Paragraph 4

COUNTRY REPORT: GERMANY

Martin Heger, Anna Sakellaraki

I. Asset Recovery Offices (AROs): Structure and Activities

1. Which agencies serve as the Asset Recovery Offices (AROs) in your country? Under which government department or agency do they operate?

Germany has established two national asset recovery offices, the Federal Office of Justice (*Bundesamt für Justiz – BfJ*) as the judicial ARO and the Federal Criminal Police Office (*Bundeskriminalamt – BKA*) as the police ARO[1]. The judicial ARO operates under the Ministry of Justice and the police ARO operates under the Ministry of the Interior.

Although the German national AROs were designated in the German government's 2009 Communication to the Council and the Commission in accordance with the obligation under Art. 1 of Council Decision 2007/845/JHA, the legal implementation and codification of the designation of the BKA as the national police ARO appears to have taken place 12 years later by way of an amendment to Section 3 para. 2a of the BKAG through the new Transparency Register and Financial Information Act of 2021[2].

According to information from the police ARO, there is no strict division of competences between both national AROs. In principle each ARO could answer

1. This is stated in Germany's cover note No. 12080/09 to the Council and the Commission of 15 July 2009, following the obligation of each Member State to notify the relevant national AROs pursuant to Art. 1(3) of Council Decision 2007/845/JHA of 6 December 2007 on ARO cooperation in the field of tracing and identification of proceeds from or other property related to crime.

2. Entwurf eines Gesetzes zur europaweiten Vernetzung der Transparenzregister und zur Umsetzung der Richtlinie 2019/1153 des Europäischen Parlaments und des Rates vom 20. Juni 2019 über die Verwendung von Finanzinformationen zur Bekämpfung von Geldwäsche, Terrorismusfinanzierung und sonstiger schwerer Straftaten (Transparenzregister- und Finanzinformationsgesetz), BT-Drs. 19/28164, S. 60-61.

all inquiries, but depending on the question, there may be a lack of access or, in some cases, lack of specific expertise.

According to our research the German ARO thus has a dual structure: on the one hand, the BfJ has been designated as the national judicial ARO, which primarily has an advisory and training function and serves as a central office for national and international requests; on the other hand, the BKA's SO 35 is the police, operational part of the ARO with responsibility for practical cooperation between law enforcement authorities[3].

The relevant legal bases can be found:

1) for the judicial ARO in Section 2 para. 2 No. 3c) BfJG (*Gesetz über die Errichtung des Bundesamts für Justiz (BfJG)* – Act on the Establishment of the Federal Office of Justice (BfJG)) stating that «the Federal Office supports the Federal Ministry of Justice in (…) European and international legal cooperation, in particular (…) in the context of its tasks as a national contact point in the area of international legal assistance in criminal matters, in particular as one of the national contact points of the European Judicial Network»[4]; and
2) for the police ARO in Section 3 para. 2a BKAG (*Gesetz über das Bundeskriminalamt und die Zusammenarbeit des Bundes und der Länder in kriminalpolizeilichen Angelegenheiten (Bundeskriminalamtgesetz - BKAG)* – Act on the Federal Criminal Police Office and Cooperation between the Federal Government and the Federal States in Criminal Police Matters (Federal Criminal Police Office Act - BKAG)) stating that «The Federal Criminal Police Office is the Asset Recovery Office pursuant to Article 1 of Council Decision 2007/845/JHA of 6 December 2007 on cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from crime and other property related to crime (OJ L 332, 18.12.2007, p. 103). The Federal Criminal Police Office also performs its tasks as a designated authority in accordance with Article 3(1) and (2) of Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of

3. BT-Drs. 19/28164, S. 61.

4. «Das Bundesamt unterstützt das Bundesministerium der Justiz bei der (…) europäischen und internationalen rechtlichen Zusammenarbeit, insbesondere (…) im Rahmen der Aufgaben als nationale Kontaktstelle im Bereich der internationalen Rechtshilfe in Strafsachen, insbesondere als eine der nationalen Kontaktstellen des Europäischen Justiziellen Netzes».

certain criminal offenses and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122)», namely the Directive which improves the access of law enforcement authorities to financial information[5].

2. **Are there any instances in your country where the Reg. (EU) 2018/1805 (hereinafter, the REG) was applied with the involvement of the ARO? Please provide examples and data if available.**

In Germany, the public prosecutor's offices are primarily responsible for the application of Regulation (EU) 2018/1805 (as issuing or executing authorities)[6]. National AROs do not have the power to directly issue or execute such freezing and confiscation orders, but only to assist the prosecution. From the answers to the questionary, it appears that if the national AROs receive requests on the basis of Regulation (EU) 2018/1805, they forward them to the competent regional public prosecutor's office.

3. **What are the main activities undertaken by your ARO in applying the REG (e.g., asset tracing, investigative support, international coordination)?**

The national AROs may themselves undertake investigative measures to trace assets, they forward incoming requests to the locally competent public prosecution office, they can provide information to domestic and foreign authorities and due to the special skills and experiences of those officials can facilitate and effectively promote cooperation. In Germany the public prosecutions offices are charged with leading criminal proceedings (Art. 152, 160 StPO) and police and

5. Das Bundeskriminalamt ist Vermögensabschöpfungsstelle nach Artikel 1 des Beschlusses 2007/845/JI des Rates vom 6. Dezember 2007 über die Zusammenarbeit zwischen den Vermögensabschöpfungsstellen der Mitgliedstaaten auf dem Gebiet des Aufspürens und der Ermittlung von Erträgen aus Straftaten oder anderen Vermögensgegenständen im Zusammenhang mit Straftaten (ABl. L 332 vom 18.12.2007, S. 103). Das Bundeskriminalamt nimmt im Rahmen der bestehenden Zuständigkeiten seine Aufgaben auch als benannte Behörde nach Artikel 3 Absatz 1 und 2 der Richtlinie (EU) 2019/1153 des Europäischen Parlaments und des Rates vom 20. Juni 2019 zur Festlegung von Vorschriften zur Erleichterung der Nutzung von Finanz- und sonstigen Informationen für die Verhütung, Aufdeckung, Untersuchung oder Verfolgung bestimmter Straftaten und zur Aufhebung des Beschlusses 2000/642/JI des Rates (ABl. L 186 vom 11.7.2019, S. 122) wahr. For more information about the Directive (EU) 2019/1153 see https://eucrim.eu/news/new-directive-law-enforcement-access-financial-information/.

6. For an overview of the competent authorities see European Judicial Network, Summary of Declarations and Notifications, Competent Authorities, necessary documents and languages accepted according to notifications made by Member States pursuant to Article 24 of the Regulation (EU) 2018/1805, 11 January 2023, p. 10-12.

other investigative authorities provide help (Art. 152 GVG – Courts Constitution Act). These investigators have independent competence (Art. 163 StPO). Some measures however due to their compulsory character and /or their intrusion into the basic rights of individuals affected by those measures such as searches or seizure of documents require a judicial order (Art. 98, 102, 105 StPO). The national AROs also represent Germany to the relevant international meetings where AROs are invited (e.g. Camden Asset Recovery inter-Agency Network (CARIN), the network of asset recovery offices, and the Asset Recovery Focal Point Initiative)[7].

According to the reply of the police ARO tracing of assets, supporting investigations (including also legal support) and international cooperation are the main tasks of the Federal Police ARO in the application of the REG.

According to the reply of the judicial ARO they are a merely national contact point, as there is direct cooperation between the prosecution also at EU level.

4. **What are the biggest challenges your ARO faces in the application of the Regulation, and how are these addressed?**

The main challenge and biggest obstacle in the cooperation with foreign AROs mentioned by the German Police ARO is that the information exchanged is often not usable in court. Such a classification of information as "not usable in court" is often based on a lack of knowledge of which data may only be released on the basis of judicial order/confirmation. In Germany for example data from public registers, such as residence registers, real estate registers, commercial registers and the central traffic information system can be passed on by the police without restriction. On the contrary, requests for specific account transactions requires judicial approval, what means request for judicial assistance in advance.

5. **What tools and databases does the ARO most commonly use when applying the REG, especially for asset tracing (e.g., accessing public records, utilizing professional services or software)?**

The Federal Police Office as ARO uses the following databases:

- Accounts register;
- Resident registration register;
- Central traffic information system/national vehicle register;
- Real estate register (a separate register for each federal state);

7. Federal Ministry of Justice and Consumer Protection, Asset Recovery under German Law, Pointers for Practitioners, 10.04.2014, 5-6.

- Commercial register;
- Commercial database Sayari Graph.

It has direct access to the aforementioned databases. Inquiries to the account register are automatically forwarded via a second federal authority to the register maintained there. With the exception of the commercial database Sayari, the databases are managed nationwide, while the real estate registers are managed centrally in the federal states.

Here we should mention that the EU wanted through Directive (EU) 2019/1153 to give national authorities direct access to bank account information contained in national centralised bank account registries, which all Member States must set up under the 4th and 5th AML Directives[8].

Inquiries to the account register are usually answered within one day. Inquires to the real estate register depending on the federal state can take one to two days and for some federal states exist direct access. The new deadlines provided in Art. 10 of the Directive (EU) 2024/1260 can be met but the German police ARO mentioned the need for appropriate and increased personnel resources in this sense.

According to the reply of the Federal Police ARO, the most useful tools in the practice are the account registers, company registers and real estate registers.

6. **How does your ARO collaborate with AROs from other EU member states in applying the REG? Please provide examples and data if available.**

Cooperation usually takes place directly between prosecution offices. The German police ARO reported successful cooperation with foreign AROs, national judicial AROs and national prosecution services.

7. **How many times has your office contacted the ARO for information or assistance in the past three years? What was the subject of your request?**

Not at all, the BKA is the ARO.

8. **In which areas does the ARO provide the most support to your authority? (e.g., asset tracking, legal support, international cooperation).**

The BKA as ARO provides support in the following areas - in asset tracing - in the field of international cooperation - and legal support.

9. **Which technologies or tools provided by the ARO do you find most useful in your activities/investigations?**

8. https://eucrim.eu/news/new-directive-law-enforcement-access-financial-information/

The most useful are the account databases, company registers and the respective real estate registers.

10. **Could you provide examples of successful cases or challenges encountered in collaborating with the ARO?**

The BKA as ARO cooperates successfully within the EU at police level with foreign AROs as well as with the judicial ARO and the public prosecutor's offices with regard to tracing assets and supporting investigations.

11. **What legal or administrative challenges prevent effective collaboration between your authority and the ARO? Are there regulatory or bureaucratic barriers that limit effective cooperation?**

The biggest obstacle to cooperation with foreign AROs is that the information exchanged is often not usable in court.

12. Do you have any proposals for the harmonization of EU MS legislation on the structure and the activities of AROs?

No.

13. **Could you provide us with potential guidelines regarding the structure and the activities of AROs?**

It is important to have the most comprehensive and, above all, direct access to databases.

14. Do you have any further reform proposals, at a national or international level, concerning the structure and the activities of AROs? No.

15. Do you have any further policy recommendations, at a national or international level, concerning the structure and the activities of AROs? No.

16. In light of the new Directive (EU) 2024/1260 on "asset recovery and confiscation", do you consider the changes proposed for the functioning and composition of AROs to be effective? Please explain your reasoning and any anticipated impacts on your operations.

According to the reply of the judicial ARO on the evaluation of the new Directive, this would improve the time efficiency in this area and strengthen cooperation between AROs by extending and directly regulating their powers and access possibilities.

In the new Directive (EU) 2024/1260, the BKA was granted more powers. This expansion of tasks is likely to result in increased resource requirements.

17. **Does your organization collect data on the gender of individuals affected by asset freezing and confiscation orders? How is this information used to inform the functioning and policies of the ARO?**

No.

II. The Management and the Social Reuse of Frozen and Confiscated Assets

National Report Germany on the management of frozen and confiscated assets abroad & third parties rights

Presentation RECOVER Workshop 11.07.2024

Introduction

The legal provisions governing the management, sale or disposal of seized assets are mainly regulated in Germany by the German Code of Criminal Procedure (*StPO* – **GCCP**) as part of the investigative measures within the framework of the investigative measures of the Public Prosecutor's Office.

Section 111i GCCP – insolvency proceedings

Here we can see what happens to third party claims to the illegally obtained proceeds of crime.

Firstly, if a person is entitled to a sum of money equal to the value of what has been obtained as a result of the offence, and insolvency proceedings have been opened in respect of the debtor's assets, there is no longer a security interest.

Second, if there are several claimants and the value of the assets is insufficient to satisfy their claims, the prosecutor files a request to open insolvency proceedings on the debtor's assets.

Thirdly, if there is a surplus after the final distribution, the state acquires a lien on the debtor's claim to surrender of this surplus up to the amount of the seized assets. The insolvency administrator hands over the amount of the surplus to the public prosecutor's office.

Section 111m GCCP – management of seized assets

The management of assets being seized under Section 111c GCCP or detained under Section 111f GCCP falls within the competence of the public prosecutor's office under Section 111m GCCP. Here we have to remind that in German law there is a difference between seizure and property detention. Seizure (*Beschlagnahme*) pursuant to Section 111b GCCP serves to secure the subsequent confiscation of an object, while property detention (*Vermögensarrest*) pursuant to Section 111e GCCP is intended to secure the subsequent ordering of the value confiscation.

Pursuant to Section 31 (1) no. 4 of the Act on Senior Judicial Officers (*Rechtspflegergesetz* – RPflG) the execution is assigned to the judicial officer (*Rechtspfleger*)[1]. The main target of the management is to preserve the value of the secured assets.

The prosecution may commission its investigators under Section 152 of the Courts Constitution Act (*Gerichtsverfassungsgesetz* – GVG) or the bailiff with the administrationof the assets. In appropriate cases, another person may also be entrusted with the administration. So it seems that the management of seized assets can also be outsourced tothe private sector. This confirms also the explanatory memorandum of the 2017 Law mentioning that private persons could be entrusted with the management of the property particularly when it deals with the management of real estate[2].

In the explanatory memorandum of the 2017 Law is also mentioned that the centralized offices (AMOs) asked by Art. 10 of the 2014 Directive could be located at the general public prosecutor's offices, the specialized public prosecutor's offices or at the state criminal investigation offices.

When it deals with the management or storing of dangerous but also valuable and therefore vulnerable items the type, scope and degree of care required for safekeeping must be checked. There was for example a case of a theft of cash seized from customs office in Emmerich. This raises the problem of not allowing the cash to be converted into bank money, as it is more important to keep it as evidence, for example in the case of drugarrests[3].

In the case of the management of an entire business, the prosecution may appoint a kind of(sector-specific) administrator. This administrator could, for example, continue to manage the essential inventory and make use of the expertise

1. KK-StPO/Spillecke, 9. Aufl. 2023, StPO § 111m Rn. 1.
2. BT-Drs. 18/9525, p. 83.
3. MüKoStPO/Bittmann, 2. Aufl. 2023, StPO § 111m Rn. 12.

of the accused person responsible. If the person concerned requests careful custody at his own expense, the prosecution must decide on this at its own discretion[4].

In addition, the person affected by the management of the assets may, as a legal remedy, apply to the competent district court of Section 162 GCCP for a court decision on measures taken in the course of the administration of the assets. For example, the claims could be that special due diligence measures are required, that the type of custody is challenged, or that the refusal to consent to the sale of securities at risk of forfeiture (possibly by emergency sale) is challenged[5].

In most of the cases the person affected is not aware of the administration measures. Is it entitled to request information about the assets under management? There is no general answer to this question. A right to information about the exact location of objects at risk must be denied. Whether there are security concerns about information about the delegation of administrative tasks will have to be decided on a case-by-case basis. If, on the other hand, there is a special need for care (e.g. medication of confiscated animals),the legitimacy of the question of whether the actual needs are sufficiently taken into account will not be disputed and a right to information must therefore be affirmed[6].

Section 111p GCCP – emergency sale

A provision for the emergency sale already existed before the 2017 Law, under the previous Section 111l GCCP. The novelty is that the new provision under Section 111p GCCP is not anymore that restrictive and the emergency sale can be ordered throughout the whole proceedings and even after the judgement on the confiscation has become final. The main idea behind this rule is that, according to the 2017 Law, after the final judgement, the ownership of the objects/assets is transferred to the state in the first step (Section 75 of the German Criminal Code) and, in the second step, the injured party is compensated from the proceeds of the realization (Section 459h GCCP)[7].

An object which has been seized pursuant to Section 111c GCCP or detained pursuant to Section 111f GCCP may be sold if there is a risk of its spoilage or a considerable loss of value or if its storage, care or preservation would involve

4. MüKoStPO/Bittmann, 2. Aufl. 2023, StPO § 111m Rn. 13.
5. MüKoStPO/Bittmann, 2. Aufl. 2023, StPO § 111m Rn. 14.
6. MüKoStPO/Bittmann, 2. Aufl. 2023, StPO § 111m Rn. 15.
7. KK-StPO/Spillecke, 9. Aufl. 2023, StPO § 111p Rn. 6.

considerable costs or difficulties(emergency sale). The proceeds from the sale shall replace the item sold.

The emergency sale shall be ordered and carried out by the public prosecutor's office (Section 111p (2) (1) GCCP). Exactly like for the management the judicial officer (*Rechtspfleger*) is pursuant to Section 31 (1) No. 2 RPflG responsible for the emergency sale. The police or other investigators of the public prosecutor's office may only order an emergency sale if the object threatens to spoil and the decision of the public prosecutor's office - i.e. the judicial officer - cannot be brought about (Section 111p (2) (2) GCCP).).

In some cases, the costs and difficulties of storing, caring for and maintaining the assets may be questionable. The prosecutor's discretion must be based on the standards of an economically minded owner.

The threshold of the significant loss of value should be reached at an imminent loss ofvalue of 10%. Motor vehicles and electronic equipment should therefore be subject to an early realization. In the case of movable property, the first thing to be considered is thesurrender/restitution under Section 111n of the GCCP. For the maintenance of the value ofreal estate there is already jurisprudence requiring that the operating costs must be paidand the outstanding interest on the loan must be also paid in order to prevent the flat frombeing auctioned.[8] If high storage costs are to be expected, an emergency sale may bejustified in relation to the value of the secured object and the expected duration of theproceedings. The case law indicates that with a 10% storage cost for sets of tyres and anaverage proceedings time of three years, there is no need to order an emergency sale[9]. Another case concerned the emergency sale of the animals, which the court ruled waspermissible given the high cost of housing the animals for a period from October 2013 toJanuary 2014 at 45,618 € and the value of the dogs at 8,150 €, according to an expertopinion obtained by the public prosecutor's office, making the cost of continuing to carefor the animals disproportionate[10].

The right to be heard of the affected from the seizure or attachment parties is guaranteed before the (emergency sale) order is issued (Section 111p (3) (1) GCCP). The persons affected are the accused, the owner and persons who have rights to the property[11]. They shall be notified of the (sale) order and the time and place of the sale insofar as this appears feasible (Section 111p (3) (2) GCCP). They

8. OLG München Beschl. v. 20.8.2002 – 2 Ws 677/02, BeckRS 2002, 31142482, Rn. 4.

9. KK-StPO/Spillecke, 9. Aufl. 2023, StPO § 111p Rn. 5.

10. NJW-RR 2017, 598, Rn. 19 (OLG Schleswig: Auskunftsanspruch über Verbleib beschlagnahmter Tiere).

11. KK-StPO/Spillecke, 9. Aufl. 2023, StPO § 111p Rn. 8.

may also be informed of the possibility of surrender of movable property under Section 111d GCCP. The provisions ofthe Code of Civil Procedure on the disposal of property shall apply mutatis mutandis tothe emergency sale (Articles 814 et seq. Code of Civil Procedure – realization of seized property). The emergency sale can therefore be assigned also to the bailiff or to private companies.

The hearing may be waived if the emergency sale is so urgent that its purpose could not beachieved without a prior hearing. This is what happens in practice when the police carry out urgent emergency sales.

A lot more important is the fact that non compliance with this provision does not affect thevalidity of the emergency sale[12]. There is also previous case law ruling on the previous Section 111l GCCP, that the states acquisition of a fall-back right in the course of asset recovery for criminal offences is not affected by the notification (or not) to the injured parties[13].

As a legal remedy the party affected may submit to the prosecution an application for a court decision against the order and execution of the emergency sale. Either the court or inurgent cases the presiding judge of the district court under Section 162 GCCP may order the suspension of the sale (Section 111p (5) GCCP). The latter (judicial decision) may be contested of an appeal under Section 304 GCCP.

According to information from the german federal police office, the most common cases they deal with are emergency sales of cryptoassets when there is a risk of their losing value, and of cars when there are high accommodation costs.

Case study: Emergency sale of bitcoins from authorities in Saxony

A case-study which reached the media is this of seizure of bitcoins worth two billion euros(50.000 bitcoins) from the local police in Saxony on January 2024. The largest ever seizure of bitcoins in Germany. The money is said to have come from the illegal business with pirated copies on the "movie2k.to" portal.

The seizure of the digital money is the result of a joint investigation into two men by the Dresden Public Prosecutor's Office, the Saxony State Criminal Police Office (LKA) and the Tax Investigation Department of the Leipzig II Tax Office. The 40-year-old German and the 37-year-old Pole are accused of copyright infringement (distributing pirated copies and operating an illegal streaming service) and subsequent money laundering. Theyare alleged to have operated the

12. KK-StPO/Spillecke, 9. Aufl. 2023, StPO § 111p Rn. 8.

13. OLG Celle: Auffangrechtserwerb des Staates – Unterlassen der Mitteilung an den Verletzten (NStZ-RR 2011,343).

German piracy portal "movie2k.to" until the end of May 2013. They are alleged to have invested income from advertising and subscription traps in bitcoins[14][14].

The procedure for dealing with the seized bitcoins has not yet been completed. From the published answer of the competent local authorities dealing with the case is clear that the proceedings are still ongoing and as in the "Movie2K" case an emergency sale can always be considered when seizing virtual currencies as part of the ongoing investigation proceedings. However, this would require a significant loss in value of the seized items. This will generally have to be taken into consideration due to the risk of high losses in value or even total loss in the case of many virtual currencies.

According to the Arkham data[15], the investigators began selling the confiscated bitcoins around three weeks ago. Initially, they started with trial transactions of 0.001 Bitcoin on crypto exchanges such as Coinbase, Bitstamp or Kraken. Coins were also repeatedly transferred back and forth between various BKA wallets. They continued with transactions of hundreds of bitcoins on the relevant exchanges.

About a week ago, Arkham listed the first transactions in the other direction: Coinbase and Co. partially transferred bitcoins back to the BKA wallet. This suggests that there was notenough demand for the Saxon investigators' bitcoins at the time, and the exchanges simplytransferred the surplus coins back. This has been the case more and more frequently inrecent days, especially when the investigators tried to sell 1000 Bitcoin and more at once. To ensure that sales are as market-friendly as possible, the authorities also sell to so-calledmarket makers - traders who primarily supply the market with liquidity and ensure that every seller also finds a buyer. Wallets from companies such as Flow Traders or Cumberland are increasingly appearing on the list of recipients.

All of the above information about this case has come from the press. The latest update is that there are currently just under 18,000 bitcoins in the BKA's wallet, as the investigators have gradually sold the rest over the past few days. Assuming that the authorities sell more than 1,000 bitcoins worth over 60 million € in one day, as they did recently, there arefears that this will have a significant impact on the market[16].

14. https://www.mdr.de/nachrichten/sachsen/dresden/dresden-radebeul/bitcoin-geld-raub-kopie-ermittlung-polizei- 100.html

15. Arkham is a blockchain analysis platform that anonymises blockchain and on-chain data using AI.

16. https://www.wiwo.de/finanzen/boerse/bitcoin-was-ist-dran-am-sachsen-crash/29889070.html

Compensation claims victims, disposal and social reuse

This final chapter contains information on the compensation claims of victims, finaldisposal and social reuse in the German legal system.[17]

Once the confiscation order becomes final, ownership of the confiscated object is transferred to the state either immediately or subject to a condition precedent (Section 75 of the German Criminal Code).

Before the disposal of the confiscated object, it must be first checked whether compensation claims exist in accordance with Section 459h (1) GCCP, which would makethe return or retransfer of the object to the victim necessary.

If this is not the case, it follows the disposal of the object governed by Section 63 et seq.of the Code of Execution of Sentences (*Strafvollstreckungsordnung – StVollstO* – CES).

Before the disposal, which can take place either by public auction under Section 63 (2) (1)CES or by sale by private contract under Section 63 (2) (2) CES, it should be proved if theitem can be used for other purposes under Sections 65-67a, 69 et seq. CES.

In some cases, use for public welfare purposes (so called social reuse) is also envisaged.Some examples of social reuse detected in the CES are the following:

> Under Section 67a CES: «*objects confiscated in proceedings for criminal offences under an intellectual property law (…) which are suitable for use for charitable or humanitarian purposes (…) shall be handed over free of charge to corresponding associations or institutions, provided that this is possible without disproportionate expense*». This refers primarily to the objects of so-called product piracy. Handing over is only permitted after «the condition of the objects caused by the infringement has been remedied», for example by removing the trademark logo. Furthermore, handing over is only possible if the owners of the property rightshave not asserted their civil law claims for destruction.
>
> Under Section 80 (2) (4) CES: it regulates the treatment of measuring instruments, packaging and unpackaged goods that violate packaging regulations. A violation ofthese regulations can only constitute an administrative offence. Under the conditions described in

17. Summary of the information contained in the document "Individual Aspects of the Possible Use of Confiscated Assets" of the scientific service of the german Parliament from 29 December 2021 (WD 7 - 3000 -111/21) [in German].

more detail, «*pre-packaging, bottles used as measuring containers or other containers with usable contents that do not comply with the regulations*» can be «*sold or given away free of charge*» to certain charitable organisations.
But also in the case of the disposal by sale according to Section 64 (4) CES: charitable organisations and persons in need should be given priority when selling everyday items.

After the disposal the proceeds are transferred to the competent justice fund of the federal state (Section 64 (7) CES or Section 459h (2) GCCP for the value confiscation). As there are currently no specific statutory or budgetary possibilities for using confiscated assets, the confiscated assets can therefore be used for all expenditure of the federal states.

Annex – Relevant legislation

Section 111i
Insolvency proceedings

If every person has become entitled, by virtue of the offence, to claim the sum of money equal to the value of that which was obtained and if insolvency proceedings have been openedagainst the debtor's assets, the security interest referred to in section 111h (1) in respect of theobject or the proceeds generated by its realization expires as soon as it forms part of the insolvency estate. The security interest does not expire in respect of objects located in a state in which the opening of the insolvency proceedings is not recognized. Sentences 1 and 2 apply accordingly to a lien in respect of the security deposited pursuant to section 111g (1).

If there are several entitled persons within the meaning of subsection (1) sentence 1 and either the value of the object secured by means of enforcing the asset seizure or the proceeds generated by its realization are not sufficient to satisfy their claims, then the public prosecution office files a request to open insolvency proceedings against the debtor's assets.The public prosecution office does not file such a request to open insolvency proceedings if there is justified reason to doubt that the insolvency proceedings will be opened on the basisof such request.

If a surplus remains following the final distribution, the state acquires a lien up to the amount of the attached assets over the debtor's claim to surrender of such surplus. The insolvency administrator surrenders the amount of the surplus to the public prosecution office.

Section 111m
Management of seized or attached items

The public prosecution office is responsible for managing items which have been seized pursuant to section 111c or attached by way of asset seizure pursuant to section 111f. It maydelegate such administrative tasks to its investigators (section 152 of the Courts ConstitutionAct) or to a court bailiff. In appropriate cases, these tasks may also be delegated to another person.

The person concerned may apply for a decision from the court competent pursuant tosection 162 against measures taken in the course of performing the tasks referred to in subsection (1).

Section 111n
Surrender of movable property

If movable property which has been seized or otherwise secured pursuant to section 94 orwhich has been seized pursuant to section 111c (1) is no longer required for the purposes of the criminal proceedings, it is surrendered to the last person having possession of it.

In derogation from subsection (1), the object is surrendered to the person who has beendirectly deprived of it by the offence if that person is known.

If the claim of a third party stands in the way of the object being surrendered in accordance with subsection (1) or (2), the property is surrendered to the third party if thatthird party is known.

Such surrender is effected only if the conditions therefor are manifestly met.

Section 111o
Procedure for surrender

In the preparatory proceedings and after final conclusion of the proceedings, the decisionin respect of the surrender of movable objects lies with the public prosecution office, in all other cases with the court seized of the matter.

The persons concerned may apply to the court competent pursuant to section 162 for adecision against a direction issued by the public prosecution office.

Section 111p Emergency sale

An object which has been seized pursuant to section 111c or attached pursuant to section 111f may be sold if there is a danger of its deterioration or of its suffering a significant loss invalue, or if its storage, maintenance or upkeep gives rise to significant costs or difficulties (emergency sale). The proceeds of sale take the place of the object sold.

The emergency sale is ordered by the public prosecution office. Its investigators (section152 of the Courts Constitution Act) have this authority if there is a danger of the object deteriorating before a decision can be obtained from the public prosecution office.

The persons affected by the seizure or attachment are, as a rule, to be heard before theorder is made. The order and the time and place of the sale are to be made known to theminsofar as this appears feasible.

The public prosecution office is responsible for conducting the emergency sale. The publicprosecution office may delegate this task to its investigators (section 152 of the Courts Constitution Act). In all other respects, the provisions of the Code of Civil Procedure concerning the realization of objects apply analogously to the emergency sale.

The person concerned may apply to the court competent pursuant to section 162 for adecision against the emergency sale and its enforcement. The court, in exigent cases the presiding judge, may order the suspension of the sale.