at least three proposals. That will be recorded into the file.

Article 41. Advice on enforcement of seizures and forfeitures.

1. The Office shall request other Administrations and public bodies the advice and assistance on enforcement of seizures and forfeitures decreed by the judicial authority.

2. Unless the asset management is entrusted to the Office by the judicial body, the intervention of the Office shall finish with the submission of the proposal of action to the judicial competent body.

Article 42. Deposits and Consignations Account of the Office.

1. The Office has a Deposit and Consignations Account with an instrumental character in regard to deposit accounts and judicial consignations aimed at ensuring the traceability and correspondence of the various files opened by the Office with court files.

2. The Office's Account is unique and it will gather the balance and transactions of the different Office's accounts-file integrated into that account.

Article 43. Management costs.

1. All expenditure incurred by the management of a specific asset by the Office shall be deemed management costs.

2. In any case, expenditure derived from the deposit judicially established is excluded from management costs, which, once the procedure is finished, shall take part of the taxation of legal costs or shall be paid by the relevant Administration in each case.

Article 44. Completion of payments.

1. On a regular basis, payments derived from contracts, management delegations or, when applicable, collaboration agreements necessary for the preservation, administration and realisation of assets by the Office, shall be made in accordance with the General Budgetary Act 47/2003, of 26 November.

2. However, payments authorised by the court regarding the asset management within the framework of a certain case file shall be charged to the corresponding account-file of the Deposit and Consignations Account of the Office, or failing this, shall be charged to the interests of the Office's account.

3. Likewise, in accordance with the sixth additional Provision of the Code of Criminal Procedure, management costs shall be met with the interests of the Office's account.

Article 45. Settlement of procedure.

1. When the judicial body agrees to transfer the amounts obtained to the judicial body's account prior to the completion of the procedure, the expenditure caused by the preservation and the procedure of the assets realisation shall be withdrawn from the amount transferred.

2. In case the Court gives a final decision that puts an end to proceedings and the forfeiture of assets is not agreed to, the Office shall enter the amount of the account-file in the Deposit and Consignations Account of the judicial body, without charging the expenses already incurred in the preservation and in the assets realisation procedure.

3. In case the Court gives a final decision that puts an end to proceedings and the forfeiture of assets is agreed to, the Office shall proceed to the asset realisation if it had not been previously made and shall ask the judicial body to inform, as the case may be, about the amount required to be transferred.

Once the costs incurred in the asset realisation have been withdrawn, the Office shall transfer the required amount to the judicial body's account.

Article 46. Cancellation of the account-file.

When an Office file is completed and there is no balance registered in the corresponding account-file, it will be cancelled.

The person responsible for the Account shall be the only one authorised to cancel the account-file of the Office's Account.

First additional provision. Relation with the National Plan on Drugs.

The items excluded from the objective scope of application of this regulation are assets and products or yields derived from them, previously confiscated by court final decision and that should be included in the fund regulated by Law 17/2003, of 29 May, governing the Asset Forfeiture Fund for illicit drug trafficking and other related crimes that shall be subject to the specific regime set out in such Law and in its development regulations.

However, the Office for Asset Recovery and Management may sign a collaboration agreement with the Government Delegation for the National Plan on Drugs to articulate the relations between both organs, which shall include forms of cooperation in the functions of advice, management and realisation of assets derived from criminal activity, referred to in the above paragraph; reference to the exchange of information and to the coordination of actions can also be made where appropriate.

Second additional provision. Confiscated assets for the offence of smuggling.

Assets confiscated for the offence of smuggling are excluded from the scope of application of the present Royal Decree and shall be subject to the provisions of the Organic Law 12/1995, of 12 December, to counter smuggling.

Third additional provision. Collaboration within the scope of tracing of assets.

1. The Intelligence Centre Counter-Terrorism and Organised Crime of the Ministry of Interior through the two international police channels established shall conduct the exchange of international police information related to the tracing of assets.

2. The Office for Asset Recovery and Management shall carry out the passive exchange of information from other offices, institutions or judicial or multidisciplinary bodies whose sole purpose is the seizure or confiscation within the framework of criminal proceedings. Likewise, in compliance with the management delegations received from Court and from the Public Prosecution

Service, the Office may contact any other office or institution with jurisdiction on that matter regardless its nature, for the active exchange of information.

3. The Office for Asset Recovery and Management and the Intelligence Centre Counter-terrorism and Organised Crime of the Ministry of Interior shall share the information needed to avoid duplication and loss of efficiency and shall provide mutual cooperation on this matter, within the framework of personal data protection legislation.

First transitory provision. Start of operation.

The start-up and operational phase of the Office for Asset Recovery and Management shall be determined by the Ministry of Justice's order and shall be carried out after the entry into force of the Law 41/2015, 5 October, amending the Code of Criminal Procedure for the streamlining of criminal justice and the strengthening of procedural guarantees and gradually in accordance with the action plan previously approved by the Director General of the Office.

Second transitory provision. Transitional regime.

This Royal Decree shall only apply to assets, whose tracing, seizure or confiscation is decreed after the date of its entry into force and that are made available to the Office for Asset Recovery and Management after its start of operation, as provided for in the abovementioned Ministerial Order.

However, the Office on its own initiative and prior authorisation from the judge or relevant court, may assume the management and realisation of assets seized and confiscated before the entry into force of this royal decree, where appropriate, regarding the nature or particular circumstances of assets.

First final provision. Amendment of the Royal Decree 467/2006, 21 April, regulating the deposits and judicial consignations in cash of assets or securities.

The Royal Decree 467/2006, of 21 April, regulating the deposits and judicial consignment in cash, of assets or securities, is amended as follows:

One. The paragraph 4 of Article 2 is modified with the following wording:

"The interests charged by the relevant credit institution to the Deposit and Consignations Accounts shall be paid to the Public Treasury in form and amount specified in the Rules of Tender for procurement proceedings followed for the selection of the credit institution established in the first paragraph of this article which shall respect, in any case, the means of payment set out in Article 110 of the General Budgetary Act 47/2003, of 26 November and in accordance with Article 70

of the Law 53/2002 on Tax, Administrative and Social Measures, of 30 November or with the rules that would supersede it, when applicable.

An exception is made in the interests produced by the amounts from the special account of the Office of Asset Recovery and Management that shall be entered in the said account, for the purposes of the provisions set forth in the Code of Criminal Procedure”.

Two. The Article 3(4) is modified with the following drafting:

“Likewise, the funds in the Deposit and Consignations Accounts would be made available to the following persons:

a) Members of the Career of Prosecutors, in the cases mentioned in the first and second additional provisions of this Royal Decree.

b) The Deputy Director General for preservation, administration and realisation of goods of the Office for Asset Recovery and Management, in the terms foreseen in the fifth additional provision, and

c) The secretaries-rapporteurs in the military jurisdiction.

All of them shall comply with the regulations established in the above mentioned paragraph.”

Three. Article 13(2) is amended with the following wording:

“The amounts entered in the Deposit and Consignations Accounts and subject to confiscation by the application of Article 374 of the Organic Law 10/1995, of 23 November, of the Criminal Code and of Article 5 of the Organic Law 12/1995, 12 December, on Counter-Smuggling, shall be transferred by the court clerk to the special revenue account of the Public Treasury “Forfeitures for Drug trafficking or other related offences”, once the judgment decreeing their confiscation and definitive assignment to the State becomes final. This account shall be the only one for the national territory without prejudice to the agreements for transferring the amounts that could be reached by virtue of the collaboration agreement referred to in the first additional provision of the Royal Decree regulating the Office for Asset Recovery and Management”.

Fourth. – A fifth additional provision is added:

“Fifth additional provision. Deposit and Consignations Account of the Office for Asset Recovery and Management.

1. For the management and realisation of assets entrusted by the relevant judicial authorities to the Office of Asset Recovery and Management, a Deposit and Consignations Account of special nature shall be at the disposal of the Office. The person authorised to dispose of funds shall be the Deputy Director General for preservation, administration and realisation of assets or the person delegated by him for that task.

2. This account shall bear the name of the Office for Asset Recovery and Management with the added name of “Deposit and Consignations Account” and its

regime shall be provided for in this royal decree for the Deposit and Consignations Accounts of judicial bodies, with the following particulars:

a) The account shall possess an instrumental character in regard to deposits accounts and judicial consignations in order to guarantee the traceability and correspondence of different proceedings brought by the Office of Asset Recovery and Management with court proceedings.

b) Once the costs incurred in the preservation of assets and in the procedure of their realisation have been paid to the Office, the surplus derived from the realisation of assets, goods, instruments and gains required by the Court shall be entered in the consignations account of the court or tribunal, being subject to civil liabilities and court costs to be paid when decreed in proceedings. The remaining amount shall be finally assigned to the Office for Asset Recovery and Management to serve the regulatory purposes intended."

Second final provision. Amendment of the Royal Decree 1887/2011, of 30 December, establishing the basic organisational structure of Ministerial Departments.

One. The letter A) of Article 2(1):

"A) The Secretariat of State for Justice. The following governing bodies report to this Secretariat:

a) The Secretariat General of the Administration of Justice, under which the Directorate General for Relations with the Administration of Justice operates.

b) The Office for Asset Recovery and Management.

c) The Directorate General for International Legal Cooperation and Interfaith Relations.

Third final provision. Amendment of the Royal Decree 453/2012, of 5 March, developing the basic organisational structure of the Ministry of Justice and modifying the Royal Decree 1887/2011, of 30 December, that establishes the basic organisational structure of the ministerial departments.

One. Article 2 is drafted as follows:

"Article 2. Secretariat of State for Justice.

1. The Secretariat of State for Justice is the superior body of the Department, under the high authority of the Ministry, responsible for the coordination and collaboration with the administration of autonomous communities to the service of justice, the planning, support and cooperation with the Administration of Justice and with the Public Prosecution Service for their modernisation, the international legal cooperation and relations with international and EU bodies in the area of responsibility of the Ministry of Justice as well as the direction, promotion and management of ministerial functions regarding religious matters and freedom of conscience and those related to the tracing and recovery of

assets, goods, instruments and proceeds of crime, their preservation, administration and realisation.

Without prejudice to the Ministry's powers, the incumbent of the Secretariat of State is engaged in the participation in the ministry's relations with other governing bodies of the General Council of the Judiciary, of the Public Prosecution Service, of those concerned with justice from the autonomous communities and the General Councils of professional associations of lawyers and solicitors, as well as the relations of the Ministry with the ombudsman.

2. The following governing bodies come under the Secretariat of State for Justice:

a) The Secretariat General of the Administration of Justice, under which the Directorate General for Relations with the Administration of Justice operates.

b) The Office for Asset Recovery and Management.

c) The Directorate General for International Legal Cooperation and Interfaith Relations.

The Centre for Legal Studies and the General Mutual Insurance Scheme for the Judiciary are attached to the Ministry of Justice through the Secretariat of State for Justice, with the legal status, structure and functions laid down in its specific regulation.

3. As immediate assistance and support body to the Secretary of State, there is a Cabinet, at the organic level of Subdirector general, with the structure laid down in Article 14(3) of the Royal Decree 1887/2011, approving the basic organisational structure of ministerial departments."

Two. A new Article 5 bis is included with the following wording:

"Article 5 bis. Office for Assets Recovery and Management.

1. The Office for Assets Recovery and Management, with the status of Directorate General, is responsible for the following functions:

a) Identification and search of assets, items, instruments and proceeds of crime, inside or outside the national territory and their placement at the court's disposal.

b) Maintenance and managements of assets, items, instruments and proceeds of crime, irrespective of their nature, as well as the benefits, products and yields of such assets. It shall be also in charge of the destruction of assets when decreed by the competent authority under the legal terms established.

c) Preparing reports on the state and circumstances of assets managed that shall be submitted to the relevant authority, ex officio or at the request of that authority, in order to avoid uneconomical actions and to guarantee the maximum economic benefit, in full compliance with law and due process.

d) The realisation of assets, including the sales activity of goods, items, instruments and gains delivered to the Office for Asset Recovery and Management, when decreed by the court, after the confiscation of such assets.

e) Function related to the necessary support for the development of the activity of the Commission for awarding goods that are proceeds of crime.

f) The necessary administrative processing to get the money from seizure or the prior realisation of assets referred to in the Code of Criminal Procedure into the deposit and consignations account.

g) Other functions relating to the object of the Office and that may be assigned under other regulations.

2. The following bodies report to the Office for Asset Recovery and Management:

a) The Subdirector General for tracing and recovery of assets, which is responsible for the functions mentioned in the letter a) of the above paragraph.

b) The Subdirector General for preservation, administration and realisation of assets, that is responsible for the functions mentioned in letters b), c), d), e), f) and g) of the above paragraph.

3. The incumbent of the Office for Asset Recovery and Management is responsible for planning the activity of the Office and developing an annual action plan, conducting the institutional relations of the Office at national and international level and the relations with the Courts, tribunals and Public Prosecutor's Offices, signing agreements with third institutions in order to carry out functions and activities of its own, convening the Commission for awarding the proceeds of crime, issuing instructions for improving the coordination of the Office with the Judiciary, the Prosecutor General's Office and the Ministries concerned, as well as with third public or private institutions, coordinating the office's task with other public departments, bodies and institutions within the scope of their competencies, when appropriate and submit the Ministry of Justice the annual report and annual accounts for approval."

Fourth final provision. Attribution of powers.

The present Royal Decree is issued in accordance with Article 149.1.5 and 6 of the Spanish Constitution which gives the State exclusive jurisdiction for the administration of justice and criminal and procedural law.

The Chapter IV and the first final provision are also issued pursuant to Article 149.1.14 of the Spanish Constitution which gives the State exclusive competence over public finances.

Fifth final provision. Empowerment for development.

The Minister of Justice is hereto empowered to adopt the rules necessary for the development and enforcement of this Royal Decree.

Sixth final provision. List of posts and budgetary amendments.

The Ministry of Finance and Public Administrations shall carry out the budgetary amendments for compliance with this Royal Decree and shall approve the list of posts of the Office for Asset Recovery and Management, upon the proposal of the Ministry of Justice.

Seventh final provision. Entry into force.

This Royal Decree shall entry into force on the day of its publication in the Official State Gazette.

In Oviedo, on the 23 of October of 2015.

Philippe the King

The Minister of Finance and Public Administrations,

CRISTOBAL MONTORO ROMERO