

English version of report 2014:10



Follow the money

An Anthology on Asset-oriented Law Enforcement

brå

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**The Swedish National Council for Crime Prevention (Brå) –
centre for knowledge about crime and crime prevention measures**

The Swedish National Council for Crime Prevention (Brå)
works to reduce crime and improve levels of safety in society
by producing data and disseminating knowledge on crime
and crime prevention work.

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Preface

Today, it is more or less obvious to most practitioners that combating economic and serious organized crime is more effective if the traditional law enforcement is supplemented by an asset-oriented approach: “Follow the money”.

Why, then, is there a need for an anthology in the form of a handbook in this area? One reason is that there are indicators that public authorities have not succeeded particularly well to date. Expectations have been high and the outcome has been questioned. In this anthology, the authors provide their view on the asset-oriented approach and can contribute to disseminating knowledge about it in a single volume.

The idea for the project was generated by a number of cooperating authorities, who also followed the project through a reference group. The group comprised representatives of the Swedish National Council for Crime Prevention, the Swedish Economic Crime Authority, the Swedish Social Insurance Agency, the Swedish Police, the Swedish Enforcement Authority, the Swedish Tax Agency, Swedish Customs, and Lund University. The authors of the anthology, who are identified under the following titles, are also professionally active at these authorities. The authors are personally responsible for their contributions.

The editor of the anthology is Lecturer Helen Örnemark Hansen at Lund University, and she was assisted by Jennie Nordenström, Johan Ramklint, and Maja Rudling.

The scholarly reviewers were Lennart Johansson, president of the Courts of Sweden Judicial Training Academy, and Professor Emeritus Per Ole Träskman of Lund University.

The project was financed by the National Bureau of Investigation, the Swedish Economic Crime Authority, the Swedish Enforcement Authority, Swedish Customs, the Swedish Social Insurance Agency, Lund University, and the Swedish National Council for Crime Prevention.

The English edition is an abridged version which has been revised for an international audience.

Stockholm, August 2017

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Chapter 1

What is asset-oriented law enforcement?

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1.1 Current definition

The meaning of the concept of 'proceeds of crime' is less than clear-cut. In judicial terms, the implication of the term is limited to seizure, confiscation, and extended confiscation. However, it is not necessarily the case that all assets that are seized or confiscated should be considered to be proceeds of crime (this includes, for instance, instrumentalities of crime). One possible method for effecting criminal asset recovery is the use of corporate fines. It is also possible to use damages for obstructing financial gains from criminal activities, in cases where damages incurred are equivalent to proceeds of crime. Impoundment does not necessarily have to do with crime, but is a preventive measure aimed at guaranteeing tax revenues (similar to sequestration). The same goes for attachment, used within the framework of the asset-oriented law enforcement as a tool to "regulate" the debts of specific individuals identified as profiting from crime.

The term *asset-oriented law enforcement* is conceptually broader than that of *recovery of proceeds of crime* (meaning to search, seize, and confiscate crime proceeds). Rather than referring to recovery of *proceeds of crime* and *criminal assets*, the alternative terminology of *asset-oriented law enforcement* is preferred. By forgoing concepts stressing the criminal asset side of things *exclusively* – in favour of the broader terminology of the asset-oriented law enforcement – the efforts of non-law enforcement agencies also gets accommodated.

The strategy of the asset-oriented law enforcement basically is to eliminate the opportunities of individuals for criminal gains. If this strategy is to be successful, the relevant authorities need to be equipped with appropriate tools.

1.2 Retrospective – a new approach/take/perspective to law-enforcement

Today, quantities are not only talked about in terms of the size of drug shipments, number of weapons, and length of prison sentences, but amounts of money as well. "How much?" – such is the question asked after authorities have successfully captured money and other assets belonging to various criminals (Korsell

2012). (Or, perhaps with more exactitude, “successfully recaptured”). The act of confiscating cash, motorbikes, luxury watches, gold chains, and other property in lieu of proceeds of crime takes on an almost symbolic significance, as offenders are forced to return that which they once obtained through theft, robbery, and fraud.

The Swedish Enforcement Authority and the Swedish Tax Agency have indeed always seen things from the financial angle; “follow the money” was never anything new for these government agencies. Turning to the judicial system, the Swedish Economic Crime Authority – traditionally focusing on taxes and insolvency – significantly enough spearheaded the asset-oriented law enforcement by establishing a dedicated asset recovery office. But the Police and the Swedish Prosecution Agency were not far behind in stressing the importance of money; if the driving force of economic and organized crime is money – and that which can be bought with it – then law enforcement ought to have the same focus. If not, agencies are failing to ‘hit it where it hurts’.

As a consequence increasingly economic perspectives on crime, agencies specializing in the area – such as the Swedish Social Insurance Agency, the Swedish Enforcement Authority, and the Swedish Tax Agency – are gradually taking on more important roles in an arena up until recently dominated by police and prosecutors (Korsell 2012). Instead of trying to get at proceeds of crimes such as drug dealing through confiscation, we are now seeing the tax weapon and its constituent parts (assessment, additional assessment, tax surcharge, and impoundment) being used to get at the profits from activities such as undeclared work (Brå 2007:27, Brå 2011:7).

While this is going on, the Swedish Social Insurance Agency is constantly reviewing outgoing subsidies and economic support, reclaiming that which has been paid out incorrectly. As we know, flows of income from criminal activities are often precarious and irregular – which is why social welfare systems have a function in the criminal economy as well (Brå 2007:4, 2011:7, 2011:12, compare chapter 3). On its part, Swedish Enforcement Authority is coming to the fore, ready to intervene with restraint as assets are continuously uncovered, freeing them up for payment of previously mentioned taxes, among other things.

Social insurance agency, enforcement authority, and tax agency are today all considered natural partners in the fight of the police and associated authorities against organized crime.

The scenery for law enforcement is now arguably changing before our eyes. While this has not been reflected in the establishment of new agencies (as in some other countries), already

existing ones have seen organizational reforms – and, most importantly, improved inter-agency cooperation, together with increasingly deliberate applications of tools for asset-recovery available. The question then is, when did this landscape start to change, and why?

It was in a Brå-published report (2008:10) that the concept of asset-oriented law enforcement was first introduced in the Swedish context. “Follow the money” was now an important component of the Government’s strategy against organized crime. Efforts then went into overdrive as the ministerial memorandum

“Mobilization against Serious Organized Crime” (Ds 2008:38) was published. Nevertheless, a number of authorities had concerned themselves with “tracing and recovery of proceeds of crime” (Skr. 2001/02:40). In the 1990s, there had also been a review of the rules governing confiscation – more or less the precondition for an efficient implementation of asset-oriented law enforcement (SOU 1999:147).

1.3 Foreign influences

A number of international circumstances have influenced the development of asset-oriented law enforcement strategies in Sweden. When the “War on Drugs” was launched in the US in the 1980s, confiscation and seizure of proceeds of crime came into focus (Vettotori 2006). Money-laundering was accepted as the cornerstone for organized crime, not least in regards to the illegal drugs trade. With the adoption of the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the importance of counter-narcotics was internationally established; the groundwork for anti-money laundering efforts had been laid. In 1993, the first Swedish legislation subsequently arrived.

The Act on Measures against Money Laundering came with increased demands on Swedish business. Banks, stockbrokers, and other institutions and businesses involved in large transactions found themselves in the frontlines of the asset-oriented strategy against crime, obliged to report any suspicious transactions, with strict enforcement of know-your-customer policies. Country after country saw the development of Financial Intelligence Units, with Sweden setting up of the Finance Intelligence Unit, FIPO, under the aegis of the National Bureau of Investigation (Brå 2011:4).

Internationally, more or less no expense has been spared in the fight against money-laundering (van Duyne 2002). According to Levi (2013) this could in part be explained by the fact that wildly different political interests – from left to right – all have united in

singling out money-laundering as the key to solving their respective version of “the crime problem”. In contrast to this, however, there has been less enthusiasm for assessing the results of all their anti-money laundering efforts, nor for attempting to gain any deeper understanding of the actual workings of the black market and criminal economy, an issue addressed in Skinnari’s contribution to this anthology (compare Brå 2008:10, Brå 2007:4, and Brå 2011:7).

As evident, there is nothing novel about asset-oriented efforts. Authorities and agencies have employed confiscation, sequestration, attachment, and other tools many years previously. The innovative aspect is the emphasis it has received in contemporary criminal policy, most recently expressed in the introduction of the new tool of extended confiscation – one of the consequences of the Swedish implementation of article 3 of the so-called confiscation decision (Council Framework Decision 2005/212/RIF of 24 february 2005). As of 2015, a number of different agencies are collaborating in the development of strategy and action plans for asset-oriented law enforcement.

1.4 Domestic role models

Aside from numerous foreign examples, a number of domestic circumstances have also been important for the direction and development of asset-oriented strategies in Sweden. In the 1990s, inter-agency cooperation featured as an important component in the counter-effort against economic crime (Skr. 1994/95:217). With County Governors at the helm, key persons were convened in order to outline the economic crime strategy; participants were recruited from not only judicial agencies, but also Swedish Customs, the Swedish Tax Agency, and, to some extent, the Swedish Social Insurance Agency.

Even though these inter-agency task groups are no longer statutory required – most are now phased out – the collaborative effort has continued in new forms. This can be exemplified by the Regional Intelligence Centres (RUC) that have been set up in eight locations across the country to combat organized crime (Brå 2008:10, Brå 2011:20). Central joint anti-OC structures have also been established, in the form of the Operational Council and the Cooperation Council. The underlying message of all these collaborative structures is that law enforcement must not be an issue for police and prosecutors only; other agencies have their role to play too – and all the more so when incomes, subsidies, and assets become increasingly important. By having “taught themselves” how to cooperate and discover respective competen-

cies, Swedish authorities are now seeing a radical new landscape for law enforcement unfolding in front of them.

One explanation for this development might be found in on-going structural changes in the criminal market. Lately there has been a shift in the focus of criminal policy, from economic to organized crime (Korsell 2006, Korsell 2012). Still, this has also been accompanied by a parallel development where these crime areas are increasingly subsuming each other – both in practical terms and in relation to inter-agency cooperation. This might be exemplified by the fact that “companies as instrumentalities of crimes” is considered a national priority in the fight against organized crime. As a consequence, law enforcement is now explicitly tasked with targeting businesses exploited for criminal purposes. This, to all intents and purposes, is the same as saying matters of economy are now coming to the fore (compare chapter 3).

We may therefore conclude that asset-oriented law enforcement strategies boosted by two parallel developments, the first being a more general one, connected to the legacy of the ‘War on Drugs’ and other international efforts – especially the drive to counter money-laundering, and one more related to domestic affairs, with the formulation of inter-agency-oriented law enforcement strategy, which, if not exclusively focusing on economic crime, at least includes a focus on types of criminality where businesses are used.

1.5 How big are the proceeds of crime?

According to Swedish Tax Agency calculations, the so-called ‘tax gap’ – which obviously includes more than just revenue shortfall related to criminality – currently stands at a sum significantly exceeding more than SEK 100 billion (Skatteverket 2008). The Swedish office for statistics, SCB, puts the yearly revenue of the smuggling, prostitution, and other criminal markets in Sweden at several billions SEK (SCB 2005). On the global scale, the UN Office for Drugs and Crime (UNODC) has calculated the total revenue for organized crime world-wide at a 870 billion USD yearly – a figure corresponding to 1.5 per cent of the global GDP.

When facing such extraordinary sums, there is of course a great deal of expectation on the asset-oriented outcome. We would be saving quite a pretty penny from a return of only a meager few per cent, as representatives of various authorities are quick to highlight.

Still, when the books have to be balanced, calculations hinting at size of the earnings for organized crime will be a double-edged sword for asset-oriented law enforcement (Levi 2013). On the one hand, extraordinary figures help prove the importance of taking organized crime seriously, consequently leading to well-funded agencies, career advancement for officials, and vigorous politicians. On the other, should it turn out that the efforts failed to meet the high expectations, there is also the risk that the wind goes out of the asset-oriented sails.

At first glance, the *raison d'être* for asset-oriented policing would seem rather obvious: we must follow the money and seize as much of it as possible. Yet this corresponds to a simplistic, almost vulgar view of the purpose. As suggested earlier, the proponents of asset-oriented strategies have themselves to blame for hastily turning to the Pandora's box of counting exercises. Nevertheless it must be reiterated that money is a relative thing – what some consider negligible might be considerable amount for others. The reality is that financial margins are slim for a great deal of those involved in the world of organized crime; there are few cocaine kingpins living in the real Sweden. In view of this, the framework of asset-oriented policing means that even seizing assets of lesser value is worthwhile in the end.

1.6 The need for an anthology

As we are now entering partly unknown territory, examining this new landscape for law enforcement more closely is warranted. There are a number of questions associated with this new approach. At the most basic level, this means asking what is to be included under the concept's umbrella, as well as thinking about the contents of Government agency toolboxes. What role each authority is to have is another important question, as well as in what order the various steps are to be taken; in intelligence collection, in decision-making, in sentencing, in enforcing court orders. It is necessary to summarize the experiences of the authorities involved, and to take stock in how far they have come; Brå report 2008:10 might serve as a point of reference here.

The motivation behind publishing this anthology is to present a handbook-styled report, in which representatives from various authorities share their perspective on the present effort. Our hope is that the handbook will be useful for internal education as well as a source of inspiration.

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Chapter 2

Measures in the chain of control and the justice system

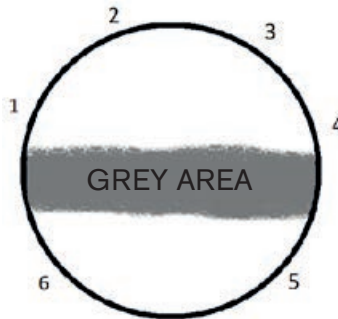
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2.1 The goal of the different tools

2.1.1 Introduction

Just as asset-oriented measures (described in section 2.2 below) do not share the same objectives, they rest on different theoretical foundations.¹ Given the lack of comprehensive regulation in the inter-agency effort, this is of course understandable. A similar situation exists when it comes to the different tools at the disposal of the authorities working within the framework of asset-oriented law enforcement. Taking an examination of these tools as a starting point, we will then proceed to formulating a general description, that is, theory.

1. General deterrence
2. Individual deterrence
3. Block illegitimate gain
4. Reparative effect
5. Secured receivables
6. Create group solidarity



Following this, section 2.2.6 will compare the goal of the different tools with the aims and objectives of asset-oriented law enforcement.

2.1.2 The goal of the different tools

As previously mentioned, the different agencies have several types of tools at their disposal for asset-oriented objectives. As confiscation seemingly has become something of a “golden egg”, the summary will concentrate on said tool (compare Träskman 2013).

¹ Research assistants Johan Ramklint and Maja Rudling have contributed to this chapter.

Sometimes confiscation is justified as an efficient method for stripping offenders of his or her criminal gains. In other situations, confiscating it is primarily characterized as a means to prevent further crime. It should be kept in mind that confiscation is a ‘special legal effect of crime’, with weaker requirements for proportionality compared to penalties. The issue of whether an increase in the use of confiscation is in agreement with generally held principles of Swedish criminal policy is a question to be addressed in chapter 10.

In the following description of the tools and the intentions behind them, we will rely heavily on the preparatory work on proposed laws – texts created in connection to the legislative process (and also used in the application of law). It should be noted that the older preparatory texts are quite resistant to interpretation, and the intentions of a tool is not always wholly transparent (see also Lindberg 2009).

Confiscation – Chapter 36, section 1 and section 1b of the Swedish Penal Code (Brb)

Already in medieval times there were stipulations governing confiscation of wealth in Sweden, existing in Swedish medieval (provincial) law as additional penalties sometimes issued for certain serious crimes. Back then, confiscation tended to be repressive in nature, explicitly asset-oriented, and could bereave the sentenced of either parts or the whole of their assets. Fast-forwarding a couple of centuries, Swedish general criminal law of the early 1900s contained a number of provisions for confiscation pertinent to the asset-oriented strategy of law enforcement (SOU 1944:69). Rather than primarily maturing within the framework of general criminal law, however, these provisions developed out of the supplemental provisions outside the Swedish Penal Code instead (SOU 1960:28).

For a long time the provisions governing confiscation existed in the shadows of criminal law proper. With police and prosecutors mainly concerning themselves with the issue of culpability, confiscation was often relegated to the back seat. Note also that the higher standards of evidence associated with provisions for confiscation, meaning that police and prosecutors had to be able to prove the relationship between specific assets and offences.

With the arrival of the 21st century the interest for confiscation provisions was renewed, and to all intents and purposes these now constitute the core of asset-oriented law enforcement. Confiscation is now no longer restricted to being used against individual offenders only; relatives and legal entities aware of illegal activities may be targeted as well (prop. 2007/08:68, p. 68f). Moreover, following the introduction of extended confisca-

tion into Swedish law there have been complementary additions to the provisions governing confiscation as well, extending the range of this tool. The main distinction between confiscation and extended confiscation is that, when investigating serious crime, police and prosecutors are not required to prove the relationship between assets and specific crimes; it is sufficient if it is shown that assets are more probable to be proceeds of crime than not.

The motivations underlying the Swedish confiscation provisions have shifted in the years since their introduction. When studying legal texts, three main motivations for confiscation stand out. Firstly we have confiscation as a repressive measure. This has an additional pedagogic-symbolic effect: the economic sanctions effect types of property associated to the committed offence in the mind of the general public. Secondly, there is confiscation as a method for neutralizing goods that might pose a danger. As this primarily involves dangerous goods, it is not of immediate concern to asset-oriented law enforcement. Thirdly, there is confiscation of proceeds deemed unduly gained from criminal activities. Here, the motivation is to obstruct the possibility for economic gain, thereby eliminating the ability to profit from crime (Thornstedt 1960).

However, it often seems that confiscation gets to serve most than just one purpose. For instance, it might be levied in order to neutralize danger in combination with repressive punishment. Even more common is the combination where confiscation of illegitimate gain simultaneously becomes a sort of punishment. This ambiguity in terms of the intended purpose of confiscation is clear to be seen in the penal code preparatory works: “Placing these provisions in chapter 2, which relates to penalties according to the penal code, is deemed to be in accordance with the current organization of the penal code. However, this must not lead to the conclusion that confiscation would always have the same intent or adhere to the same rules as legal penalties proper” (SOU 1944:69, p 67).

Additional support for the argument that all tools should be considered as belonging to the same package comes from the Minister for Justice stressing that authorities are to use corporate fines (to be addressed further in chapter 10). Furthermore, admonitions in the preparatory works for the new confiscation provisions point out that unless pre-trial supervision measures are improved and rendered more efficient, the new law might not result in the intended effects. Included in this reference are attachment, custody, seizure, search of premises, and search of person (prop. 2007/08:68, p 48f). This is interesting to note, as it is indicative of the Government view on the interrelationship of these tools. Thus, we find support for the argument that these

tools should be interpreted as belonging together. Yet this issue is never discussed in any of the preparatory works.

The efficiency of confiscation as a legal tool is guaranteed by a number of coercive measures suitable for different types of confiscation. Attachment, for instance, is used for effecting value confiscation, while seizure is useful for confiscation of goods. Goods may be taken into custody pending an attachment decision. In conclusion, the classical purposes of penal theory – individual and general deterrence respectively – emerges from this discussion on confiscation, as well as the purpose of preventing the offender from engaging undue enrichment. These purposes are to be found as points 1, 2, and 3 in figure 2.2.6.

It should be noted that justice or the perspective of the crime victim is absent from the Government texts, which primarily concern themselves with efficiency and crime prevention, that is, general deterrence.

Attachment – Chapter 26, section 1, the Swedish Code of Judicial Procedure (Rb)

In order to “guarantee the claims for fines from the side of the state, or claims for damages from that of the plaintiff” and similar claims, the court may issue attachment orders or restraints on the alienation of assets belonging to the suspect (prop. 1942:5, p. 417). Attachment takes on a role of special importance when it might be suspected that defendants are planning to rid themselves of properties or transport money out of the country. Although issuing attachment orders is effective in such instances, other tools may be useful too, such as banning travel.

It would seemingly seem like there is little to be said about attachment in penal theory. Attachment is considered to be a helping tool in defending the interests of the state and possible crime victims. It could be viewed as having been designed as a working tool for the authorities, but nevertheless, there is no discussion as to the underlying purpose in terms of penal theory (point 6 in the figure in section 2.2.6).

Custody – Chapter 26, Section 3, the Swedish Code of Judicial Procedure (Rb)

Custody is introduced as a preliminary measure for attachment of property. It is used to secure property while awaiting future measures. The tool of custody can be used as a part of asset-oriented law enforcement as long as there is economic value in the object in question is question, and not just a criminal or similar tool without value on the open market (point 6 in the section 2.2.6 figure).

Seizure – Chapters 27 and 14a, the Swedish Code of Judicial Procedure (Rb)

If the provisions governing seizure are to be applicable, it must reasonably be presumed that the object in question is important to a criminal investigation, or taken from a person through a criminal act, or subject to criminal confiscation (Rb Chapter 27, Section 1).

The person who is legally authorized apprehends or arrests a suspect, or who acts to effectuate detainment, search of premises, search of person or body examination, is allowed to seize such objects if discovered during these actions. Objects otherwise found may only be seized by orders of investigation leader or prosecutor. However, if delay entails risks, a police officer may seize such objects without an order concerning such measures, except certain written dispatches. In the legislative proposal on extended confiscation it is moreover emphasized that the possibility to make use of seizure and search of person and premises ought to be applicable in investigations proceeding extended confiscation (prop. 2007:08:68, p. 80f).

When crime-fighting authorities make use of seizure, this is mostly done using it as a investigative tool. While it is true that the tool be used to pave the road for extended confiscation, asset-oriented work is not the primary purpose of seizure. Seizure is used in order to secure property pertinent for the criminal investigation, and thus, the tool is not of an all too great an importance for asset-oriented law enforcement (point 5 in the figure in section 2.2.6).

Damages – Chapters 2 and 3, Tort Liability Act (SkadestL)

According to chapter 3 (Skadeståndslagen), anyone who seriously violates another person through a criminal act comprising an assault on the person, liberty, peace, or honor, shall provide compensation equivalent to the damage incurred by said violation.

Here, the purpose of compensation is restorative above all else. When incurred injury corresponds to proceeds of crime, damages qualifies as a useful tool within the framework of asset-oriented law enforcement.

Corporate fine – Chapter 36, Section 3, Swedish Penal Code (BrB)

The introduction of the system of corporate fines was motivated by the inadequacy of the then-existing system of sanctions to efficiently handle crimes committed within the sphere of business activity. In addition to this, there were problems in terms of proportionality in relation to sentences handed out and the possibly considerable sums at stake for businesses (prop. 2005/06:59, p. 14). In the preparatory works, the Government also argued that

there is often a link between offences committed inside a firm and its structure and organization. In terms of fairness, it thus seemed unsatisfactory that the individual rather than the corporation was the recipient of the punishment. With the introduction of corporate fines, the Government intended to transfer the responsibility for such lesser offences inside business to the company in question (prop. 2005:06:59, p. 19). Moreover, aside from the Corporate Fines Inquiry proposing the introduction of the corporate fine sanction, it wanted to see legal entities become criminally liable – an addition the Government did not consider necessary (prop. 2005/06:59, p. 19).

As such, the purpose of corporate fines primarily concerns general deterrence. The Government also used the legislative proposal to note the fact that company fines were not used to the extent they should.

Attachment – Chapter 46, Tax Procedures Act (SFL)

An attachment order could be said to have its origin in a claim. There is a citizen who aside from being liable for taxes, duty, or fees also is indebted to the state, and the state wants to avoid not being able to fulfill its claim. Due to the special nature of this procedure, the claims of the state will always be given higher priority than those of additional creditors. Considered from this angle, you could also argue for a purpose of strengthening social solidarity, where the state is assigned more weight compared to other creditors. Additional arguments also make the case for general deterrence, as the state's purpose is to prevent citizens from giving in to the temptation of tax evasion (point 6 in the figure 2.2.6).

In summary, several of these tools suggest to us that the legislator had no specific purpose in mind, so that the interpretation of when they could or should be used is left to the investigative law enforcement authorities. The one exception is the provisions governing extended confiscation, where there is a more explicit expression of the purpose.

2.2 The objectives of asset-oriented law enforcement

2.2.1 Introduction

While there is nothing written into any of the preparatory about the purpose of asset-oriented law enforcement, this has evolved through the work of the relevant authorities. In this section we will examine this development more closely.

2.2.2 Eliminate illegitimate gain and general public prevention

As mentioned in section 2.1, the various tools (confiscation, attachment, etc.) come with different purposes, and therefore also based on different theoretical frameworks. Add to this the temporal dimension, with the different tools introduced in different time periods. There is considerably more that sets these purposes apart than simply the size of the sums of money involved.

However, it might reasonably be asked whether there is not a certain shift in the purpose of each specific tool as they are brought into the new context of asset-oriented law enforcement, with its intent of striking against assets acquired through criminal activities. This shift is arguably even clearer to see in instances when these tools are used in conjunction. But in a situation where different measures are used for asset-oriented purposes, which purpose is to be considered the dominant one? Suffice it to say that the overarching target should be to *remove illegitimate gain* (compare Gallant 2005, Naylor 1999). This is supported by the moral argument that a social system cannot allow individuals to enrich themselves through criminal activities. On the contrary, the basic principle of society is that a living is made through honest enterprise – granted that there is often a fair bit of fast and looseness in market economies, both in terms of honesty and enterprise.

If we agree with the objective of removing illegitimate gain, then it becomes important to have a realistic outlook on the funds left available after offenders have taken care of costs for personal drug use, wages, and everyday expenses (Brå 2007:4). (A fact emphasized in chapter 1.) Money often keeps slipping through one's fingers in this environment, and it is not implausible that the sums the authorities seize is taking a respectable bite out of the net criminal profits. While getting as close as possible to the gross incomes of the criminal and black market is doubtlessly important, the chances of getting close enough to the taps to shut off the streams of money are the same as always being on the spot to prevent crime as it happens (compare chapter 3).

2.2.3 Block future illegitimate gain

If the purpose is to eliminate illegitimate gain, it could be argued that this also applies to any *future illegitimate gain* as well as more practical crime prevention – *counteracting future criminal activity* (compare Naylor 1999). At the same time as it is morally unacceptable that criminals get rich from the proceeds of their deeds, there is also the risk the same proceeds ends up sustaining

criminal enterprises, even developing them further. Asset-oriented counter-measures thus serve to incapacitate property in much the same way as jail sentences serve to prevent offenders from committing any further crimes (Levi 2013). There is also a clearly forward-looking purpose to certain administrative sanctions. These include the disqualification from engaging in business activity and the refusal or recall of licenses or authorizations, relating to commercial traffic or the serving of alcoholic beverages, for instance. The focus should be on obstructing criminal activities, and therefore also future criminal proceeds.

2.2.4 Make law enforcement more impractical or more dangerous

Inasmuch as they constitute a daily obstacle to undeclared and criminal streams of capital, the regulations against money-laundering should be included in the list of crime preventive measures. Thanks to the Act on Measures against Money Laundering, with its stipulations on monitoring and reporting obligations for market actors, it is now more *impractical* and *dangerous* for offenders engaged in these activities (compare chapter 3 and Brå 2011:7). In fact, having criminal ties and possessing noteworthy assets simultaneously has grown increasingly impractical and dangerous in general. The heightened focus of authorities on monitoring widened the scope of search considerably – instead of the earlier search for drugs and guns, questions are now being asked about the ownership of cars, boats, and similar properties (Brå 2008:10).

In the preparatory works our attention is drawn to the role of asset-oriented as an important obstructive method for making things complicated for organized crime (see chapter 9). Police involved in combating organized crime are thinking along the same line of making things complicated. This perspective must be considered a realistic one. Rather than pursuing grand zero visions, the goal instead becomes to obstruct the path of crime.

2.2.5 Strengthen group solidarity

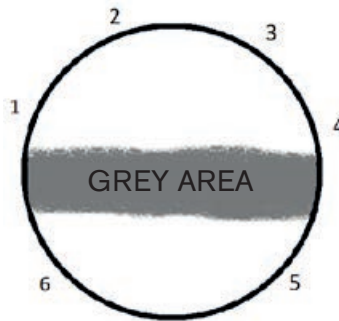
In recent years, society has suffered economic crisis upon crisis. The unemployment rate has parked itself at an unusually high level for Sweden. Transfer payments and pensions no longer keep up with a general rise in prices. In times of constant crisis the fact that offenders will enrich themselves through crime becomes an especially trying challenge. The fact that authorities are now approaching the problem of undeclared and criminal cash flows might therefore be understood as a stage in social crisis therapy. Efforts focusing on claims and receivables will be further

addressed in chapter 7, with the authors dissecting the various tools as they highlight the importance inter-agency cooperation. Following this, the subject of tools and cooperation is brought to the level of the international by the authors of chapter 8.

2.2.6 Measures in the chain of control and the justice system

In the figure seen here, also presented in the introduction of the chapter, we have identified respectively six types of purposes present in asset-oriented law enforcement as it stands today. Points 1–6 represent the six different purposes in asset-oriented law enforcement, with different purposes sometimes intersecting.

1. General deterrence
2. Individual deterrence
3. Block illegitimate gain
4. Reparative effect
5. Secured receivables
6. Create group solidarity



As seen in the above example, the purposes present in asset-oriented law enforcement are to be found side by side with the different tools. However, it is only by the confiscation tools we find more than one purpose.

The following question is left for further consideration:

Would it have been better with the previously-used, clear purpose with an asset-oriented approach to law enforcement, current and prevention of future assets arising from criminal activity, and with clear systemisation of the different tools available to the public authorities? These should be collected in a single regulatory framework.

To this question we will return in chapter 10.

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Chapter 3

The criminal economy

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In the third chapter we will examine the criminal markets more closely. What types of criminal assets are there, and what are they used for? Who is in control of these assets and properties, and how are they hidden from the watchful eyes of the authorities? These and other questions are answered with the aid of contemporary research and situational reports from various relevant authorities.

3.1 The criminal economy and its characteristics

In the criminal underworld, accomplices and competitors as well as government authorities represent potential threats to ones assets. Another problem is the theft and wastage, issues that are considerably more common in some types of criminal networks than others (compare Brå 2007:4). There is also the fact that authorities have now become quite adept at tracing transactions in the banking system, prompting players on the criminal market to avoid taking care of transactions in the legal financial system, with cash-in-hand alternatives being preferred to banking solutions. In virtually all types of criminal activities there will be at least one step in the chain of payments involving cash transactions (compare Rikskriminalpolisen 2010:2, Brå 2007:4, Brå 2011:7). More recently, virtual currencies such as bitcoin have been highlighted by authorities as a potential alternative route, since these allow for anonymous transaction (see, for instance, Skatteverket 2014).

Another major advantage of cash is that there are few things a criminal could wish for it cannot buy. In coining the term ‘aquarium economy’, the Dutch scholar Petrus van Duyne has highlighted the fact an overwhelming percentage of all proceeds of crime never leaves the criminal underworld, instead getting recycled through either reinvestment in new criminal schemes or in the form of payments for illegal or untaxed goods and services.

In contrast to this, when businesses are used as criminal tools – a modus operandi commonly seen among economic criminals – offenders are much more likely to turn to banks to take care of their transactions (compare Brå 2011:7, see also Engdahl 2010).

In addition to this, banks and informal payment processors are sometimes also used for payments for illegal drug shipments (Brå 2007:4, Brå web report 2006:2, Rikskriminalpolisen 2012:2). If the plan is to bring foreign goods into the country to satisfy illegal markets, access to currency exchange offices becomes a necessity in order to secure the sought after currencies. Such exchange offices may be located in the country as well as outside of it (Brå 2011:7).

However, using currency exchanges also means risking exposure, as there is a requirement for offices to file suspicious transaction reports (STR) with the Swedish Financial Intelligence Unit (Fipo) or its foreign counterparts. Some criminal organizers therefore prefer that transactions are taken care of by physically transporting the cash, both when assets are to be shipped inside of the country and out of it (Brå 2011:7, compare Finanspolisen 2012, compare Ekobrottsmyndigheten 2012, Rikskriminalpolisen 2010:2, Brå 2005:11). This solution to the problem is associated with a wide range of economic and organized types of crime, including illegal narcotics, trafficking, and undeclared work (Brå 2007:4, Brå 2011:7, Brå 2008:24).

The cash involved here is mainly used for three things: a) payments related to criminal activities, b) consumption of goods and services, and (to some extent) c) legal market investments.

3.1.1 The role of payments in business operations

Among the organizers in the criminal underworld there are some who will both be realistic and ambitious enough to secure for themselves stable positions as businesspersons on the criminal market. These players are often found in the area of economic crime, where legal and illegal businesses co-exist side by side (compare Brå 2011:7, compare Brå 2006:6, Ekobrottsmyndigheten 2013). Even so, the great majority of organized and economic criminals possess neither the strategies nor the resources needed to sustain long-term operations, and will instead satisfy themselves with taking on assignments as they go. For those who operate on short-term horizons, however, forging bonds of trust and cultivating healthy customer relationships will seem relatively less attractive compared to sponging of the work of others, increasing the risk for theft and non-payment in business deals (Brå 2007:4, Brå 2012:6). Business relationships in these conditions are therefore characterized by a preference for cash payments at the point of delivery, with a low expectation of future payments being honoured.

Some players will attempt to guarantee payments and boost bonds of trust by focusing on amassing cash reserves of their

own (Brå 2011:7, Brå 2007:4, van Duyne and Levi 2005). When the payday of undeclared workers looms or a large shipment of illegal goods is expected, offenders will often try to make sure that necessary cash reserves are made available ahead of it. It may take a few days until these assets have been mobilized, and during the operation various currency exchanges and indebted business clients are likely to be paid multiple visits.

There are plenty of examples in the research literature of how organizers strain to scrape together enough money to be able to pay a previously agreed upon sum (Brå 2007:4, Brå 2011:7, compare Brå 2008:24). In the illegal drugs market, taking care of part payments in time is important if a good supplier relationship is to be maintained. Not only could failing to meet the due date repeatedly lead to the relationship being terminated, but there is also the risk of being targeted for debt recovery or blacklisting. As if this was not enough, the bad reputation which follows might disrupt relations with other suppliers too (Brå 2007:7, Brå 2007:4, Brå 2012:6). In fact, research singles out mismanagement of credits as something very common in the illegal drugs trade (Brå 2007:4, Brå 2005:11, van Duyne and others 2003, Desroches 2005). This inability to meet payments causes disturbances that propagate upwards the chain of distribution until reaching someone equipped with enough cash to solve the problem, possibly even higher-level importers (Brå 2007:4, Brå 2007:7).

During such emergencies there are likely to be lapses in otherwise stringent security protocols, meaning that there is a connection between inability to meet payments and increased risks for detection. Common scenarios here include contacting people in ways normally avoided or disregarding the use of code during phone conversations (Brå 2005:11, Brå 2007:4). Research also suggests that people also start buzzing about business partners they consider unreliable, and as rumours start spreading the use of phone-tapping means that authorities are more likely to be informed about the illegal activities of dodgy dealers.

Even though there are serious consequences associated with inability to meet payments the illegal drugs market could not function without the use of credits. One way of explaining this is that possession with intent to distribute involves serious dangers, not least in terms of possibly lengthy prison sentences. The dealer who readily accepts half of the cost paid up front with the rest later is able to shift not only more drugs, but bigger batches as well – indirectly minimizing his or her risk, as they can satisfy themselves with having fewer customers too (Brå 2007:4, Brå 2007:7). In interviews, offenders point out that the customer ends up in a position of dependency as yet another positive spin-off effect of offering generous credit terms. This obviously also

comes with a risk, as they might be more likely to turn police informers (Brå 2007:7). In other words, when offenders are unable to meet their payment obligations, this could cause other problems further down the line – such as indebtedness – a situation which therefore works to the advantage of law enforcement agencies.

3.1.2 Economic criminals have a harder time dealing with payment problems

As drug dealers are used to having to deal with problems focusing on payments, they will acquire the skills to handle such problems in the long run. This, however, is not the case for economic criminals. When scanning through the research literature it is easy to find examples of stressed out economic criminals busy creating the false invoices that will help convert money in the bank into cash-in-hand wages for undeclared workers (in other words, reverse money-laundering, see Brå 2011:7, Brå 2007:27). The cause of their distress is that exchange and bank offices have barred them from making withdrawals. This means having to live in fear of having crossed the principal, who, considering the sizeable sums of money they were hired to take care of, obviously could afford to bring in expert help in the field of rough-and-ready debt recollection (compare Brå 2012:6, Brå 2012:12). If the principal does not get his cash as promised, this will in turn obviously greatly anger the dozens of undeclared workers down at the building site, a site managed by a main contractor not keen at all on sullyng his image as a tax-paying upholders of the industry's code of procedure (compare Brå 2011:7). Put differently, avoiding disturbances in the cash flow is extremely important for economic criminals if their activities are to go unnoticed.

Add to this that economic criminals too have started running into problems because of increasingly efficient anti-money laundering policy implementations (Brå 2011:7; compare Brå 2011:4). Economic criminals are on the other hand spared the plight of the drug dealers having to deal with partners who steal their money or principals and customers who refuse to pay up. In the case of the dealer in narcotics, there is no getting away from the fact that the end-consumer is a drug abuser, and that finding a reliable partner is hard to do in a firmly illegal line of business (Brå 2007:4, Brå 2007:7, Brå 2005:11). When it comes to the economic criminal, contractors are mainly found in legal business sectors, where the issue of solvency is considerably less of a problem and where offenders may use the legal side of their business to recruit new business partners and co-workers (compare Brå 20011:7, Brå 2007:27). However, these advantages also means that offenders will be less experienced at handling disrupted

flows of income, which in comparison makes them more vulnerable to any countermeasures that are introduced by the authorities. In most cases a tax offenders' inability to meet payments is caused by financial institutes refusing to handle suspicious transactions. The disruption in cash flow might become such a serious issue that he or she is no longer able to take on certain assignments (Brå 2011:7).

Economic criminals who face acute shortages of cash are forced to consider new methods, where even organizers try to withdraw cash, putting themselves at the risk of being brought to the attention of the authorities by way of STRs (Brå 2011:7). Overdraft is another emergency solution, but not only does this generate a suspicious transaction in the company account, it also introduces additional expenses (Brå 2011:7). When offenders are short on cash, they might be forced to postpone "payment" until the false invoices used for reverse money-laundering are long overdue. As economic criminals never incur late payment charges despite always trying to make sure that their invoices are "paid" well ahead of time, this constitutes a pattern authorities might use to identify false invoices.

While criminal asset recovery shows great potential when it comes to disrupting economic crime and illegal trade in drugs, the same is not true for all types of crime. Rather than relying on large transactions, the sex trafficking trade is instead characterized by regular transportation of 'the daily takings' out of the country (Brå 2008:24; Korsell, Vesterhav, and Skinnari 2011). When credits are used, this is in conjunction to the transportation costs associated with prostitution, where sex workers are forced to work off the debts they have incurred. Here organizers are hardly the ones taking responsibility for the economic risks; this is left to the disadvantaged sex workers. As a consequence, there is markedly less potential for successful implementation of asset-oriented approaches in this area.

3.1.3 The purpose of the criminality is consumption

As evidenced by previous research, consumption is so important for the offender that for many is just a natural part of the criminal lifestyle (Hall, Winlow, and Ancrum 2008; Brå 2011:7, Zaith 2002; compare Ekobrottsmyndigheten 2012; compare Rikskriminalpolisen 2010:2; Rikskriminalpolisen 2005:2b). This significance assigned to consumption may be illustrated by the results of a study, where it was shown that the use of criminal proceeds for consumption was considered to be an important work-related cost (Brå 2007:4). Even though there is high variability in consumption patterns, these usually include eating out, travelling, clothes, gambling, vehicles, jewelry, and various gifts to relatives

(Brå 2011:7; Junninen 2006; Hall, Winlow, and Ancrum 2008; Larsson 2006; Brå 2007:4; Rikskriminalpolisen 2010:2; Engdahl 2010).

When it illegal markets and consumption patterns, proceeds of crime are used to finance personal drug use, illegal gambling, to purchase sex services and stolen goods, and, in some cases, weapons (Brå 2007:4, compare Ekobrottsmyndigheten 2013, Rikskriminalpolisen 2012:2). Engaging in consumption is experienced by offenders as a pleasurable compensation for an often rough and demanding lifestyle. When revenues are down, some players will actively start looking for alternative business areas, setting their sights on legal as well as illegal markets. This is how important it is to maintain their capacity to engage in consumption. Then again, the attachment of these big-spenders to their money does not seem to be very strong; it is frivolously spent, and when everything is gone they are quickly back at trying to make more. That is, it is only in spending that their money is worth something.

Stories of initial offences being committed in order to maintain lifestyle or social position are especially prevalent for economic criminals (Engdahl 2010; Alalehto 1999; compare ISF 2011:12). Using consumption as a way to project an image of success is likewise popular among organized criminals. Authorities must be able to see through this bluff; expensive habits and clothing should be taken as indication of someone's position in the criminal hierarchy. Some criminals will engage in conspicuous consumption but lead otherwise Spartan lives (Larsson 2008; Hall, Winlow, and Ancrum 2008); this while others would rather borrow money or forgo paying their distributors than give up "necessary consumption" (Brå 2008:24, Brå 2007:4).

When cash actually is exchanged for goods and services, offenders are rendered more visible, at least if they make their purchases from legal, legitimate businesses. Judging from the annual report of the Financial Intelligence Units, few consumption-related suspicious transactions are reported, indicating an under-exploited potential when it comes to asset-oriented approaches to law enforcement (see Finanspolisen 2012; Brå 2011:4). It should however be noted that only some industries are covered by the obligation to file such reports. The restaurant sector represents one of these exempted industries, despite the fact that there is a lot of illicit money is injected into circulation here. There is however a great potential for employing information-gathering strategies here: if police officers who spend a lot of time in similar areas assume an asset-oriented perspective persons of interest may be identified by keeping an eye out for certain consumption patterns.

3.1.4 Future criminal reinvestments

Especially offenders working long-term strategies are likely to set off a certain percentage of their proceeds for reinvestment in future criminal schemes (Brå 2007:7; Brå 2008:24; Brå 2007:4). Some individuals keep spending at a minimum over longer periods of time in order to meet future needs for major restocks or business expansion. In a study of Finnish professional criminals it was shown that a third of the profits ended up being reinvested in further criminal schemes (Junninen 2006). While this share doubtlessly varies greatly depending on type of crime and those involved, the result serves to illustrate the fact that organizers will try to amass substantial sums of money in order to reinvest them in further criminal activities.

When interviewed in connection to various Brå studies, police officers have shared information about how organizers without access to capital turned to loans in order to fund new criminal ventures or for expanding their current ones. There is some support in international criminological research for the existence of financiers who can be approached about backing criminal ventures (Adler and Adler 1992; Brå 2005:11). While there are examples to be seen of this in the Swedish context, studies indicate such situations as exceedingly rare (Brå 2005:11; Brå 2007:4). Thus it may be concluded that financiers only have a limited role to play in Sweden. Comparatively more common are stories about black market lending schemes, where opportunistic money-lenders offer organizers loans against interest. These loans may not only be used to fund black market deals, but legal side businesses as well, such as the purchase of a restaurant (Brå 2012; Brå 2012:12; Brå 2006:6). When investments do not turn out as they were supposed to, the displeased userer will not likely think twice about turning to a debt-collector for help (compare Brå 2012:12; Mayer 2012).

3.1.5 Ambitious offenders invest in the legal businesses

In addition to the offenders who pursue long-term strategies there are also those whose criminal ventures generate enough profit that there is money left after expenses. Some of these will reinvest their surplus in legal enterprises in order to one day become able to retire from the criminal businesses world (Brå 2007:4; Junninen 2006). Here, at least the ambition is to keep the one separate from the other. However, things do not always work out this way, and this for two reasons. First of all, running a company is easier said than done: there are returns to be filed, taxes to be paid, and forms that must be filled out correctly. With mounting financial problems, owners will be tempted to stay

with one foot in the criminal underworld, where they agree to take care of minor tasks and projects in order to save their company (Brå 2007:4). Secondly, the business owner who maintains relationships with criminals are more likely to become targets of various forms of extortion (Brå 2012:12).

When criminals establish their new, legal businesses, these are often found in sectors the owner is already familiar with, either because of his or her lifestyle or career experience (Brå 2007:4; Larsson 2006). Another important factor is the status associated with certain types of businesses, with restaurants located in the city centre being a case in point. This makes running certain type of businesses desirable than others. Not only does proceeds of crime funds restaurants, investments are made in construction companies, automobile repair shops, groceries, corner shops, and import/export firms. Some reports also indicate that investments are being made in the real estate business, along with health and beauty salons (Brå 2007:4). The majority of the business sectors covered here are cash intensive, but all of them are familiar as vulnerable targets for money-laundering and tax evasion schemes (Skatteverket 2006:4; RRV 1998:29; Brå 2011:7, Brå 2011:4).

When offenders busy themselves founding companies, purchasing real estate and planning their savings, they are placing these resources both inside of Sweden and abroad (Brå 2007:4; Fabre 2003; van Duyne and Levi 2005; compare Ekobrottsmyndigheten 2012, Finanspolisen 2012). Even though some of these payments are made in cash, few estate agents are submitting suspicious transaction reports to the Financial Intelligence Unit (Brå 2011:4; Finanspolisen 2012). Consequently there is room for improvement when it comes to intelligence flows in relation to criminal investments.

3.2 Who has assets financed by crime?

The perhaps most striking conclusion from previous studies is the extreme disparity when it comes to the distribution of crime proceeds. As a rule, organized crime projects involve a significant number of people, regardless of type of crime. Those who accrue the most assets usually include leading organizers, high-level distributors, and key personnel such as experts (Brå 2007:4; Brå 2007:7; Brå 2011:7; Korsell, Skinnari, and Vesterhav 2009; Korsell, Vesterhav, and Skinnari 2011). Those receiving least of the winnings are highly exchangeable accomplices, including couriers, domestic transporters of illegal goods, insolvent company straw persons, and members of criminal networks and groupings tasked with other risky assignments. These individuals are

brought in as casual labour, and it is rare for them to see any sort of steady income from crime.

In these contexts, research has shown that, in general, the farther away you are from mainstream society, the weaker your bargaining power is. This, however, does not always apply to debt-collectors, some of which are able to maintain a respectable profitability precisely because they are more capable of resorting to violence than others (Brå 2007:4; Brå 2012:12). Their bargaining position is strong in relation to the clients who seek their services, who come to them both from the criminal underworld and outside of it. Often they are able to collect fees (or profits, if the debt has been purchased) corresponding to at least half of the sum to be recovered (Brå 2012:12; Brå 2007:4). There is some flexibility in what interest rates they choose to charge; all too exorbitant rates are associated with the risk of not getting paid at all (compare Brå 2012:12; Mayer 2010). Yet another contributing factor is the low expenditure associated with this line of criminality. Nevertheless, for those with intimidation capital, debt collection is often looked on more as an additional way to fill up an empty wallet than a full-time career.

3.2.1 Organizers and specialists acquire the most assets

To the extent that the business generates profits, these chiefly end up in the hands of the distributors and organizers. Important helpers in this regard are the legal and financial experts, who are able to provide valuable advice in money-laundering and economic crime schemes (Brå 2011:7). These expert advisors are likewise heavily featured in international research (Di Nicola and Zoffi 2004; Lankhorst and Nelen 2004; van de Bunt and van der Schoot 2003; Reuter and Truman 2004; van Duyne and Levi 2005). While some of these formally trained lawyers and accountants remain on the payroll of private companies, others have more or less slowly slipped out of their legal assignments in favour of white-collar crime. An obvious problem here is that those employing advisors for their criminal ends themselves risk ending up being defrauded. There are examples of individuals paying larger fees to evade taxes than the actual amounts (of taxes) they wanted to escape in the first place.

Just because the organizer is the owner of property, this does not necessarily mean that he or she is the one looking after it. It is common for cash to be left in the custody of close childhood friends, family members – sometimes law-abiding ones – and trusted criminal associates. As cash is highly theft-attractive, only persons of utmost reliability are considered (Brå 2007:4; Rik-

skriminalpolisen 2010:2; Korsell, Skinnari, and Vesterhav 2009). Sometimes the custodians are not even aware that the bag left by their friend/family member in the attic (or elsewhere) is stuffed with cash, but there are situations where there are good reasons to suspect that they are harbouring something that might have to do with illegal activities.

As with storage and bank accounts, relatives sometimes also help out by letting organizers sign them up as owners of companies and real estate. Sometimes the relatives are acting as fronts (we will return to this in the following section about concealing assets). But organizers may also simply gift relatives with companies or real estate, as exemplified in the case of the beauty salons bought for by dirty money and handed over to the girlfriends of the principals (Brå 2007:4; Brå 2011:7).

3.2.2 Economic crime more profitable than traditional criminality

International as well as Swedish research stresses the fact that economic crime is more profitable than traditional criminal activities, such as drug dealing, fencing, or human trafficking (Brå 2011:7; Skinnari 2008; Skinnari and Korsell 2006; van Duyne and Levi 2005; compare Ekobrottsmyndigheten 2013). This is explained in terms of two factors: 1) as economic criminals are running fundamentally legal businesses, they are better positioned to exploit social institutions to protect and facilitate their criminality, and 2) economic criminals tend to be more capable, both in terms of knowledge and skill at recruiting suitable accomplices.

This higher capacity is primarily reflected in the immense talent at managing their businesses displayed by many of them (see for instance Brå 2011:7). Their operations may be wholly legitimate, only that there are also complementary, shady subsidiaries, the profits of which are intended to put a gilt edge on life. Others more or less unintentionally end up committing offences in order to save their struggling businesses. Regardless of how they got involved in crime, it is a fact that when profits from the illegal side of things are down, incentives will increase to handle most, if not all, of their business in a law and tax abiding fashion instead. In other words, this presents us with great opportunities to use criminal assets recovery as a way of pushing economic criminals back into the fold of legality.

Even though there are admittedly many factors determining the profitability of an illicit or illegal business, there is still one general conclusion to be drawn from research: it is fundamentally impossible to maximize profits at the same time as minimizing

risk. Aside from causing stress and a good deal of everyday problems to handle, there are also the direct costs inflicted by various necessary security measures. In the following section we will now consider such asset-concealing strategies.

3.3 How do you conceal assets from the authorities?

In the first part of this chapter we described assets management in three phases: crime-related expenditures, consumption, and investments. As the expenditures are directly connected to criminal activities, there are almost always attempts to cover them up. As already mentioned, the preferred strategy here is to handle payments outside of the banking system, in cash. This is especially true when it comes to remunerating those carrying out high-risk, high-visibility work, such as couriers, undeclared workers, and debt collectors. In these situations it is common to contract intermediaries to handle the payouts while at the same time covering up the role of the principals (compare Brå 2007:4, compare van Duynne and Levi 2005). These intermediaries are referred to as “firewalls” by one organizer involved in large scale tax fraud (Brå 2011:7). The person acting as a firewall is offered a risk premium to act as a stand-in for the principal and to protect those behind “the wall” should the authorities start taking a closer look at their activities. A problematic aspect of this procedure is the fact that those at the top are not always able to monitor events on the other side of the firewall; there is always the risk that upset customers highlight unsatisfactorily executed undeclared work, with authorities picking up the scent before the organizers have disposed of the company by means of straw persons and complex chains of transactions (Brå 2011:7).

One distinguishing feature separating traditional from economic criminality is that those involved in the former need to conceal every stage of payments, as the goods or services they offer are illegal from the beginning of the sales process to the end. In the case of tax evasion, the criminal act does not occur until the failure to file tax returns, which opens for openly carrying out transactions that in other contexts would have been associated with high risk. This procedure is reminiscent of traditional money-laundering, where illegal incomes are diluted in normal transactions in order to make them untraceable and seemingly legitimate. The idea is that when the authorities are notified about the tax evasion, the trail from those behind the firewall will long since have gone cold.

In the consumption and investment phases, things are less about keeping property out of sight than concealing who it really belongs to. The organizers want to be able to drive their cars, live in their nice houses, and watch their large screen TVs. As is evident, a common strategy is to have relatives or close friends act as owners of vehicles, properties, or other valuables on paper (Brå 2007:4; Kopp 2004). A procedure among those with more extravagant consumption habits is to live frugal lives in Sweden while spending considerably greater sums of money when abroad (Brå 2007:4, compare Junninen 2006).

When substantial profits are involved, organizers may engage advisers to help them invest the profits safely; safe both in terms of keeping them away from other criminals and law enforcement agencies. This is often more easily said than done, however. Sometimes the choice falls on offshore schemes, where companies are started abroad to evade taxes on profits and to obscure ownership (compare Brå 2011:7; Rikskriminalpolisen 2010:2). Some prefer to engage formally competent advisors (who may even work for legitimate financial or law firms) to provide their investments with a varnish of legitimacy and avoid attracting the attention of the authorities.

There is, however, an obvious risk to this, in that not only might the money disappear from the view of the authorities in the process, but also disappear from the owner. In our research, we encountered a number of financial consultants who had been working with tax haven solutions for clients, and who then had been defrauded by foreign consultants they in turn had contracted (Brå 2011:7). The client can hardly turn to the authorities for help here, as the money does not even officially exist. Those involved in criminal gangs and groupings rich in intimidation capital are used to mobilize this capital in such situations; this intimidation capital, however, is an extremely local currency. During research, interviewees spoke about foreign investment managers who, unmoved by locally powerful intimidation capital, simply decided to ignore the threats of recovery. Besides, these untrustworthy investors are fully capable of meeting threats by hiring ‘muscles’ of their own. Not only does this increase the risks involved, but also the unwillingness among local debt collectors to take on such an assignment (compare Brå 2012:12) – after all, they want to have information about what they are about to get involved in, and in cases such as these this is not easily done.

3.4 Why use criminal assets recovery?

Summing up, we will consider what our research on illegal markets can teach us about the potentials of criminal assets recovery.

3.4.1 Prioritize payments to disrupt the criminal enterprise

Our analysis of illegal markets suggests that focusing on payments in criminal activities should be the first priority of law enforcement authorities. Not only does this strike the closest to the offence itself – it also creates a turbulence magnitudes stronger than just "follow the money" which allows organizers to eat out or buy branded clothes. While payment problems have consequences such as complaints from suppliers, reduced levels of trust, and loyalty issues, there is also the risk that debt-collectors and other attention-attracting players will get involved – thus increasing the authorities' chances of being alerted to the criminal operations.

3.4.2 Prioritize consumption to reassure law-abiding citizens

If assets recovery is to fulfil the secondary aim of reassuring law-abiding citizens that crime does not pay, then it follows that consumption and investments should be prioritized as well. Obstructing consumption will remove an important motive for crime, and might become the straw that breaks the already hard-pressed criminals back. There is always the risk, however, that further offences are committed in order support the addiction to consumption which is at the very core of much of the criminality.

3.4.3 Prioritize investments to test the loyalty of family members

When investments too are stripped away from offenders, this will test the commitment of relatives, who may or may not have been aware of their collusion in the criminality. One organizer observed that his wife could not have failed to notice that their house and lifestyle were financed by criminal proceeds (Brå 2011:7). She never complained until the money stopped flowing – first then did she start to feel uncomfortable about his activities. The Swedish Tax Office and the Swedish Social Insurance Agency both receive a fair amount of tip-offs from former spouses, who might be upset about the financial divorce settlement – or simply intent on hurting their ex-partner (Brå 2011:7; ISF 2011:12). But

aside from this, relatives also have an important role to play in that they might be able to persuade the offender to give up crime or that they should approach relevant authorities with information. It might be asked whether removing the benefits to relatives through criminal assets recovery could provide them with an incentive to try to stem the criminality.

3.4.4 Increase the costs through an image of active criminal assets recovery

Critics of criminal assets recovery often make a point of calculating how little money authorities actually manage to secure using such methods. However, when taking into consideration the realities of the informal and illegal markets, it becomes clear that it is more important to cultivate an image of efficient authorities with criminal assets recovery high on the agenda. In the Brå report on the financial management of the drug market, it was interesting to see just how many of the interviewed offenders who expressed a considerable respect for the Swedish Enforcement Authority (Brå 2007:4). Few had experienced their assets actually being taken away by police and prosecutors, but the one who was in debt knew from personal experience that the Senior Enforcement Officer will come knocking on their doorstep. This perception made the drug distributors prioritizing debts that could end up with the Enforcement Authority, and spend less effort in trying to conceal their assets from the police.

As soon as similar stories start to flourish about law enforcement using criminal assets recovery more broadly, certain players will surely arrive at the conclusion that it is time for them to adapt, increasing their efforts to conceal their assets. Rather than beating about the bush, we must acknowledge the fact that even if payments are prioritized by authorities, this does not necessarily translate into success in the individual case. Even so, this is a secondary consideration. When people start talking about efficient, asset-grabbing authorities, the perceived risk of detection will increase – consequently causing mounting security expenses for offenders. For every expert brought in to handle investments and money-laundering (both regular and reverse) there will be yet another one wanting their cut. And besides, there is always the risk that someone will disappear with the money. It is in this that the real potential of criminal assets recovery is to be found.

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Chapter 4

Offences and environments

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4.1 Introduction

The subject of this chapter is the trade in goods and services. In every single case discussed below, businesses have been used to criminal ends, and, likewise, every single case involves a business plan with the goal of providing the market with attractive goods and services – in our case garlic and light bulbs (goods) and gambling and striptease (services) respectively. The profits generated for the businesses correspond to their surplus after expenses. These expenses have been kept down by keeping or submitting incorrect statements and financial records relating taxes, duties, or other charges. As these faulty records constitute the basis of the criminal activity, they are also the starting point for the intervention from the side of the authorities. It should be noted that the goods and services addressed here should in no way be taken as somehow representative of profit-generating criminal activity; if anything, it is the other way around. What these cases instead illustrate is that, given certain conditions, combining enterprise and tax evasion makes for a very profitable proposition, applicable to the import sector as well as the domestic service sector. More typical examples of tax evasion are likely found in the construction and catering industries, and certainly in the cross-border tobacco trade as well. Irrespective of the type of service, goods, or trade involved, these four cases highlight both the potential profitability of tax evasion and the indispensability of the taxation authorities' efforts in reclaiming proceeds of crime.

The main thrust of this chapter is on both fiscal monitoring (the Swedish Tax Agency and Swedish Customs) and enforcement (Swedish Enforcement Authority) and their contribution to asset-oriented law enforcement – efforts that have been going on for quite some, receiving neither any recognition in anthologies nor in any ministry memoranda.

The struggle over the gambling and striptease market has resulted in at least two incidences of lethal violence. Only last year, in January 2014, one of the major players was shot and killed. The fact that these shootings take place illustrate that organized crime is involved in not only the illegal narcotics market, but in the world

of legal business as well. Offering goods and services out in the open means having business plans and control over businesses.

A commonly held view is that “classic” crimes – including extortion, theft, and drug dealing – are highly lucrative. It might be asked, however, whether tax and custom offences are not the main moneymakers for organized crime in Sweden. And, if this is the case, has this fact been brought to the awareness of the general public and politicians – or even law enforcement authorities?

4.1.1 Case 1: The man the media named the Game King (B 1873-09)

The year was 2005, and the Minister for Finance had just finished his interview for the TV4 news show. However, thinking the cameras were now off, the minister was caught on tape saying something which came to cause a major stir: “The police are so bloody slow-footed”. This utterance came out while the minister was reasoning about the problems caused by illegal gaming machines. The “Jack Vegas” video lottery terminals of the state-owned company Svenska Spel were seeing increased competition from illegal gambling terminals. The view of the Minister for Finance was that it was fully possible to stop these, if only the police took the pains to perform better monitoring of business and restaurant premises. The only problem was the insistence of the owners that the machines presumed “illegal” actually were totally legal remote gambling terminals: As soon as authorities tried to close them down, they were met with the counter-argument that they connected to the actual gambling machines over the web, and with the company registered in another country this was also its tax residency. As a consequence of this, every attempt at forfeiting the machines gave rise to protracted legal battles, where the focus became the nature and definition of the concept of ‘gambling machine’ rather than the existence of illegal ones.

Background

Up until 2005, the operation had been run under the auspices of one company, with the principal, “K” as its representative. Then the business was restructured into three different companies, all represented by different front men, and with no trace the actual owner’s name in the books. This reorganization might have been caused by negative fall-out in media during 2005; it is likely that K wanted to avoid being perceived as being in charge of the operation, and therefore had three persons of his choosing step up in the three new companies.

The real owner of the operation was well-known to the police in the south-west county of Västra Götaland. Thanks to meticu-

lous investigative work the links in the new corporate structure was uncovered, and with the aid of the Swedish Tax Agency and the Swedish Economic Crime Agency they were able to examine these in more detail. It was not long until they had managed to piece together a workable understanding of the operation: Cash generated by the gambling machines was taken care of by mobile teams visiting the premises where these were installed. The employees also took care of maintenance, replacing any broken machines or delivering new ones. The gambling terminals could be found virtually anywhere in the country, with the exception for the northern parts of Sweden's northernmost province of Lapland.

Not only was the principal a person of interest to the police because of the ties illegal gambling, but also because of his role in a murder attempt in 2002 and also in 2003 a homicide – violence thought to have been triggered by the struggle for control over the lucrative illegal gambling market.

All in all, 230 gambling machines had been installed, in pubs, restaurants and newsagent's shops. Prospective punters had to pay at the counter and where then free to play, with the pub or restaurant paying out any prize money on the spot and in cash. The owner of the premises got to keep 30 per cent of the profits. After a careful count, the money was then handed over to a cash-in-transit operative, after which it was deposited in the bank account of one of the three companies. With the aid of seized evidence it could be shown how the companies had engaged in large-scale fraud in neglecting to enter revenues and wage expenditures in financial records and in failing to declare employer's contributions correctly.

In the final assessment the tax and economic crime agencies calculated that the four companies had avoided entering at least 45 million SEK in revenues and wage costs into the books, while the unpaid employer's contributions amounted to a minimum of 15 million SEK.

All in all, roughly 25 million SEK in taxes had been evaded between the years 2005 and 2007. Following discretionary assessment and impoundment, the Swedish Enforcement Authority was able to execute the attachment of K's tenant-owned apartment, generating 3.5 million SEK at its compulsory auction in May 2009 (Å 6939-09). According to an 2010 EBM Report to the Swedish Government on economic crime, an estimated 6.3 million had been successfully recovered by the enforcement authority thus far (EBM A-2010/0236).

4.1.2 Case 2: The man the media named Stockholm's King of Gangster (B 20219-07)

The Stockholm police had had a long-standing interest in the city's strip clubs; however, this was not because of any ill repute on the side their customers, but because of suspicions regarding the management of the clubs were operated and connections to other types of criminality in or around these premises.

Background

A party from the Stockholm Police Department had turned up at the Hantverkargatan street offices of the Swedish Economic Crime Authority. After an extended period of surveillance and police work the Stockholm police were now requesting assistance: they had encountered problems after having spent a lot of time investigating the clubs on suspicions that they were used for pandering, and possibly for sex trafficking as well. After a six month investigation it had turned out that these suspicions were exceedingly hard to prove, and that maybe the pimping and trafficking was not as extensive as originally thought. Patrons of the Stockholm club were free to request various types of striptease performances, not limited to being allowed to sharing a glass or two of premium soft drink with one of the "hostesses" (the club was not licensed to sell alcohol at the time). Surprisingly, a former police officer not only a member of the board, he also served as the legal representative of the company operating the club. He had somehow been lured and recruited into lending his services to the enterprise, and could often be seen at the premises. One of the real owners of the company, later identified as the principal, was in fact a well-known character with a lengthy rap sheet. "M" – the alleged principal – was dubbed "one of the gangster kingpins of Stockholm" by the papers. Even though no enormous profits were made, sufficient sums of money were flowing in for the business to transfer several millions in Swedish currency to Dutch bank accounts, were they were kept in order to evade taxation. The only thing all this investigative work resulted in was the conclusion that striptease, bubble baths, high-end soft drinks, and entrance fees generated the lion's share of revenues. Even though procuring and sex trafficking might have occurred, this was impossible to demonstrate, just as it was impossible to tie any of the revenues to procurement. There is nothing illegal in offering striptease and bubble baths, and neither is selling soft drinks. However, with a steady enough customer base, the business model makes for a safe stream of income – especially if clients are paying several hundred euros for a single performance and fizzy drinks are 100 euro each.

Following their investigation into the case, the Swedish Economic Crime Authority and the Swedish Tax Agency could jointly report that roughly 6 million SEK had brought out of the country, with a corresponding sum missing from the company's incorrect financial records.

Acts (B 20219-07 Stockholm County Court Judgment Appendices 1)

The following could be found in the summons application filed to the district court:

N, acting as the legal director of two companies, together with M, acting as the de-facto director have on the behalf of the limited-liability company deliberately neglected to report to the Swedish Tax Agency value-added tax and employer's contributions in income tax returns, and have, on April 10th and 26th, in underreporting their figures (in total 2,957,671 SEK), submitted incorrect statements to the Swedish Tax Agency. Moreover, incorrect statements have also been submitted in the income tax returns of the limited partnership through under-reporting output value-added tax and employer's contributions (to the value of 3,168,881 SEK). This failure to submit income tax returns, together with the false information in those that were submitted, has put the public at the risk of being defrauded out of significant sums in tax money, at an estimated 6,100,000 SEK.

Penalties and more

M was eventually prosecuted in the district court on various counts of receiving, serious false accounting, driving under the influence of alcohol, drug offence, serious tax offence, obstructing tax inspection, and serious unlawful possession of firearms. (The serious tax offence charge was later dismissed). In June 2008, the district court sentenced M for crimes judged to correspond to a 'penal value' (containing both an indication of the courts judgment on harmfulness and culpability) of two years and three months in prison. M moreover received a 10 year sanction disqualifying him from engaging in business activities, this in accordance with the Trading Prohibition Act (1986:436).

In the County Administrative Court, The Swedish Tax Agency motioned for a decision on attachment, citing preliminary investigation evidence. The tax agency argued for a court order for attachment of properties of M corresponding to outstanding claims of 4,526,680 SEK, citing the liability of the legal representative, in accordance with chapter 12, section 6 of the Swedish Tax Payment Act (Stockholm Administrative Court 13411-08). Authorities were able to impound assets in the form of cash, automobiles, and boats thanks to the collaborative effort of the Swedish Enforcement Authority and the Swedish Economic

Crime Authority. The Swedish Enforcement Authority were able to recover roughly 2.5 million SEK (EBM A-2010/0236).

This example clearly demonstrates the fact that it is possible to make hefty profits from the sale of services. In this specific case, introducing tax inspections alongside preliminary investigations proved to be a decisive factor, despite the serious tax offence charge being dismissed. Were it not for the close collaboration between the Swedish Economic Crime Authority and the Swedish Tax Authority, important evidence would not have been located. Even though the state was unable to recover all of the criminal proceeds, the efforts nevertheless paid off in the form of tax arrears, thus opening up future possibilities to recover the proceeds – in the form of outstanding taxes – from the offender.

4.2 Economic crime from the Customs perspective

4.2.1 Introduction

While Swedish Customs is tasked with a number of responsibilities, its main function consists of overseeing the flow of goods over the border. This is in part done to ensure that citizens and businesses adhere to stipulated regulations regarding imports and exports, and in part to guarantee the correct inflow of taxes to the state, so that the majority of collected customs duties and agricultural levies can be forwarded back to the European Union. This in turn functions to guarantee equal conditions for trade and a safer society. As a consequence, this commitment also means that Swedish Customs is involved in fighting cross-border crime. Within these various fields of involvement there are many opportunities for illegitimate gain to be found, many of which surely seem tempting to some. Customs invoices alone generate in excess of a billion SEK every week, a sum which includes customs duties, value-added tax, and additional import taxes on goods. Thus, it can be confirmed that the possibility of making illegitimate profits is hardly limited to only the more classic types of criminality such as the smuggling of narcotics, tobacco, and alcohol.

In addition to inspections of documents and physical examinations of goods, there are several other important tools at Swedish Customs's disposal. One such tool – potentially of great interest for asset-oriented law enforcement – is the agency's retrospective review and follow-up process, during which any incorrect statements or violations of import and exports regulations on the part of businesses are sought out.

The case below exemplifies how Swedish Customs' post-clearance examination routines contribute to exposing economic criminality embedded in the flow of goods.

Thanks to a field audit or other post-clearance examination, multiple anomalies have been spotted in the financial records of the targeted enterprise. Discrepancies can take on many forms, but some of the more commonly seen errors include: entries referring to more invoices than declared with the customs, not reporting the appropriate HS codes (misrepresenting the commodity), and companies using "double" book-keeping (where one invoice is for the customs, but not the one with the correct, higher value declared). If the audit leads to the conclusion that there are outstanding customs duties the business becomes liable to pay hefty retrospective charges. At this point, it no longer matters whether previous actions were made in good faith or not, or even if they were not systematic in nature – customs duties and other taxes must be paid regardless of such considerations. And if the outstanding sums are substantial, there is also the possibility of handing over the cases to the police for criminal investigation. In these and other cases attachment may become an option for recovering any such customs debts.

There are a number of requirements to be met before attachment may be granted (see chapter 2). This includes the provision that it has been (or will be) established that the sums outstanding are substantial, and that there is a considerable risk that the person liable will attempt to engage in duty evasion. When these requirements have been met, Swedish Customs will proceed to motion the administrative court about levying distraint orders on the legal entity as well as its representative. When the motion is granted the Swedish Enforcement Authority steps in to execute the decision. The procedure is basically identical to requesting attachment or impoundment, except that in the case of distraint there is no need to prove that the person has committed a crime has been committed – that is, not even reasonable suspicion is necessary. Yet another prerequisite for distraint is naturally that there are in fact any assets to secure.

Administrative sanctions such as distraint take on an even more important role when it comes to ensuring that the correct sums end up in the European Union's coffers. As mentioned previously, customs duties are mandatory, and a request for distraint cannot be upheld until there has been an investigation of assets, i.e. a survey of the financial resources of the company and its representative. If there are no assets – the company simply cannot pay – then the company may be petitioned for bankruptcy by either the Swedish Tax Agency or individual creditors and debtors. One

suggestion is therefore for law enforcement agencies to adopt the use of restraint as a method in counteracting illegal activities.

Both dishonest individuals and business have ample opportunities to exploit the legal flow of third country goods into the EU to considerable sources of income. Restricted goods, waste exports, export refunds, and anti-dumping duties are all used to the advantage of the criminals, who integrate exports as well as imports in their money-making schemes. As previously mentioned, Swedish Customs has a broad range of responsibilities, many of which do not match with the public image of the uniformed official at screening counters in airports and ports. Most visible are the important efforts to counter the smuggling of illegal drugs and weapons, but there is much going on in the background deserving of attention. Below we will present a number of example cases where substantial economic interests have translated into large-scale tax and duty evasion.

4.2.2 Case 3: The energy-saving light bulb (B 2796-07)

A case involving the intentional attempt to circumvent anti-dumping duties.

Background

Anti-dumping duties are additional duties decided upon by the EU, which, under certain conditions, may be levied on imported goods that are predatory priced or the result of a policy of subsidy in the country of origin (the price of goods are lower when not destined for the internal market).

Act (B-2796-07)

A Swedish company was in the business of importing Chinese-made energy-efficient light bulbs via Vietnam, where they were equipped with falsified origin certificates, all as a part of a concerted anti-dumping duty evasion effort. Using an intelligence analysis compiled by the Swedish Customs intelligence unit, it was possible to detect a change in import patterns after the implementation of an anti-dumping duty decision; goods were no longer being declared with the same country of origin in the certificate. Getting at this type of fraud using post-clearance audits is not easy as a lot of time and resources are devoted to covering up the illegal business maneuvers. Neither customs audit nor inspection of goods resulted in information indicating that the company had declared country of origin incorrectly. Only thanks to an alert from the European Anti-Fraud Office (OLAF) about a consignment of energy-efficient light bulbs destined for the company did the Swedish Customs have solid ground for suspicions that there had been a violation of Act on Penalties for

Smuggling (2000:1225). The information was that the light bulbs had in fact been manufactured in China, with Vietnam as trans-shipment country. In Vietnam the goods were first supplied with incorrect origin declaration before further export to the EU, with the Swedish company as its ultimate destination.

Corporate Responsibility

During the course of the preliminary investigation it was discovered that the company had cited incorrect certificate of origins on 24 separate occasions, and thus incorrectly declared country of origin. The criminal scheme was betrayed by written correspondence found in computers belonging to the company. Add to this the fact that one of those involved admitted to the scheme. Up until then the company had successfully managed to evade duties, anti-dumping duties, and value-added tax roughly to a value of roughly 16.6 million SEK. Anticipating future claims, Swedish Customs proceeded to secure assets by filing a petition for distraint against the company and its legal representative, and assets were seized in the form of cash during a search of the representative's house. Thanks to these actions, the Swedish Enforcement Authority was able to recover significant parts of the criminal proceeds – in the form of assets worth an estimated 8.5 million SEK – when executing the distraint order (EBM A-2010/0236). The company was then finally declared bankrupt.

The CEO and the company's Hong Kong agent were both sentenced to two years in prison for serious customs offence. In addition to this, the customs manager and the purchasing manager received sentences of one year in prison for aiding and abetting serious customs offences.

4.2.3 Case 4: Garlic – fragrant smuggling goods from China (B-2506-10)

Background

While importing Chinese garlic to Norway is a fully legal, duty-exempted activity, the EU has imposed sharp tariffs on the crop.

In June 2010 a truck was driving across the Svinesund Bridge from Norway into Sweden. However, when the driver arrived at the door of the Swedish Customs clearance office he turned on his heels, explaining that he needed to double back to the Norwegian border to pick up some paperwork he needed. Rather than returning to Norway, however, the driver proceeded to drive further into Sweden. His behavior had been observed, and Swedish customs officers pursued him to a lay-by two miles south of the Norwegian border, where he was stopped. When examin-

ing the cargo 28 tons of undeclared garlic were discovered. It was calculated that only this single consignment amounted to evaded duties to an amount of half a million SEK.

Penalties and underlying organization

The truck-driver, pleading not guilty, was sentenced to 4 months in prison for customs offences and smuggling. Arrest warrants in absentia have been issued against the principals – two male British citizens in their mid-30s – by the Stockholm International Public Prosecution Office for their suspected involvement in serious customs offences. They are furthermore suspected of being a part of a larger organization specialized in the smuggling of garlic.

4.3 Conclusion

While it is only considered natural to associate violence, guns, and drugs with organized crime, this is still not true for the profits generated on these markets in combination with tax and duty evasion, despite numerous reports published by Brå highlighting the connection (see, for instance, Brå 2008:10)

There is every chance that asset recovery will be successful as long as the industry the false accounting occurs in is subject to taxation.

As a rule, the Swedish Tax Agency is only able to formulate a claim based on representative liability in accordance with chapter 12 section 6 of the Swedish Tax Payment Act (1997:483) if it is possible to secure evidence clearly indicating a specific person as responsible for a business. In the first two of the cases described above, the Swedish Tax Agency was able to establish representative liability, thanks to close collaboration with investigators at the Swedish Economic Crime Authority, which, in the case of the gambling machines enable the Swedish Enforcement Agency to use distraint action and auction off a tenant-owned apartment. In the strip club case, distraint was issued on assets, and the principal was residue, which made it possible for the enforcement agency to continuously seize assets up until January 2014, when the principal was shot and killed. Evidence recovered during house searches or through secret coercive measures is often crucial in successfully recovering assets gained through criminal activities.

The cases involving the customs offences in their turn serve to illustrate the extreme profitability of combining import businesses with evasion of taxes and duties. The case of the incorrectly declared energy-efficient light bulbs involved closer to 17 million SEK in evaded duties, and in the case involving a mere truckload of a highly common agricultural product in the form of garlic the

evaded duties amounted to 500.000 SEK. No matter what these offences end up costing society, they teach us that cross-border trade in goods is a lucrative industry – and with penalties relatively mild compared to what applies to the smuggling of narcotics.

Inter-agency cooperation between Swedish Customs and the Swedish Prosecution Office is vital if economic crime within the context of international trade is going to be met with successful prosecution and recovery of the proceeds of crime. One example worth mentioning is the interaction between customs auditors and prosecutors, which has the potential to help customs auditors gain a better understanding of the kind of information needed by prosecutors if they are going to be able to bring charges. It is also essential to make sure that the rest of the agencies involved possess a solid knowledge of the role of Swedish Customs in the fight against economic crime.

All of the cases presented here show that just as Sweden is a part of an European market characterized by a free flow of goods, services, and capital, the country is also a part of a global market. If the country is to be a member of the EU, this also means taking action against crime – and this goes for all international as well as national authorities that are involved.

The conditions for investigating a lucrative crime do not exist until authorities know which activity is generating the gains. The first four cases illustrate that cooperation between tax authorities, criminal investigatory authorities, and the Swedish Enforcement Authority is crucial for successfully recovering proceeds of crime in connection with offences connected to commercial activity. If the authorities know the source of the criminal gains, the conditions exist for investigating the underlying criminality as well. The lesson which can be learned from the described cases is that public authorities must, as early as in the intelligence stage of their work, be aware that criminal gains are not always generated through the handling of illegal goods or services. The gains are just as likely to come from a business activity.

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Chapter 5

Track, secure, recover – attacking the incentive for crime

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5.1 Introduction

The aim of this chapter is to provide answer to three basic questions:

1. What is the point of asset-oriented intelligence work?
2. What does asset-oriented intelligence mean on practical level?
3. What kind of impact and what kind of results can be expected?

Our purpose here is to shed light on the possible effects of asset-oriented intelligence work, while at the same time also providing practical guidance as to how to reach these goals. We will attempt to show how administrative sanctions might bring concrete results even in the absence of criminal investigations and proceedings, and also what this means on a more practical level.

From a starting point more or less rooted in theory we will later move on to advice of a more practical nature, all the while highlighting the potential of this relatively uncomplicated method capable of producing desirable results reasonably quickly.

As a final comment, it should be noted that the working methods and procedures which are addressed here may be useful for agencies with other responsibilities than those of the authors’.

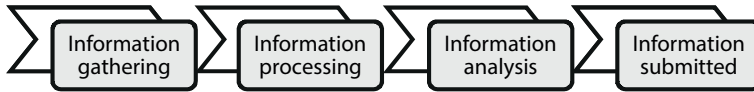
5.2 Why conduct asset-oriented intelligence work?

5.2.1 Introduction

The Government is now calling for law enforcement agencies to adopt asset-oriented procedures, as is clear to see when considering the appropriation directions that were handed down to the Ministry of Justice and the Ministry of Finance ahead of the fiscal year of 2013. Generally speaking, the goal of the asset-oriented approach is the confiscation, recovery, and confiscation of monetary assets and other property belonging or accessible to individuals by virtue of their criminal activities.

For asset-oriented intelligence gathering, the main focus is on the proceeds generated from crime. This marks a significant shift compared to earlier approaches, where preliminary investigation, prosecution, and verdict were seen as both the objective and desired effect of a completed decision cycle.

5.2.2 The intelligence cycle



As already pointed out in this anthology, asset-oriented intelligence is not in itself a new procedure. Financial behavior and assets have been considered important for the intelligence of asset-oriented agencies for a while now. On July 1st 2008, Sweden passed amendments to several laws regarding the confiscation of criminal instrumentalities, proceeds and property, in accordance with the Council Framework Decision (2005/212/JHA, article 3). This has provided agencies with extended powers, so that they are now no longer limited to confiscating proceeds of any specific crime, but of criminal activity without the need for further specification – provided that it is exceedingly more likely that the profits derive from other crimes than not. This means that officials of the Swedish Police Authority, Swedish Coast Guard, and Swedish Customs are authorized to confiscate property without the need for a direct link to any specific crime. It is important that law enforcement bodies are able to integrate confiscation of proceeds of crime and other assets into how they operate, and that assets are secured already at an early stage.

What is new is that the material resulting from early intelligence can serve to open up for several courses of action beyond that of prosecution. These are steps that may in turn be taken by several authorities and agencies, independently of one another, and without the need for prosecutorial authorization. It should be underscored that asset-oriented intelligence must remain an integrated part of intelligence efforts aimed at pursuing prosecution.

A concise overview of the goals of asset-recovery intelligence includes the following points:

- The facts regarding a subject's assets and general financial situation are to be investigated and corroborated
- The investigation into the economic situation of the person of interest is to be carried out as soon as possible.

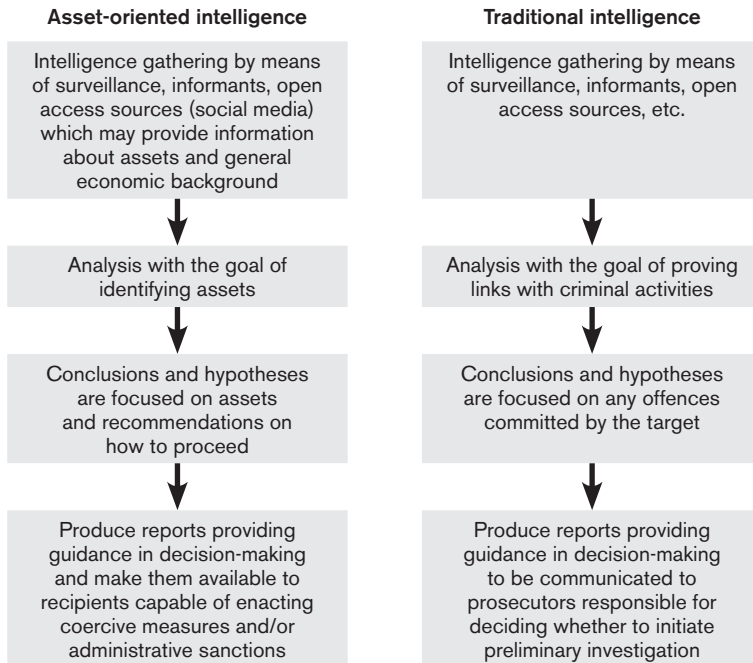
- The decision whether administrative sanctions are applicable to the specific case must be taken at an as early stage as possible, and should be informed by sharing intelligence with relevant agencies.
- Intelligence reports must be submitted to the appropriate authority at the right time and in such a format that the relevant authority is able to proceed with distraint, recovery, or confiscation.

Information gathered within the framework of intelligence operations may be disclosed to the Swedish Enforcement Authority even in the absence of a preliminary investigation. However, this can only be approved after a confidentiality assessment, as determined by the general clause set down in the Public Access and Secrecy Act (2009:400), chapter 10, section 27. In addition to the provisions contained in sections 2, 3, 5 and 12-16, there is also the principle that disclosure of classified information to another Government authority can only happen if there is clearly greater interest in doing this than preserving the interest the principle of confidentiality was set there to protect. If the Swedish Enforcement Agency does not possess any knowledge about certain assets, or are unaware of their location, providing them with suitable information takes on great importance. Even though the powers of the enforcement agency are fairly far-reaching, there are still certain types of distrainable assets that could easily be concealed from them (compare the Ombudsman's decision in case Dnr 2187-2012). There is therefore a potential that intelligence work will result in the distraint of assets previously undetected in the regular investigations of the Swedish Enforcement Agency – if information gained during, for instance, surveillance, is passed on by the police to the agency. When distrainable assets are found at the same time as there are outstanding liabilities at the Swedish Enforcement Authority and the provisions for extended confiscation apply, this presents the authorities with something of a dilemma.

The problematic situation results from the fact that arrears still remain unpaid after assets have been forfeited, and when these then are handed over, this would mean that the enforcement agency potentially have used proceeds of crime to repay tax debts.

As we have seen, there is the potential for asset-oriented intelligence to result in readily implemented means to recover assets for the state, and this without even having to initiate a preliminary investigation.

In order to illustrate the workings of this new approach the model seen below was developed:



5.2.3 Administrative sanctions efficient at counteracting criminality

In short, the administrative sanctions approach means that the public sector acts to limit the opportunities of organized crime to use legal structures for illegal purposes. One such measure is distraint, used by the Swedish Tax Agency and – in some cases – Swedish Customs, and which may be granted after petitioning an administrative court (chapter 46, section 5, Tax Procedures Act, and chapter 1, section 8, Customs Act). Yet another example is the power of some regulatory authorities to stop the establishment of new businesses or to recall operating licenses; the restaurant business is but one of several industries subject to such license requirements. Here, inter-agency cooperation has a major role to play, which also makes it important to iron out the details regarding the various administrative routines of the agencies involved, as well as potential confidentiality-related obstacles.

The Swedish Tax Agency

Even unsuccessful inquiries may yield credible information about funds being funnelled between persons of interest. Should this happen, investigators can opt to bring this to the attention of the Swedish Tax Agency, thus serving them with an opportunity for

discretionary assessment. The tax agency has a row of measures at its disposal, including inspections of the mandatory cash registers (which must be registered with the Tax Agency by law) and staff registers (which are statutory for certain industries). Additional measures include reassessing protected personal data status, recalling registration for corporate taxation, reviewing applications for tax deductions for home repair and maintenance ('ROT'-deduction), and attachment.

Municipalities

When there are cases where restaurants are involved contacting the municipality's alcohol license administrator becomes possible way forward. Aside from processing applications for alcohol serving licenses, these administrators are also responsible for inspecting that those granted licenses adhere to the Swedish Alcohol Act. They should be able to share the following information with investigators:

- Has the company in question applied for a license to serve alcoholic beverages?
- What is the name of the signatory of this application?
- Where additional documents submitted along with the application, and if so, which documents?
- What individual(s) did the alcohol license administrator have contact with?
- What was the purchase price for the business at time the business it was acquired by the current owner?

Another option is to make use of the fact that directives stipulating prevention of organized crime are included in the steering directives of many of the country's numerous municipal housing companies. Thanks to this, housing companies should be able to aid the police with information, for instance if certain staircases or hallways plagued by rowdy behavior, or if an apartment is used for drug-dealing. As housing companies also serve the function of a landlord, they may moreover also be of help for police on the lookout for suspects who are trying to stay off the radar, or who control restaurants and other businesses from behind the scenes.

If there are ports in the region, yet another possible partner to approach is the municipal company operating them. In Stockholm, there are several restaurants leasing municipal properties owned by Ports of Stockholm, and the company also has some capacity for identifying goods that might have some connection to serious economic crime.

Lesser ports too lease out land to commercial players who sometimes display a more or less flexible attitude towards the law. These companies often come to play a very important role for the goings-on in or around the port – a fact which is readily exploited by criminals. Aside from maintaining a continuous presence in the ports, Swedish Customs already maintains good working relationships with the municipalities, the publicly owned port authorities and the port facility operators who handle the cargo. These are all potential sources as observers of illegal activities, unusual events, or irregularities in the flow of goods.

The Swedish Social Insurance Agency

The Swedish Social Insurance Agency (FK) can provide information about potential subsidy payments, including sickness compensation, sickness benefit, or attendance allowance. There are roughly 40 subsidies administered by the FK, but those just mentioned are top three among those seen in connection to the cases dealt with in asset-oriented intelligence work, and they often involve significant sums of money being paid out over relatively long stretches of time. Inter-agency cooperation has also allowed the Swedish Social Insurance Agency to carry out its own investigations to detect individuals receiving subsidies incorrectly, which in the long run might result in future subsidies being suspended or reduced as well as recovery of sums already paid out. The agency is also able to tell which persons have been granted student aid by the Swedish Board for Study Support (CSN). If there are questions relating to student aid, the CSN should be approached first, however. The primary contribution of the FK to asset-oriented law enforcement lies in its ability to suspend benefits and to recover the sums already paid out.

The Swedish Enforcement Authority

The Swedish Enforcement Agency is responsible for the execution of seizure, payment security and attachment, and for monitoring that individuals previously disqualified from engaging in business activities adhere to this decisions. The agency is moreover responsible for supervising the administration of bankruptcy estates. The Supervisory Authority for Bankruptcies (TSM) – the division of the Enforcement Authority responsible for trustee-in-bankruptcy supervision – is therefore tasked with a number of things, including safeguarding the debtor's assets for the creditors and ensuring that the trustee submits actions to, amongst other things, set a transaction aside, when and if conditions apply. The TSM is also responsible for making sure that trustees do file reports when there is reason to suspect criminal activity or when there are grounds for issuing a decision on trading prohibition.

Swedish Customs

In addition to its responsibility for monitoring and inspecting traffic passing in and out of the country, Swedish Customs is also tasked with the correct assessment and collection of Swedish and European Union customs duties and taxes. Here, the option of levying distraint is an important part of the toolbox, and should be put to use already in the intelligence collection phase of an investigation since effects are tangible for those involved. Using distraint is however contingent on the presence of a considerable risk for tax and duty evasion involving significant sums of money (RiR 2010:26, Riksrevisionen).

When a business is selected for post-clearance auditing, this is always preceded by an investigation carried out by the fiscal division of Swedish Customs, using analytical and risk-oriented methods to detect any systematic irregularities. Such false accounting threatens to cause huge losses for the state, and might as such cause great harm to the legal economy and the rule of law. When irregularities like these are uncovered, it is very important that an investigation of financial assets is already available so that a petition for distraint can be put forward. Moreover, such an investigation might also result in the conclusion that there are no assets, saving Swedish Customs from having to waste resources obtaining a warrant for distraint.

When an application for enforcement of the decision of the Administrative Court is submitted to the Swedish Enforcement Authority, this is done with the purpose of having property that may be subject to distraint designated. The examination conductor is the only one authorized to assume custody pending distraint. Note that this type of custody only applies to movable property, while custody in the context of criminal proceedings may be applied to all property, including immovable assets, this in accordance with the provisions in the Swedish Code of Judicial Procedure. The national head for Swedish Customs post-clearance unit is designated as the examination conductor in the agency's organizational rules of procedure (STY 2012-603), in addition to being responsible for issuing written orders on assuming custody over assets (Tax Procedures Act 2011:1224).

5.2.4 Different ways of work

There is a difference in the conditions for information-gathering when it comes to intelligence work carried out within the framework of a preliminary investigation on the one hand and information gathering outside any preliminary investigation only. The primary distinction lies in that in on-going preliminary investigations it becomes possible to start requesting information from other authorities. It should be noted, however, that even

outside the aegis of the preliminary investigation there are plenty of records and other sources available which may be of help in investigating the assets of the target (social media being but one example).

The issue of available means might also be related to the requirements and goals of an investigation. There are different needs for different cases – and obviously also a question of restrictions in terms of time and resources when putting a file together.

In some cases it might be warranted for a prosecutor to issue directives for an extended or more thorough-going investigation of the assets of a person of interest or related individuals, while in others persons not included in the preliminary investigation might be targeted for a limited asset investigation, as surveillance intelligence point to a likely involvement in serious crime. In another scenario, intelligence might result in charges against one or more individuals; in this case, asset-oriented intelligence gathering then enters into a more intensive and far-reaching phase, with an increased mandate for seeking out information. There are also situations where assets maybe looked into, not with confiscation as the goal, but to investigate the financial situation of suspect or relative at a certain point in time or period of their life. The reason why one would want to dig into the finances of a suspect is that the offence might have been committed because of economic reasons – a fact sometimes glossed over during the course of criminal investigations.

Oftentimes asset investigations are carried out in parallel to usual investigatory measures as the preliminary investigation progresses. As such, the asset-oriented measures constitute both a self-contained and integrated part of the investigation, inasmuch they contribute to the prosecutor's decision on counter-measures. The asset-oriented investigatory measures should commence at the same time as surveillance and intelligence gathering.

5.3 Practical approach

5.3.1 Introduction

Efficiently hunting down assets means that the hunt should start as soon as possible. Collecting and documenting intelligence relating to money and assets is something that should be handled by intelligence functions. It is of utmost importance that those involved possess both motivation and competence. Not only must they recognize the significance of identifying assets, but of gaining a greater picture of the financial situation of an individual as well. When the Swedish National Audit Office reviewed the Government efforts against criminal proceeds in 2010, they con-

cluded that all of the authorities in the review should take pains to have such measures initiated at an earlier stage: Surveillance and forensic intelligence as well as criminal investigation units must launch investigations into the financial situation of individuals when deemed necessary (RIR:26).

Intelligence as well as surveillance personnel must be brought in as soon as possible. The number of kilos of narcotics and years in prison cannot be the sole focus of undercover officers, but should include the assets associated with serious crime, and how these came into the possession of the offenders. Questions to ask oneself include: Does the suspect lead an obviously luxurious life given his or her income? Are luxury cars used, and what about their housing arrangements? Does the suspect go on extravagant holidays? Are investments in legal businesses being made? It is important to procedure this new way of thinking, so that it is applied out in the field right from the start.

Asset investigations should be carried out in all cases that are likely to result in incurred liabilities, as well as those where uncovered assets later could become targets for extended confiscation orders. The thrust of the investigation should be to prove that the suspect is in possession of assets, liquid assets, or good credit ratings (a requirement for importers applying for credit authorization, to guarantee that Swedish Customs will be able to collect customs debts (customs duties, agricultural tariffs, export duties). The guiding question should always be whether the suspect really possesses the economic means to legally have accrued assets and capital. When it comes to proceeds of crime, determining the extent of the profits stemming from these is sometimes necessary. This includes assessing the size of the profits as well as how the money was generated, used, or concealed.

Carrying out an asset investigation basically means comparing the suspect's earnings for, in most cases, three preceding years to the suspect's assets as they currently stand. This is done to see if it could reasonably be argued that assets and capital have been accrued legally. If this does not turn out to be the case, then chances are that the property might constitute proceeds of crime. The asset investigation should present nothing but proven facts.

A rough summary should be compiled containing all the resulting information during the course of the asset investigation, possibly along with additional information, surveillance, interrogation, contracts of sale and cash calculation. The summary may contain information regarding family situation and income, credit balance, debit and credit cards, capital investment, properties, credit assessments, debts, and circumstances indicating arrangements of hidden ownership. It is important to note that all information

must be stored in such a way that it is immediately available for any future measures, such as coercive measures and motions for confiscation and distraint orders, as well as for issuing of corporate fines.

5.3.2 Cash calculation

One alternative when looking into the suspect's capacity to secure his or her livelihood through legal means is to turn to the cash calculation, a highly useful method. The results then provide the basis for attachment and any distraint actions. When using cash calculation the 'reserve sum' set down by the Swedish Enforcement Authority should be used for comparison. This reserve sum corresponds to a minimum sum that should be available for taking care of living expenses (including housing costs) after all fees have been paid, is updated yearly and tied to Consumer Price Index (CPI).

A cash calculation should include:

- a comparison of different assessment periods
- travels abroad
- luxury consumption
- major investments such as cars, art, tenant-owned apartments
- foreign payments using foreign exchange companies
- certain Swedish Social Insurance Agency benefits
- company investments, shareholder's contribution, etc.
- costs for rent, cars, properties.

5.4 Ownership, decoy and possession conditions

5.4.1 Introduction

It is the job of the prosecutor to explain how the assets singled out in the motion to the court constitute proceeds of crime, and that issuing confiscation would not be manifestly unreasonable (Chapter 36, Section 1, BrB). Showing if the suspect reasonably could have afforded the assets in question is not the only difficulty here; just as often this is also a case of proving a circumstance of hidden ownership of property or companies.

When it comes to money laundering, one common way of realizing this is through investments into cash-intensive businesses such as restaurants or similar establishments; legal fronts are often used for criminal activities. A particularly efficient way of doing this is intermingling criminal profits with legal earnings, there-

fore bringing illegal money into circulation in the legal economy. Another take on this could be to procure run-down restaurants in order to use proceeds of crime for luxury renovations. If there are suspicions that proceeds of crime have been invested in a restaurant which is owned by someone else than the suspect, then the problem becomes proving that there is a situation of hidden ownership beyond a formally registered ownership. Note that restaurant premises are valuable in that they have a price and can be sold freely, as opposed to residential tenancy apartments.

Undercover intelligence has a big role to play in cases involving restaurants. Plainclothes police should keep the following questions in mind:

- How does the suspect carry him or herself at the restaurant? Does he or she give out orders to the staff?
- Who negotiated the deal to buy the restaurant? What about meetings with buyer and seller?
- What about loans from relatives – is this possible to investigate? – and what about promissory notes, IOU:s?
- Does the suspect have a personal key to the restaurant/premises?
- Does the suspect spend time in areas not accessible to the general public?
- Is the counter manned by the suspect?
- One idea is to make a test purchase in order to inspect the company registration number on the receipt.

Additional points to keep in mind regarding the operation and financing of a business include:

- A business might be run as a front, where registered transactions do not necessarily correspond to any real business activity and only serve as a smoke screen for the kind of business the principals are really running.
- The company board might have been replaced with figure-heads – front men – without any real idea of what is going on in the company.
- Have loans been taken out? One way to make sure that an application for a loan is granted is to cultivate relationships with insiders working in financial institutions, who then get kickbacks in the form of luxury goods or commissions of up to 5 per cent for every loan that is paid out. It is important to gain knowledge of where the money is coming from.

In the event that assets are discovered which are under the control of the suspect it becomes of utmost importance to establish what the situation is regarding ownership, especially when hidden ownership is involved. If cars, boats, and immovable property formally belong to someone else, then intelligence from undercover officers might become a deciding factor when establishing ownership relations. It might be useful to consider this process as consisting of two phases: first the assets must be identified, and second there must be an investigation into the economic capacity of the suspect to legally have acquired the assets at the time of purchase. If heavily mortgaged immovable property is encountered, this might indicate to the investigator the involvement of proceeds of crime.

Is it reasonable to suppose that the suspect had the purchasing power to acquire expensive property while at the person at the same time shows up as zero-taxed in Swedish Tax Agency registers? If not, we must attempt to prove that his or her assets correspond to proceeds of crime. "In contrast to what is stipulated for regular confiscation, there is no requirement for proving a connection between that which is to be forfeited and a specified criminal act," as this is phrased in a handbook on confiscation published by the Swedish Prosecution Authority's Prosecution Development Centre (22:2010). In other words, there is no necessity that there is a direct connection between asset and offence. We must also investigate the financial status by querying various databases, including the Swedish Road Traffic Registry, the Real Property Registry, and the police General Surveillance Registry. Just as important is to investigate the suspect's declared annual earnings, benefits, and possible debts. The social life of the suspect must also be looked into; information on non-marital cohabitation, standard of living, and social habits could all end up being important pieces in the intelligence puzzle.

When private boats are involved, charting the extent of use of them becomes important. Additional questions to answer include:

- Whose name is on the berthing contract, and who is paying berthing charges?
- Who signed the yacht insurance contract?
- Who takes care of loans or repayments?
- What are the dimensions of the boat? Is it found in the Swedish Transport Agency's Register of Ships?

There are also problems associated with immovable property, where deeds are necessary in order to prove formal ownership. In

order to challenge this presumption the prosecutor must present the following evidence and information:

- Observations which substantiate X's use of the property
- Observations which indicate that every room is at the disposal of X
- Observations where X is shown to be responsible for garbage disposal
- Information pointing out X as responsible for paying the insurance
- Information regarding loans and amortization
- Information about X using the premises to change clothes
- Information regarding arrangements for payment of electricity and water bill
- Information indicating that X can access the premises using his or her own key

Even larger obstacles are faced when the proceeds of crime are reinvested abroad in immovable property or businesses not under the formal ownership of the suspect. In general a request for mutual assistance must be granted in order if the investigator is to be able to use the tool deemed most suitable to get at the criminal profits. There are many reasons an offender would want to conceal assets in this way; those with large debts could presumably be interested in hiding their assets from the authorities or others.

Furthermore it is also important to keep in mind the difference between primary and secondary offence, with primary offence referring to the initial crime – such as robbery or narcotics offences – and secondary offence to any criminality aimed at aiding primary, more profitable offences. One approach to handling proceeds of crime is to use them for reinvestments in current criminal schemes while also funneling the profits into the legal economy. Another alternative is to spend them on status symbols such as gold chains, luxury cars, and so on. Where this will land more or less comes down to what type of criminals we are talking about. To what extent is it safe to show off your riches?

5.4.2 Making use of the Swedish Companies Registration Office and credit reference agencies

The investigator looking into the activities of a company could also do well to turn to the Swedish Companies Registration Office in order to request copies of submitted files. If the office has received phone calls in connection to the specific case, they will

also be able to share the official notes made in connection with these.

When trying to assess the extent of the financial activities of a suspect one alternative is making a request with a credit reference agency such as Upplysningscentralen, Sweden's leading business and credit reference agency (UC). They are able to assist the investigator with a list of the credit issuers who have contacted the UC about the credit worthiness of any persons of interest, though it should be noted that UC are also obliged to notify to the individuals in question.

5.5 Example cases

We will now proceed with a discussion of an example focusing on interagency cooperation.

The Police have received information fingering "John" as likely to be involved in illegal drugs, possibly as a dealer of imported narcotics. An intelligence-gathering operation is subsequently initiated.

Through queries in police and public records lead investigator uncover 250,000 SEK in collectable tax arrears and no openly held assets in addition to these debts. According to the Swedish Population Register he resides in an area strongly characterized by residential tenancies, and aside from his disability pension there are no other known sources of income. However, this picture contrasts to that of internet-based intelligence, as John and his associates are frequently seen together visiting trendy restaurants and night clubs, traveling abroad, and driving luxury cars or motor yachts.

Surveillance results in field intelligence about John spending a large portion of his days at a local restaurant. As it turns out, this restaurant is also visited by individuals known to the police as having an involvement in the illegal drug trade. Another finding in the surveillance effort is that John drives around in a 2012 Porsche Cayenne Turbo registered to an octogenarian aunt living far away in northern Sweden.

A police file is prepared, containing circumstantial evidence indicating possible trafficking in narcotics and information about hidden assets.

The investigators now proceed to obtain additional information by means of external intelligence. Surveillance makes it clear that that the person of interest functions acts as the shadow director for the frequented establishment. The restaurant is run as a

limited liability company. According to available information all of the stock is owned by the suspect's sister, a sister who does not live in the same town and whose role in the company is seemingly limited to putting her signature on all the necessary paperwork.

When conducting an undercover visit to the restaurant it is discovered that multiple cash registers are used. After payment the receipt handed over to the police turns out to lack the obligatory control number, prompting suspicions that undeclared incomes are involved. The Swedish Tax Agency is notified about these suspicions.

After analysis, the material is handed over by the police to the prosecutor, who now has to decide on whether to initiate a preliminary examination. The collected intelligence on the fiscal situation of the suspect is also handed over for possible use in a preliminary investigation into proceeds of crime.

Informed by the information in the case file, the prosecutor then decides to initiate a preliminary investigation relating to suspicions of serious tax fraud, gross false accounting, and serious narcotics offence. Thanks to already being informed about financial aspects the prosecutor will from the outset have his or her sights set on confiscation and proceeds of crime.

5.6 Conclusion

In this chapter, we have illustrated why asset-oriented intelligence work should be conducted and how to go about it in procedure. We have also shown that the work can be conducted on several different levels with the concept of asset investigation as a common denominator. Finally, we have shown that it is possible to attain effects from the work which has been conducted even if such effect does not neatly fall under one of the categories of criminal investigation, prosecution, or conviction. In this context, we would like to point out the importance of cooperation and exchange of information.

The stance that we have attempted to communicate is that essentially all actors in the area can immediately begin the practical work by, for example, using the appended available cash calculation template.

We have identified some of the following as success factors for the asset-oriented intelligence work which we recommend:

- common asset-oriented targets
- focus on the assets at as early a stage as possible

- meticulous documentation of assets and circumstances surrounding possession
- economic skills
- use of all available sources
- an offensive approach
- intelligence-steered, long-term working method
- willingness to share information.

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Chapter 6

Tactics: lower and higher levels

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6.1 Introduction

In Chapter 5, the authors addressed how asset-oriented law enforcement can be used in intelligence activities to work with criminality both proactively and reactively. In this chapter, we wish to show how one can work operatively with a specific matter and what tactical choices are presented. We provide practical, solid advice on how to make the choices which will render an asset-oriented matter as successful as possible. We also address the impediments which may be encountered. Our hope is that the experience which we have gained will also assist others so that more matters can be approached from an asset-oriented perspective and that more asset-oriented matters will be successful.

6.1.1 Method

The authors are Patricia Arnolds, an analyst at the Swedish Police in Stockholm County, Lotta Rytter Dufwa, an expert at Swedish Customs, and Peter Waldau, an asset investigator at the Customs Criminal Office in Stockholm. We have conducted in-depth interviews and group discussions with Gunnar Appelgren, head of the Action Group at the Swedish Police in Stockholm County, Bo Eliasson, leader of the Action Group at the National Bureau of Investigation, Mattias Pellberg, public accountant and asset investigator at the Swedish Police in Stockholm County, Björn Frithiof, public prosecutor at the International Public Prosecution Office, and Hans Lundwall, Senior Investigator at the Customs Criminal Office in Stockholm. The material in this chapter is based on the experiences of these individuals.

6.1.2 Structure

In order to make it easier for the reader, the structure of this chapter follows the chronology of the tactical work on a matter. The method used in a matter differs based on whether or not the preliminary investigation has been commenced and whether or not prosecution has commenced. Accordingly, the chapter is divided into three sections: the intelligence stage, the preliminary investigation stage, and prosecution commenced. Although not

all matters go through the intelligence stage, we begin there and describe the phases that the matter goes through, beginning with the tactical selection of individuals, documentation of assets, cooperation, and media. The intelligence stage concludes with a discussion of the problems which customarily arise during these phases. The next step is the preliminary investigation stage. The phases addressed here are documentation of assets, cooperation, coercive investigative techniques, media, and seizures. Here, too, we conclude with a discussion of the problems which customarily arise during the different phases. Finally, prosecution is commenced and the media perspective is addressed in that stage.

6.2 The intelligence stage

In this section, we address the tactical choices which we face at the intelligence stage, the relative advantages and disadvantages of various choices, and the possible impediments. Our exploration of the various methods is only as deep as is necessary for the operative work. For an in-depth discussion of asset-oriented intelligence methods, see chapter 5.

6.2.1 Tactical selection of individuals

Roughly speaking, the planning stage at the Police can be divided into two steps. In the first step, the matter is evaluated from the police perspective and parameters for the operation are set. At this stage – when the matter is to be defined and planned – optimal staffing comprises a responsible supervisor for the matter, a matter administrator, and a person from KUT (*Kriminalunderrättelsetjänsten* – Criminal Intelligence Service). In the next step, mapping is commenced to find offences “through the back door”, i.e. offences which have not been reported but which are indicated, through internal reconnaissance, as incongruities. It is beneficial if personnel from the Swedish Tax Agency and the Tax Crimes Unit participate in the planning so that the economic mapping can be conducted from the outset. Individuals with economic crime experience can see incongruities which police personnel might easily miss. It would be ideal to have a public prosecutor, who can offer their perspective on the operation and the range of long-term factors for success, involved as early as at this stage. Due to a shortage of resources at the Prosecution Authority, this is not always possible.

Network analysis

A skilled selection of the individuals on whom the operation should focus is contingent on a thorough network analysis having been conducted of the individual’s criminal contacts as well as their social contacts.

Based on the network analysis, target individuals can be selected using the so-called “pruning method”. Briefly, the “pruning method” involves “killing the tree by pruning the branches”. It entails evaluating what operational focus will cause the greatest damage, including economic and social damage. This can be done on the network level and on the individual level. If the purpose of the operation is to eliminate a specific criminal group, it should be possible to identify the individuals who provide contact between different groups – from a network perspective, the individuals who hold the key positions. It is not a given that the leaders are the most important individuals for continued viability of the network; such persons can sometimes be replaced quickly.

By means of the network analysis one can, hopefully, focus on a small number of individuals and nevertheless destroy the network’s or the organization’s ability to act.

On the individual level, the focus is on an individual whose capacity within the criminality is to be thwarted. In addition to the primary target individuals, one can, for example, also focus on partners and parents. It may be very tempting to give the success factor too much weight since such an operation may produce a quick and favourable result with small means. Selecting the success factor at the expense of the “pruning method” often leads to the loss of the sustainable results – the results that make a long-term difference. Accordingly, it is important to apply one last perspective, namely the time frame. A time frame allows consideration to be given to the subjects who should be focused on for a short period and the subjects for whom a long-term perspective would be profitable. It is important here to attempt to think outside the box and beyond one’s comfort zone. One may first choose to focus on the simple individuals, those with a high success factor. If the success factor is low but it is nevertheless deemed very important to convict the target individual, one should consider the possibility of focusing on such person in the long-term. Most targets can be reached with sufficient patience. It is also important to define the time frame in order to know the length of time available to collect a sufficient amount of information on each individual.

In summary, one should have a sufficiently comprehensive and, at the same time, detailed plan for the operation, a clear goal with a time frame for each individual, and knowledge regarding the impact of each individual’s removal on other individuals and on the network in both social and economic terms. When the target individuals are defined based on the aforementioned perspectives and methods, one should select those persons in addition to the target individuals for whom it is worth developing reasonable suspicion for the purpose of using them to acquire information

about the target individuals. One should also develop reasonable suspicion for as many individuals as possible within the given criminal network since difficulties may otherwise arise with the use of coercive investigative techniques. Because of the risk of leaks, it is important to remember that when the suspect is entered into the system as a suspect, they are placed into the suspect register to which many people have access.

6.2.2 Documentation of assets

If tracking of the target individual's assets begins at an early stage and the assets are continually documented, one has a greater chance of successfully securing assets. The goal is for the target individuals to feel that continued criminality is unprofitable and unglamorous, and thus it will be less appealing for others to begin a criminal career. The intelligence activities and surveillance activities conduct mapping of the target individuals. There is much to gain if the personnel involved have, at the same time, an asset perspective. Mapping of the suspected person's financial circumstances begins when the investigation is commenced. A preliminary investigation must be commenced in order to obtain information from banks. Nevertheless, much can be done as early as at this stage. Information about the target individuals can be collected from various registers and from contact with other public authorities. Such information includes, for example, taxed income, collectible debts and records of non-payment, title to real property and vehicles, and company involvement. The asset perspective should also be emphasized for persons involved in managing sources. A register check can give additional information about ownership, particularly when the suspect has been the complaining witness in a matter. For example, there may be interesting information to obtain in the event of theft from a car (was the car parked, who reported it?) or theft of a bicycle (was it "at home", where is "home"?).

Bringing an asset perspective into surveillance is important since many interesting things can be observed regarding the suspected person's finances. It is therefore important to "think assets" and document what one actually observes during surveillance, preferably in photographs or on film. Such documentation increases the possibility of securing concealed assets as well, since possession is important. If the suspect drives a car which is registered to another person, note when they use it and, above all, where they park it at night. Note where the suspect spends the night. Note where property is stored when it is not used. Document contacts with banks, realtors, and other financial establishments. A number of authorities have drawn up checklists which can be used as support in conjunction with the collection of information

of, for example, hidden ownership of personal property and real property, surveillance, and searches of premises (see the appendix at the end of this chapter).

6.2.3 Cooperation within the authority and with others

Cooperation between crime-fighting authorities requires the ability to share relevant intelligence information unimpeded by confidentiality. Ultimately, the general clause set forth in Chapter 10, section 27 of the Public Access to Information and Secrecy Act (2009:400) may be used if it is clear that the interest in having the information disclosed takes priority over the interest to be protected by the confidentiality. The cooperation takes place within the parameters of *RUC* and *NUC*, the regional and national intelligence centres which were created specifically for this purpose. It is important in the matter that one individual who is clearly charged with coordinating the operation be appointed – someone must have this mandate. This is a very time-consuming role but it is invaluable. The operation leader must take charge in their role and have conducted substantial background work in order to persuade other authorities to prioritize the matter.

In addition to the mapping and asset perspective, the purpose of the cooperation is to be able to commence the matter on as broad a footing as possible so that it can then be narrowed down and focused when the matter has gained traction and its direction can be determined. It is also an advantage to be able to show the public prosecutor that the matter has been developed and conducted with as few presumptions as possible. Cooperation between multiple authorities is a condition to enable complete mapping of the suspect and their finances and for the application of an asset perspective from the outset. The choice of public authorities with which to cooperate depends on the nature of the matter. The Swedish Tax Agency and the Swedish Enforcement Authority are such authorities as should generally always be included in cooperation initiated by the Police. The Swedish Tax Agency has information about income and tax circumstances in respect of both natural persons and legal entities. The Swedish Enforcement Authority has information regarding unpaid debts. Swedish Customs has information regarding import and export activities. The Swedish Social Insurance Agency's knowledge regarding benefits is important since benefits fraud is common within organized crime. The Coast Guard may prove to be a valuable cooperation partner since they often have knowledge regarding real property and restaurant activities in harbour areas as well as regarding ownership of boats. Cooperation between authorities may also be important in the task of identifying the

complaining witness since public authorities as complaining witnesses are otherwise easily forgotten.

Within the Police, it is also advantageous to cooperate internally with other units since these can secure assets from the target individuals in conjunction with other offences. For example, the assets of strategically important individuals may be secured if, for example, they are arrested for assault, since such an offence often leads to a claim for damages.

Personnel working with the Police Authority's informant handler operations who recruit sources and collect information from them are focused on becoming more educated about finances in order enable them to ask the right questions and to recruit financial sources. Nevertheless, in cooperation with them it may be worthwhile to remind them of the asset perspective.

6.2.4 The media creates possibilities

Using the media when the matter is in the intelligence stage may be perceived as controversial. Nevertheless, it is recommended to at least include this item when planning, consider the available possibilities for using media, and consider its potential utility in the matter. In this way, one can make a well-thought-out decision regarding whether to use the media. However, it is important to remember when in contact with journalists that their role is one of review – they have no instruction from any public authority whatsoever. One must also respect that journalists, particularly those working on rural regional newspapers, depend on maintaining good relations with the police authorities. This cannot be abused. Regardless of whether one decides to use media at this stage of the operation, good contact should be established as early as at this point. Journalists on local newspapers often have a great deal of information and sound knowledge regarding local circumstances and thus one can obtain useful intelligence from them. This refers, of course, to information in the public domain, not information from protected sources.

In the Södertälje Operation (the Södertälje Operation (*Södertäljesatsningen*)) is the multi-authority operation initiated in 2010 to combat serious organized crime (including among other things, murder, kidnapping and extortion) in Södertälje), operation leaders went out in the media at an early stage in part to prepare the community by informing them that operations would commence, but the primary purpose was to work on the civil society relations, i.e. civilians who needed to know that there is hope for a safer and more secure future (www.lt.se/gangsterkriget 2013-

11-26). The need to build up civil society confidence in the Police was clear early on in the operation since it was, in many ways, a closed society with a parallel structure. The civil society also needed internal strengthening. The media contributions may have contributed to more individuals daring to report crimes and more individuals daring to serve as witnesses. Without these contributions from the civil society, the Södertälje Operation would not have been as successful.

The right media exposure can generate more information from the public in an information-poor matter. For example, an article where victims describe their experiences as victims of extortion inspires other victims to report or provide tips about it, since they no longer feel like the only person in their situation. Media exposure can also provide provocative effects if, for example, one wishes to create uncertainty within the selected target group on a specific occasion.

6.3 Problems and impediments to successful work

6.3.1 Tactical selection of individuals

If one chooses to place too much weight on the success factor when making the tactical selection of target individuals, one does in fact achieve good results with an easy matter but runs the risk of losing out on the large, long-term effects. Risk factors that are too small also carry a risk, since then both motivation and resources can quickly decline if there are no results. Correctly weighting different factors and perspectives is an art form. The information is limited in the intelligence stage. It is very difficult to obtain a correct analysis which reflects reality. The analysis must thus be taken for what it is – a skilled estimate of actual circumstances based on limited available information. As result, it may be the case that the Criminal Information Service, KUT – overestimates the information in its analysis of a matter and this is not discovered until it becomes operational. If only one individual is responsible for the analysis, there is a risk that the analysis results and recommendations will be very dependent on that person. One way to avoid the problem is to allow a number of individuals, both those experienced in intelligence and those experienced in preliminary investigations, to produce the analysis in consultation. The hope is that such a discussion will further increase the quality of the analysis.

6.3.2 Cooperation within the authority and with others

All authorities have their directions, prioritizations, and areas of authority. As result, it is sometimes difficult to achieve cooperation between authorities. This may, for example, result from a lack of resources – an authority is forced to refrain from cooperation in the interests of its own activities. There are examples of authorities which are compelled by a shortage of resources, to cooperate only in the extremely limited number of matters decided upon by the Operational Council. Skilful argumentation in favour of cooperation is often necessary in order to gain access to the necessary resources. This is a burdensome and time-consuming role. Since RUC and NUC are seriously understaffed, bottlenecks arise and they cannot always be relied upon as a resource; instead, one must create one's own contacts. Unfortunately, on the other hand, it sometimes happens that public authorities decline to cooperate and instead refer the matter to RUC or NUC.

6.3.3 Media

There are two primary problems encountered in respect of the media. Firstly, it can be very difficult to acquire a good contact person in the media. Secondly, a specific media tactic may have been worked up for the matter and, if this is not communicated well to the authority's press spokesperson, problems can arise in terms of which message which is released.

6.3.4 Legislation and case law

Many people do not bother reporting suspected receipt of stolen money; examples of this include car dealers and even realtors. As a result, the financial mapping may contain shortcomings. The mapping could also be more complete if it were possible to compile registers between public authorities. Confiscation of assets pursuant to extended confiscation provisions is contingent on the person being found guilty of an offence for which confiscation is a penalty (offences for which confiscation is a penalty are governed by Chapter 36, section 1 b of the Swedish Penal Code). Although the statutory support for confiscation has been reinforced by virtue of extended confiscation provisions, it is still difficult to prove that the assets are tied to criminal activity. A reverse burden of proof in respect of assets would change the situation entirely and entail that many more of the criminal's assets could be confiscated. Cooperation with other authorities ultimately takes place based on the general clause of the Public Access to Information and Secrecy Act. Unfortunately, the general clause is perceived as having been written vaguely and thus ambiguities

often arise in the face of cooperation. Situations sometimes arise within the authorities whereby individuals become so uncertain regarding the legislation that they do not dare to cooperate, notwithstanding that they have full statutory support to do so. Doubt may arise during ongoing cooperation in respect of the permissible amount of cooperation and whether such cooperation is fully supported by the general clause. There is a need for other statutory exceptions to confidentiality or, in the alternative, adaptation and clarification of the general clause so that cooperation can take place with less friction. There is also a need for comprehensive informational work regarding the general clause to the relevant public authorities.

6.4 The preliminary investigation stage

6.4.1 Documentation of assets

When a preliminary investigation commences, a number of different types of information about the suspect's finances can be retrieved. Information can be obtained from banks and other financial institutions regarding, among other things, safety deposit boxes, accounts, account cards, holdings of securities, and executed transactions. Ownership can be investigated by looking at an account analysis to see who pays amortization and interest on any loan for real property and who pays for repairs, maintenance, insurance, electricity, water, rubbish collection, and so forth. The same applies to personal property. Another source of financial information may be information which comes to light in connection with coercive investigative techniques. Suspects may talk about assets as their own notwithstanding that another person officially owns the assets. Conversations where company involvement is mentioned are also important to note. Documentation of conversations may be used as evidence of ownership and the assets may be confiscated. In connection with searches of premises, assets may be secured and documents may be seized which can provide information regarding title to property, assets in foreign banks, or property holdings abroad. In connection with interrogations of relevant individuals and witnesses, questions about the suspect's finances, living conditions, and any assets and liabilities should be posed at an early stage in order to acquire more documentation and to check on any changes.

6.4.2 Cooperate as broadly as possible

The entities with which one cooperates depends on the nature of the matter but it is advantageous to work as broadly as possible and to have as many cooperation partners as possible. During the preliminary investigation stage, the municipality often becomes

an important cooperation partner. Generally, one can say that the smaller the municipality, the more important it is as a cooperation partner. The fact that municipalities issue permits and serve as supervisory authorities make them very exposed to undue influence and thus they become central in welfare system fraud. In tandem with this, municipalities have very broad knowledge regarding, among other things, planned major purchases of real property, new construction, restaurant operations, and so forth. Many municipalities already work actively against criminal groups, for example preventively by purchasing properties in order to prevent a purchase by a specific criminal group. In such case, the municipality may need help in distinguishing disinformation from information.

Another form of cooperation – one which involves obtaining information rather than exchanging information – is working with, for example, the unemployment benefit funds (which may be good for detecting benefits fraud) as well as insurance companies for concealed assets. Unfortunately, there is no good routine for cooperation with insurance companies. Identifying the complaining witnesses and issues regarding damages should be included within the parameters of the cooperation, since unemployment benefit funds, insurance companies, and the Swedish Social Insurance Agency are often missed as complaining witnesses. The secrecy legislation is more clear in the preliminary investigation stage; since the public prosecutor takes decisions regarding exchanges of information and controls the cooperation, the problem from the intelligence stage is thus not relevant.

6.4.3 Coercive investigative techniques

Coercive investigative techniques must to be used to find assets as well. For the time being, suspects in the matter often speak rather openly about their finances in their telephone conversations. This will probably change as we become more successful in using coercive investigative techniques for this as well. When listening, listen for the words “my”, “mine”, “home”, and suchlike, since this can be an important part of asserting ownership. With respect to covert wiretapping (covert wiretapping of electronic communication is governed by Chapter 27 of the Code of Judicial Procedure), it is advantageous during the matter to maintain a close dialogue with the operators who listen to conversations so that they do not lose sight of the asset-oriented perspective. The operators can also use different tags on conversations in order to facilitate the coming analytical work. If there is no well-functioning structure at the outset of the matter, it becomes difficult to catch up later, since material from telephone wiretaps can often

accumulate at a very fast rate. One example of this occurred when the police had a peak of telephone wiretaps on over 40 telecommunications addresses at the same time following the double murder at Oasen in Södertälje. The analysis of the conversational traffic then took place for months thereafter. Collected conversation lists (covert monitoring of electronic communication is governed by Chapter 27 of the Code of Judicial Procedure) can become an important part of an asset investigation. Firstly, it is important to tie the telecommunications address or the telephone to the suspect, which can be done, among other ways, by analyzing the context. An analysis can thereafter show, among other things, where the suspect lives, where the suspect works (or does not work), the extent to which they work, and other activities. The conversation lists can also be used for comparison with, for example, stated time accounts; for example, this was done in a matter in the Södertälje Operation in order to show serious fraud against the Swedish Social Insurance Agency (the Selma matter, District Court case B 2700-12).

6.4.4 The media creates possibilities

There are at least two aims in using the media at this stage. The first is to reach out to the criminal group/organization in question. One may wish, for example, to provoke certain subjects of conversation for wiretapping purposes, or to procure that they visit a specific location. An example of the latter is when a target individual moved his luxury boat from a marina. In order to begin to track the boat again, the police released information in the media which rendered the target individual uncertain about where the boat actually was. He could then be followed to the boat when he wanted to ascertain that it was actually still there. Such efforts are made through, for example, the TV programme “*Efterlyst*” (“Wanted”). The other purpose is to reach out to other criminal groups and organizations. For example, this can illuminate international cooperation and signal to the criminals that wherever they may be, law enforcement authorities will find them. One example of this is the former leader of a criminal network in Södertälje who remained abroad for several years (primarily in Venezuela) and who was ultimately arrested by Spanish police (www.svt.se/nyheter/sverige/ledare-for-sodertaljenatverk-gripen 2013-11-26). In addition to reaching out to criminal groups and organizations, the purpose of the information to the media was also to reach civil society in Södertälje, where it was important to build up trust in the police.

6.4.5 Seizure and searching for assets

As early as in conjunction with planning and exposure prior to a seizure, it is important to emphasize that the economic perspective must be present here as well. Give clear instructions about what to look for. For example, one can look at who seems to live on the property if the issue of ownership has not been completely investigated. One can look for personal belongings, clothing, and suchlike, as well as mail. Keys to personal property may also be important to note, and a boat key may be located in the suspect's residence.

In conjunction with the seizure, it is important to coordinate with other involved authorities, for example the Swedish Enforcement Authority, so that they can take assets in hand directly after the seizure. Coordination with the Swedish Enforcement Authority for the purpose of securing assets requires that the matter involves, or will involve, payment claims against the person in question. In certain cases, the Swedish Enforcement Authority can also assist with an appraiser. If the assets are not secured in conjunction with seizure, there is a great risk that they will be moved after the seizure and will become difficult to find. One should remember the possibility to seize and take into custody property which may be assumed to be subject to confiscation. In order to make it easier for the prosecutor, an order for attachment should be sought from the district court prior to the seizure. Since such an order is public, there is a risk that the information will wind up in the wrong hands and that the seizure will be revealed. In order to minimize this risk, the application with the district court should be filed as late as possible on the day before the seizure. Seizures should be conducted at all locations simultaneously in order to secure all assets at once, otherwise there is a risk that assets will be moved from the other seizure locations and will become difficult to find. Bank assets should also be taken into custody at the same time as the seizure in order to minimize the risk that they will be moved. A great deal of information which may be of interest in the matter is located in IT equipment such as mobile telephones, smartphones, and computers. Unfortunately, going through such equipment is very time-consuming and thus this should be taken into consideration when planning the matter. Any debt relationships should be investigated at the so-called 24:8 interrogation; questions should be asked regarding whether the interrogation subject has debts to anyone and whether anyone is in debt to the interrogation subject, preferably on two separate occasions. Questions regarding residence and telephone number should also be asked. It may also be the case that the suspect is so focused on being identified as a suspect that

they feel good about getting a chance to breathe and talk about “general questions”.

6.5 Problems and impediments to successful work

6.5.1 Cooperation

Insufficient resources at the various authorities is a significant problem in connection with cooperation. This can be noted, for example, by prosecutors not prioritizing the asset-oriented perspective. The insufficient resource problem is pervasive and can be seen primarily at prosecution offices other than the international public prosecution office.

6.5.2 Coercive investigative techniques

Coercive investigative techniques can generate a great deal of information which becomes difficult to analyze due to the large quantity involved. Analysts and asset investigators who can process and analyze the material are scant. At present, it appears that there is a risk that many matters will not reach their full potential. Using coercive investigative techniques, such as collecting conversation lists, is often very expensive, particularly in more complex matters. If the budget is tight, there is thus a risk that, for financial reasons, one will give a second thought to collecting conversation lists. At the same time, it is very important to gain access to the lists since they often are crucial in terms of the chance to succeed in the matter. Due to the most recent technological developments and the change in how communication occurs, there is currently a significant discrepancy between communication methodology and the level of public authority know-how on the subject. For example, more communication today takes place through forums, various chats, and programs other than by text message (see, e.g., www.dn.se/ekonomi/appar-popularare-an-sms/ 2013-11-23), and authorities presently find it difficult to wiretap such means of communication. The level of know-how at the authorities is lagging behind both in terms of using the technology and in terms of legislation. Legislation itself is also behind the times, for example the legislation regarding bugging a room (the Covert Bugging Act (2007:978)) provides latitude for bugging a physical location, not an individual or a moving location. We have begun to lose the basis for our analyses and the material which often forms the basis for a large part of the evidentiary material. There is a risk that we will soon have difficulty catching up.

There is an erroneous understanding on many fronts regarding the legislation governing coercive investigative techniques in general, and the law is often over-interpreted in order to be certain that no mistakes are made. One common misinterpretation is that covert wiretapping applies to a specific suspect and not to a telecommunications address, as is the case. Another common misinterpretation is that one may only listen for information about the offence of which the individuals are suspected, which means that the investigators often lose important information. Prosecutors' evaluation of the permissibility of using surplus information from coercive investigative techniques is often highly personal, which creates uncertainty among the operators regarding how they are to treat such information. The operators of telephone wiretapping are not always asset-oriented, which means that a great deal of important information is lost. Both of these problems are believed to be the result of insufficient resources and the operators' very heavy workloads.

6.5.3 Seizure

A person is not required to be able to explain their assets, which is perceived as a serious shortcoming. The asset investigators estimate that only a small percentage of the assets which originate in criminal activity are subject to confiscation. A reverse burden of proof in respect of assets would thus be one possible road to take. Despite the fact that confiscation legislation regarding extended confiscation has facilitated the work of reaching assets, there are many assets that cannot be reached.

In conjunction with seizure, it may be difficult to determine who owns an asset and to localize known assets. Vigorous surveillance and analysis work can sometimes solve this problem. There is also the risk that information about a seizure will be leaked in conjunction with an application for attachment since this information becomes public. The contents of bank accounts which should not be available to the suspect should be taken into custody at the same time as the seizure in order to minimize the risk that they be moved. Despite the fact that the banks are skilled at handling this, there is a risk of a time-delay on the order of a few hours. One shortcoming in the search for assets is that there is no register of ownership of non-listed shares and ownership of tenant-owned apartments.

6.5.4 Other problems

The new legislation regarding conversation lists (Covert Surveillance of Electronic Communications Act) has created a great deal of additional work and administration at the Swedish Police. A measure which previously took 10 minutes now takes half a working day because surveillance decisions must be taken by the district court. With few exceptions, account information from banks is delivered by fax or letter, despite repeated requests for digital transmission. This has made it very difficult to process and analyze the information. The information must be processed manually instead of using the advanced analytical tools available through computer programmes. Manual processing requires unnecessarily extensive resources but the most serious issue is that a great deal of significant information and links are not detected. One should be aware that searching in the Fastighetsfakta (Property Facts) service is not entirely reliable since the service appears to be updated irregularly. A full, correct search can thus only be done through direct contact with the Swedish Mapping, Cadastral and Land Registration Authority (Lantmäteriet). Going after an individual's assets is often seen as extremely provocative, and thus personnel involved with the matter may feel very exposed. Personnel at the Swedish Enforcement Authority are perceived as particularly exposed.

6.6 Prosecution commenced

6.6.1 The media at the final stage

When prosecution has been commenced and trial is soon at hand, it is a fact that the media offers the opportunity to strengthen the brands of the various authorities in the public eye by showing the ability to convict the suspected perpetrators and the ability to recover the proceeds of crime. One side effect is, hopefully, to also reduce new recruitment by showing the unglamorous side of criminality and by reducing the value of the criminal organizations' brands.

Appendix – checklists for surveillance and search of premises

Asset card drawn up by the Economic Crime Authority:

The purpose of the following checklists is to serve as support in the collection of information, whether for purposes of intelligence or within the parameters of an ongoing preliminary investigation. Please note, however, that the individual police officer/agency officer must personally assess the legal conditions in the individual case. All information obtained falls under Chapter 5, section 1 of the Public Access to Information and Secrecy Act.

Always verify the existence of any debts with the Swedish Enforcement Authority and the Swedish Tax Agency.

PROCEEDS OF CRIME/ASSETS – HIDDEN OWNERSHIP

Investigation to secure execution of future claims as well as the confiscation of proceeds of crime, damages, and corporate fines as well as distraint for future tax liability.

Investigation of ownership must be submitted to the Swedish Enforcement Authority not later than in conjunction with the request for execution. *Note the presumption for ownership in conjunction with execution: possession!*

Personal property

Acquisition

- Is there a sales contract? Gift agreement? Testamentary documents? Division of assets documents?
- Is there information from a seller/broker?

Ongoing costs

- Who pays loans? Amortization? Interest?
- Who pays for repair and maintenance?
- Who pays for insurance?

Use/possession

- Who is the primary user?
- Where is the property when it is not being used?
- Who has any keys, e.g. to car, boat, garage, storage space?

Real property

Acquisition

- Is there a sales contract? Gift agreement? Testamentary documents? Division of assets documents?
- Is there information from a seller/broker/intermediary?
- Is there information with a mortgage holder, e.g. bank, private individual, etc.?
- What was the purpose of the acquisition?

Contact:

- Documentation for deed: Swedish Mapping, Cadastral and Land Registration Authority
- Acquisition permit for agricultural property: County Council

Ongoing costs

- Who pays loans? Amortization? Interest?
- Who declares the income expense?
- Who pays for repair and maintenance?
- Who takes care of contact with workmen, the municipality, etc.?
- Who has entered into agreements for, and who pays for, electricity, water, heating, rubbish collection, etc.?
- Who pays for insurance?

Use/possession

- What person or persons lives/live on the property (mail, land-lines, etc.)?
- Whose belongings are inside the property?

PROCEEDS OF CRIME/ASSETS – SEARCH OF PREMISES

Retrieve or document (photograph, film, memorandum):

Real property (buildings)

- The building's façade as well as its address.
- Documents which clarify title (i.e. show possession, purchase, or sale), e.g. deeds, loan documents and invoices from workmen or agreements.

Personal property, company involvement, etc.

- Vehicles: cars, motorcycles, mopeds, boats, etc. Reg. no. visible in photo. Possession is crucial!
- Car keys or documents which tie the person to vehicles which are not at the site.

- Capital goods: cash, jewellery, watches, art antiques, rugs, tools, computers, TVs, stereos, other technological products and other personal property which might be of value.
- Front side of account cards, bank papers, notes with account numbers and/or transactions.
- Documents which show registration or other ties to companies.
- Documents showing current corporate assets, e.g. bookkeeping, etc.
- Documents which clarify title (i.e. show possession, purchase, or sale) of vehicles, capital goods and other valuable personal property
- If the person is not registered at the address, photographs/videos of objects which prove that the person lives there, e.g. clothing, mail, or other personal belongings.
- Other objects or documents which may be assumed to be of economic value.

PROCEEDS OF CRIME/ASSETS – SURVEILLANCE

Document (photograph, film, memorandum):

Real property

- Property where the person spends the night or has a fixed connection. Also document where the person parks their car at night.

Personal property, contacts, etc.

- Use of vehicle/boat. Note reg. no., model, time, location, date, and who operates the vehicle. Possession is crucial!
- Contacts with banks, real estate brokers, asset managers, and other financial establishments and companies.
- The individual's income sources, such as work, as well as expenses, for example gambling.

Asset card drawn up by the Helsingborg Police:

Swedish Penal Code, Chapter 36, section 1 b. Extended confiscation.

Offences which trigger confiscation

Offences for which the penalty is imprisonment for six years or more and are of such nature as to have entailed the possibility of proceeds.

This shall also apply to the following offences where the offence has been of such nature as to have entailed the possibility of proceeds.

1. human trafficking pursuant to Chapter 4, section 1 a, paragraph 3, procurement, usury which is aggravated, unlawful possession of counterfeit money which is aggravated, or aggravated gambling;
2. a narcotics offence pursuant to section 1 of the Narcotics Penalties Act (1968:64) or unlawful possession of drug precursors pursuant to section 3 b, first paragraph of that Act;
3. a doping offence pursuant to section 3, first paragraph of the Certain Doping Reparations (Prohibition) Act (1991:1969);
4. drug smuggling pursuant to section 6, first paragraph of the Smuggling (Penalties) Act (2000:1225); or
5. human smuggling pursuant to Chapter 20, section 8, first paragraph of the Foreigners Act (2005:716) or organization of human smuggling pursuant to Chapter 20, section 9, first paragraph of that Act.

This shall also include any attempt, preparation, or conspiracy in respect of the foregoing offences.

Confiscation may take place if it appears clearly more likely than not that the property constitutes proceeds of criminal activity.

Confiscation *may not* be ordered where it would be unreasonable.

Reporting back:

Where the conditions exist for extended confiscation, seize separately and write a brief explanatory memorandum. If the property is not seized, document the property comprehensively in the memorandum.

Interrogation on asset issues:

Consider the following: Ask questions and follow-up questions about finances. Income, expenses, debts, loans.

Social Insurance Agency:

Domestic partners (housing allowance and/or maintenance support is paid): Why doesn't the couple have the same registered address? Where does the man/woman have their possessions? Name and address of the individual where the man/woman states that they live. Where is mail sent? Evidence that the man/woman actually lives at the registered address? Own keys?

Assistance compensation:

Are there aids for disabled persons in the apartment? Are these used? How does the disabled person move about? Speech, intellect? If assistance cooperation is paid, who is in the apartment; personal ID number and name? Is anyone an assistant?

Sickness benefit/sickness allowance:

What does the person do? To what extent? Where is any work done? Company name, address? The manager's name and any telephone number? Is compensation paid? By whom?

Information which can be obtained:

Address information, Relatives, Workplace, Telephone information, Information about ongoing compensation, information regarding family situation.

City of Helsingborg

Maintenance support (social security benefit):

Are there any financial assets or items of value? Does the person work but lack income? Is the person registered at an address other than the actual residence?

Contact community police at Helsingborg's operative coordinator to check benefits.

Information which can be obtained:

Whether or not the person receives benefits. Yes or No only.

Tax Agency

Information which can be obtained:

Taxed income. Income from employment or commerce. Do they pay property tax, Yes or No, and how much? Obtain an answer as to whether they own the property where they live.

Enforcement Authority

Information which can be obtained:

Attachment orders. All information about debts.

Community Police and Special Section in Helsingborg
Issued in November 2012.

Chapter 7

Receivables and claims

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7.1 Introduction

The attachment, sequestration, or distraint of property requires an enforcement order, i.e. a judgment or decision on which the Swedish Enforcement Authority can base execution (Enforcement Code, Chapter 3). In asset-oriented law enforcement, it is therefore important that not only assets, but also debts, are mapped at an early stage. This is because it takes time to generate the supporting evidence which is necessary, for example to execute attachment for extended confiscation. Moreover, the Swedish Tax Agency (or in certain cases Swedish Customs), faces extensive work when distraint is at hand. This is particularly relevant when someone else has reported an offence and no audit or other review has commenced. In the event of suspected welfare offences, the Swedish Social Insurance Agency or, where applicable, another benefits administration agency, must conduct an investigation.

When serious organized crime or serious economic crime is suspected, it is vital that interim orders for sequestration and distraint can be executed at the time of seizure or when valuable property is to be returned due to revocation, etc., of confiscation.

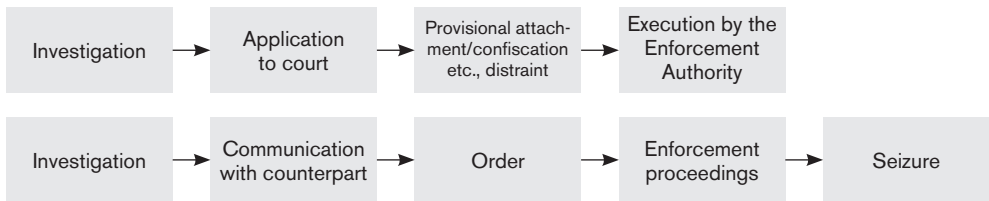
7.2 Mapping debts

As a rule, the suspect's assets and financial conditions in general are mapped at an early stage of a criminal investigation. Certain fundamental checks, for example whether an individual has debts with the Swedish Enforcement Authority, are now conducted virtually every time. However, the crime investigatory authorities should conduct a more comprehensive check with the Swedish Enforcement Authority and the Swedish Tax Agency.

It is also important to find out what debts might be established in the near future and whether the payment can be secured through sequestration or distraint. The check should primarily include the following: claims for execution and so forth, right to damages for crime victims, taxes and charges which were not paid or reported, demands for repayment of erroneous disbursements from the welfare system, applications to the Swedish Enforcement Au-

thority for payment orders, and various possibilities for making claims for payment against third parties.

This model illustrates the process which leads to an order for sequestration or distraint. It also illustrates how to obtain orders for the imposition of additional taxation and so forth, as well as orders for repayment of funds erroneously disbursed by an administrative agency which can constitute grounds for enforcement proceedings.



7.2.1 Claims for confiscation and other claims

The public prosecutor is obligated to investigate whether the conditions exist for confiscation and corporate fines. Accordingly, the possibility of obtaining this type of order should always be analyzed (Public Prosecution Authority, 2012:10).

During the mapping work, it is important to consider that the complaining witness' right to damages takes priority over confiscation (Swedish Penal Code, Chapter 36, section 17, second paragraph). When making the determination as to whether to seek confiscation, one must thus take into consideration whether there is reason to believe that liability in damages as a result of the offence will be imposed or otherwise realized (Swedish Penal Code, Chapter 36, section 1 a). There is also cause to consider that the case reported at NJA 2010, p. 374, makes clear that the latitude for confiscation of property in connection with extended confiscation is greater than was previously assumed (Government Bill 2004/05:135, p. 86-87, Ministry Report 2006:17, p. 100, and Government Bill 2007/08:68 p. 65 et seq.). In addition, a tax offence cannot constitute grounds for confiscation of proceeds of crime (Tax Offences Act, section 13 a) and serious tax offences do not constitute an offence which triggers confiscation.

7.2.2 Damages based on an offence

In respect of individual claims which are based on offences which are subject to prosecution by the public prosecutor, the public prosecutor is obligated to bring action on behalf of the complaining witness, provided this can take place without material inconvenience (Code of Judicial Procedure, Chapter 22, section

2). The complaining witness shall be notified thereof (Preliminary Investigation Proclamation, section 13 a, first paragraph). If the complaining witness makes a claim, the public prosecutor may seek sequestration provided the conditions for such a measure are met.

Where the suspected offences involve systematic fraud (for example, invoice fraud) there is often a large number of individual physical persons and legal entities who bring claims as complaining witnesses on the grounds that they have suffered financial loss. In the case of suspected welfare offences, the Swedish Social Insurance Agency or any other benefits administration agency may wish the public prosecutor to bring an action for damages. A possible consequence of the public prosecutor's failure to bring action will be an inability to obtain an enforcement order on the date on which the searches of premises are to take place. The rules which apply to the Swedish Social Insurance Agency entail that a repayment claim procedure takes time.

7.2.3 Taxes and other amounts which may be subject to expedited collection or distraint

As a rule, when the Swedish Tax Agency has reported suspected tax offences and accounting offences, the tax investigation has advanced sufficiently to have resulted in evidence supporting a motion for distraint. When another party has reported an offence and the suspicions relate to an entirely different type of criminality, a check should always be conducted as to whether there are unpaid taxes which are subject to collection (the tax has been assessed but collection has not yet been requested) and may be subject to expedited collection. Expedited collection entails that the debts are submitted to the Swedish Enforcement Authority earlier than normal (Tax Procedures Act, Chapter 70, section 2, subsection 2). When this procedure is used, collection can be requested without a demand for payment first being sent to the person with payment liability.

Asset investigators should check with the Swedish Tax Agency regarding the existence of tax liabilities which have not yet been assessed even if no audit or other review is underway. Moreover, the investigators should find out whether the Swedish Tax Agency believes that it is possible to procure distraint and whether the conditions for an interim decision, i.e. a decision regarding distraint without the relevant party first being heard on the matter, have been met. In this context, it is also important to consider that a resource-heavy measure like distraint will only become relevant if there are assets which can be secured. Moreover, it is important to check the results of the Swedish Tax Agency's in-

vestigation of creditors. This type of investigation pertains to the debtor's financial circumstances and, in certain respects, is similar to the investigation made during a confiscation investigation.

7.2.4 Customs claims

Checks corresponding to those made with the Swedish Tax Agency should also be made with Swedish Customs, whose assessment activities make requests for expedited collection and procurement of distraint possible. Moreover, the provisions regarding confiscation are applicable in respect of offences which are to be investigated by Swedish Customs (Smuggling Act, sections 16-17). In addition, aggravated smuggling is an offence which triggers confiscation.

7.2.5 Erroneous payments from the welfare system

When suspected welfare offences exist, the mapping should always include claims for repayment by the Swedish Social Insurance Agency and, where applicable, other benefits administration agencies. The Swedish Public Employment Office and the Swedish Pension Authority, as well as others, also have an obligation to report offences where it can be suspected that an offence under the Benefits Offences Act (2007:612) has been committed. If incorrect information has been submitted regarding, for example, reduced function, injuries of various types, or income circumstances, and if the public prosecutor believes that an intentional act or gross negligence can be proven, the suspect's assets may be secured quickly if sequestration is obtained in the criminal case.

Even where a party other than the Swedish Social Insurance Agency has reported an offence, a check of whether the Agency has any claims against the suspect should be conducted. It happens that an investigation regarding repayment has commenced when a preliminary investigation which applies to another type of criminality has been commenced or an enforcement order has already been obtained.

7.2.6 Further regarding checks with the Swedish Enforcement Authority

One should always check whether the suspect has debts which are subject to execution. If this is the case, the type of debt and the amount involved should be noted. Moreover, one should check whether the Swedish Enforcement Authority is entertaining any payment order matters, since matters of this type are a sign that execution in individual cases may be requested in the near future. Moreover, it is important to find out how far the collec-

tion matters have proceeded, for example whether any part of the amount receivable has been secured through attachment or whether collection was recently requested. In the latter case, it should be noted if the time within which the debtor is afforded the opportunity to pay prior to execution, known as the notice period, has ended (Enforcement Code, Chapter 4, section 12, first paragraph).

During the mapping work, it is also important, through the contacts with the Swedish Enforcement Authority and the Swedish Tax Agency, to attempt to attain clarity regarding whether the individual usually pays when collection has been requested or whether the debts may, for some other reason, lapse. For example, is it conceivable that an enforcement order will be revoked prior to the seizure? Moreover, it is important to find out whether the suspect or a company connected to them has been placed into bankruptcy or whether it is likely that this will take place within the near future. The question as to whether one may assume that bankruptcy is imminent is important, since in the event of bankruptcy the assets will be fall under the control of the person appointed as trustee. Attachment, sequestration, and distraint cannot be executed if the debtor has been placed into bankruptcy (Bankruptcy Act, Chapter 3, section 7).

7.2.7 Payment claims against third parties

When property has been placed with a closely-related person or a straw man, it is important to find out if these individuals have any debts which are subject to enforcement by the Swedish Enforcement Authority or may become subject to enforcement within the near future. However, it is not particularly common that straw men holding assets, no matter physical persons or legal entities, have their own debts. The purpose of using a straw man of this type is to protect one's property against distraint.

In procedure, it is difficult to prove hidden ownership in respect of, for example, a car or a property which has been registered to a straw man. Accordingly, it is advantageous if some form of payment claim can be made directly against the individual or individuals who are suspected of being strawmen for the person who actually owns the property.

Confiscation

Section 3 of the Proceeds of Crime (Confiscation Procedures) Act (2008:369) provides that in certain cases, an action for extended confiscation against a party other than the individual being prosecuted may not be commenced until the judgment in the case regarding the offence which triggers confiscation has entered into force. Accordingly, in procedure no action is brought against a

third party. Even when it relates to other forms of confiscation, a confiscation claim may be directed against individuals other than the suspect. This includes, among other things, a person who acquires the property as a gift after the offence. However, in these cases as well, it is seldom that confiscation claims are made against a third party.

7.2.8 Recovery, etc. in the event of bankruptcy

In the event that bankruptcy has occurred or is believed to be close at hand, it is important to analyze what happens to different creditor's claims during a bankruptcy. This also applies to the possibilities to act so that the proceeds of crime can be returned to the bankruptcy estate and thus are disbursed to the creditors.

The task of the bankruptcy trustee is to ensure that all property which is included in the estate is taken under control and sold so that the funds which are realized are allocated among the creditors pursuant to the provisions of the Rights of Priority Act. Moreover, the trustee can bring an action for recovery in respect of legal acts which took place a certain time prior to the bankruptcy. A party who is closely related to the bankruptcy debtor may, for example, be obligated to return gifts which were received during the last three years (Bankruptcy Act, Chapter 4, section 6). Moreover, the trustee may bring an action for recovery of unlawfully paid dividends or other unlawful disbursements from, among other things, limited companies (Bankruptcy Act Chapter 7, section 5, subsection 3).

Issues to consider in the event of suspected wage guarantee fraud

The Stockholm County Council, the Swedish Tax Agency, the Swedish Social Insurance Agency, the Economic Crime Authority, and the Swedish Enforcement Authority, which are represented by the Supervisory Authority for Bankruptcies, have together produced a report entitled "Abuse of the State Wage Guarantee, 2011". The report shows that in a significant number of cases, wage guarantees have been paid to individuals who did not perform any work for the bankrupt company. In other cases, the disbursements were too high as a result of the provision of incorrect information regarding employment circumstances and other matters. The bankruptcy trustees have ordered wage guarantees when, among other things, false statements of earnings and tax deductions and sham employment agreements have been invoked. Moreover, on a number of occasions, it has proven to be the case that the trustee's signature on the wage guarantee order was forged.

A decision by the County Council regarding recovery constitutes an enforcement order which may form the basis for execution. In order for such a decision to be taken, it is necessary, as a rule, that a judgment be issued in a criminal case or that a court, following action brought by the Supervisory Authority for Bankruptcies, has established that the employee is not entitled to a wage guarantee.

In the event of suspected offences, the public prosecutor has the opportunity to bring an action for damages on behalf of the County Council. If the prosecutor does so, a number of individuals may incur payment liability if they have shared the wages or other compensation paid out by the County Council. It has occurred that there are individuals who, based on sham employment agreements, stated that they were employed by a company which was placed into bankruptcy and only received a small portion of the disbursed funds. Compensation from the wage guarantee has otherwise gone to the principals, i.e. the individuals who were behind the scheme.

7.3 What is required to obtain an enforcement order?

Customarily, before an enforcement order can be obtained, a number of different questions must be investigated by the criminal investigatory authorities and the authorities whose receivables are to be secured. Close cooperation between the affected authorities provides good conditions for finding the most effective way to secure assets in the individual case.

7.3.1 Confiscation and other matters

The conditions which must be met in order to obtain an order for confiscation vary depending on the type of confiscation claims involved. Where extended confiscation is relevant, a comprehensive financial investigation must be conducted. The investigation involves whether the difference between the ability to acquire and the holding of assets is sufficiently great that the assets cannot have been acquired through legal means. Moreover, it is important to remember that it may be difficult to show that the conditions for confiscation of property have been met. Accordingly, the public prosecutor may have cause to make a motion in the alternative seeking confiscation value.

Proceeds of crime

Proceeds of crime shall be confiscated if there is a direct connection to the offence and it is not clearly unreasonable. When this assessment is made, one must take into consideration, among

other things, whether there is cause to believe that liability in damages as a result of the offence will be found. (Penal Code, Chapter 36, section 1-1 a).

Financial benefits from a trader

Where financial benefits for the trader have arisen as result of an offence which has been committed in the course of commercial activities, the value thereof shall be confiscated where doing so is not unreasonable and customary confiscation is not possible, or it is otherwise specifically prescribed. When this assessment is made, consideration shall be taken, among other things, whether there is reason to believe that other payment liability corresponding to the financial benefits of the offence will be imposed on the trader or whether the trader will otherwise undertake such payment liability. (Penal Code, Chapter 36, section 4).

Expanded confiscation

Confiscation of the proceeds of criminal activity (Penal Code Chapter 36, section 1 beak) may take place in respect of an offence for which imprisonment for six years or more is included in the punitive scale and the nature of the offence is such that it could lead to financial proceeds. Moreover, this applies to such offences as are listed in the supplementary catalogue of offences. It should be added that gains from tax offences, notwithstanding that serious tax offences do not constitute an offence which triggers confiscation, may be taken into consideration within the scope of the assessment which is to be made when a person who has committed an offence which triggers confiscation, for example serious narcotics offences (NJA 2010, p. 374).

Confiscation of the proceeds of crime becomes relevant when it is not possible to obtain an order for ordinary confiscation and it is not unreasonable. When this assessment is made, consideration shall be taken, among other things, of whether other payment liability has been imposed on the defendant. In conjunction with extended confiscation, the property which is to be confiscated need not constitute proceeds of a specific offence. It is sufficient that the prosecutor can prove that it is clearly more likely that the property constitutes the proceeds of criminal activities than not. In other words, the prosecutor must prove that the suspect did not have the financial possibilities to acquire the property in any manner other than through money arising from criminal activity. There cannot be any other reasonable explanations for the holding of the specific property.

During a confiscation investigation, it is not the sale value of the property which is to be estimated, but, instead, the value at the time that the property was acquired. Moreover, evidence which may be of significance for the investigation of the confiscation of

the proceeds of criminal activity may be investigated in conjunction with searches of premises (Code of Judicial Procedure, Chapter 28, section 1) and secured through seizure (Code of Judicial Procedure, Chapter 27, section 1).

Corporate fines

One prerequisite for the issuance of an order for a corporate fine is that an offence has been committed in the course of commercial activities and the offence was not directed against the trader (Penal Code, Chapter 36, section 7). Moreover, it is necessary that the trader has not done anything which may reasonably be required in order to prevent the criminality or that the offence was committed by an individual in a management position or an individual who otherwise had special responsibility for supervision or control of the business.

Sequestration for damages and confiscation claims, and other matters

If an individual is reasonably suspected of an offence and there is a risk that he or she will abscond or make property unavailable for execution, the district court may order sequestration of an amount which corresponds to the claim alleged in the criminal action (Code of Judicial Procedure, Chapter 26, section 1). This applies to both compensation to the complaining witness as well as confiscation of value and corporate fines. Moreover, as in the use of all means of coercion, a proportionality assessment must be conducted. Sequestration may be ordered only where the reason for the measure outweighs the intrusion or other prejudice which the measure entails for the suspect or any other opposing interest.

7.4 Unpaid taxes and charges

A taxation order can constitute the basis for distraint (Enforcement Code, Chapter 3, section 1, subsection 6, and Chapter 3, section 24) and, if the amount has not been paid in due time, shall be transferred to the Enforcement Agency for collection. This also applies where the decision has not become final (Enforcement Code Chapter 3, section 23, third paragraph).

7.4.1 Imputed liability

Imputed liability entails that more than one person is charged with payment liability for a single tax (Government Bill 2010/11:165 p. 904 et seq.). When such liability might be imposed, it is crucial to investigate the circumstances for distraint in respect of the persons to whom liability is to be imputed. Many times, there is a tangible risk that such individuals will shirk

payment. They have often removed profits from the company or companies where the offences were committed. Moreover, it is not uncommon that the companies have been placed into bankruptcy when the preliminary investigation commences.

The Tax Procedures Act governs the prerequisites for imputing liability to the principals of a legal entity for the entity's taxes and charges and the procedure when such liability is found (Tax Procedures Act Chapter 59, sections 12-21). Payment liability on the part of principals of, for example, a limited company or co-operative association, arises when ordered by the administrative court on application of the Swedish Tax Agency, and it requires proof of intent or gross negligence. With respect to partners in a partnership, however, it is the Swedish Tax Agency who decides on payment liability and there are no subjective elements which must be met (Tax Procedures Act, Chapter 59, section 11).

7.4.2 Distraint

If the payment liability for taxes and so forth has not been established, distraint may be ordered where it is likely that payment liability will be established at the claimed amount and there is a tangible risk that the person with payment liability will shirk the obligation to pay. It is also necessary that the time period to which the payment liability pertains has ended and that significant amounts are involved (Tax Procedures Act, Chapter 46, sections 6-8 and Customs Act, Chapter 1, section 8). Moreover, distraint may only be ordered if the reasons for the measure outweigh the infringement or other prejudice entailed in the decision to the person to whom it applies or for any other opposing interest (the principle of proportionality).

In order for a representative of a legal entity to become subject to distraint, there must be probable cause that the taxes will be imposed on the legal entity and that imputed liability will be found.

7.5 Social Insurance Agency receivables

If the Swedish Social Insurance Agency's investigation shows that disbursements have been made due to the provision of inaccurate information, the agency may decide to demand repayment. When such demand is made, the individual has 30 days in which to pay the debt. If payment is not made within this time, the Swedish Social Insurance Agency must apply for a payment order from the Swedish Enforcement Authority in order to obtain an enforcement order. It is not until a decision has been issued in the summary procedure or payment liability has been established by a court of general jurisdiction and the order is thereafter challenged by the person against whom the claim is made, that there

exists an order on which distraint can take place. In addition, in those cases where review of an order for repayment is requested or the decision is appealed, the Swedish Social Insurance Agency does not, as a rule, follow up with the collection matter until there is a final decision. This is because of the risk of two parallel disputes, one in an administrative court, and one in a court of general jurisdiction.

Previously, a decision of an administrative court regarding repayment liability formed the basis for execution. In the case reported at NJA 2013, p. 413, the Supreme Court (the forum in which decisions of the Swedish Enforcement Authority in execution matters can be heard) deviated from its precedent. In that case, it was found that such a decision which was issued after the Swedish Social Insurance Agency's decision was appealed does not constitute an enforcement order unless the public authority decision is such an order.

7.6 Necessary that assets can be secured in connection with the seizure

As a rule, it is urgent that interim decisions regarding sequestration or distraint can be executed in connection with the searches of premises. One alternative in a case where sequestration is to take place is for the prosecutor to provide the police with the directive that property which is encountered in conjunction with seizure shall be taken into custody in lieu of the prosecutor procuring sequestration. In addition, security measures are not necessary where the suspect has enforceable debts in an amount which exceeds the value of known assets. However, even in this situation, there may be cause to procure sequestration or distraint. When the public prosecutor, the Swedish Tax Agency, or Swedish Customs takes this position, consideration must be taken of the fact that the interim order must be enforced with the greatest haste and that the debtor need not be notified prior to the execution. Moreover, it is advantageous for a specialist enforcement team, namely a team at the Enforcement Authority which specifically focuses on economic and organized crime (an S-team) which is always responsible for the execution of distraint orders. The administration by the S-team also becomes relevant in conjunction with sequestration or attachment when there are suspicions organized crime or serious economic crime.

The key time for obtaining enforcement orders may also be when a seizure in respect to valuable property is to be revoked or when major payments are to be made from the tax account. In some cases, the disbursements are a consequence of an order for repayment of erroneously paid welfare system benefits.

7.7 The procedure at the Swedish Enforcement Authority

It is vital that the planning of the impending execution include how the application for execution (which must contain a copy of the court's order for sequestration or distraint) can be quickly submitted to the Swedish Enforcement Authority. If sequestration on behalf of the complaining witness has been obtained, it is also important to remember that only the complaining witness has standing to seek execution. Experience shows that it is not uncommon that the complaining witness has not understood that they must personally submit an application to the Swedish Enforcement Authority. Moreover, it may be the case that the complaining witness does not specifically inform the authority that the prosecutor has taken property into custody.

In addition to execution at the premises of the individuals who are suspected of offences, it is common that distraint also takes place at legal entities' premises. Moreover, sequestration and attachment are often executed simultaneously at several locations. It is therefore imperative that the crime investigatory authorities always contact the Swedish Enforcement Authority before the seizure so that the execution can be prepared and coordinated. With respect to sequestration and attachment, it must be added that it is important that the information which is provided to the Swedish Enforcement Authority shows that there is cause to hand off the execution to an S-team if the debtors have not already been dealt with by such a team.

7.8 Attachment

When attachment proceedings are to take place, it is important to clarify, in advance, that the conditions entitling the Swedish Enforcement Authority to enter the debtor's residence have been met and that the debtor need not be notified in advance. The access to the residence must be reasonably proportionate to the execution matter.

If the Swedish Enforcement Authority finds that there are special reasons, it is permissible for the authority to avail itself of access to a residence in the absence of the resident (Enforcement Code, Chapter 2, section 17, second paragraph). Special reasons may include certain property not having been found in conjunction with previous attachment attempts, the debtor's sworn statement that he or she does not own any property, or previously scheduled proceedings which were cancelled because the debtor was not home and did not thereafter contact the authority. In any of these situations, if the police provide information that valuable

property was encountered and, at the same time, there are relatively large debts, as a rule, the conditions exist which entitle the authority to enter the residence. When a seizure has taken place, the debtor is ordinarily not home when the Swedish Enforcement Authority conducts its action. As a rule, at that time, he or she has already been arrested or taken in for interrogation.

The proceedings may also be carried out where no notice of the case has been given, provided that there is a risk that property will disappear or be destroyed, or if the matter is urgent for some other reason (Enforcement Code, Chapter 4, section 12, second paragraph). This also applies where the debtor lacks a known domicile and the Swedish Enforcement Authority has not previously been able to ascertain where the person is. Execution without notice to the debtor may also be carried out when the Swedish Tax Agency or Swedish Customs requests expedited tax collection or if the public prosecutor or any other creditor has proven facts which entail a risk of sabotage of the execution.

7.8.1 Attachment by notice when seizure is revoked

If seizure is to be revoked or sequestration has taken place after property has been taken into custody, attachment of the property which has been taken into custody by the crime investigatory authority is executed by what is ordinarily called attachment by notice (Sw. *distansutmätning*) (Enforcement Code, Chapter 4, section 7). When execution takes place in this manner, the decision regarding attachment, sequestration, or distraint is taken in a conference call (Enforcement Code, Chapter 16, section 13 and Tax Procedures Act, Chapter 69, section 15). The authority which stores the property is, in such case, prohibited from releasing the property to anyone other than the Swedish Enforcement Authority. Subsequently, the attachment, sequestration, or distraint is secured by the Police or, where applicable, another authority where the property is stored, being served a notice of injunction.

In each individual case, it must be determined whether it is suitable to carry out attachment by notice or if personnel from the Swedish Enforcement Authority are to go to the authority where the property is in custody. In addition, the Swedish Enforcement Authority shall always make its own assessment of whether the conditions for attachment are met and the way in which execution is to take place.

7.9 The receivable has been established

It is important that no “gap” occurs when the court, in connection with the decision in the criminal case, takes a position on whether sequestration is to stand. For this reason, as a rule, courts order the sequestration to stand a certain time after the judgment has entered into force. The purpose is for the public prosecutor and the complaining witness to have time to apply for attachment before the sequestration ceases. If the attachment cannot be executed prior thereto, sequestration is meaningless.

There is no risk for such a “gap” in conjunction with distraint. The Swedish Tax Agency or, where applicable, Swedish Customs, requests revocation of the order in the administrative court on the grounds that the amount under distraint may be collected (Tax Procedures Act, Chapter 11, section 2 and Customs Regulation, section 3 a).

7.9.1 Confiscation and other matters

The public prosecutor’s routines include moving that sequestration decisions stand for two months after the judgment in the criminal case has entered into force (Prosecution Authority and Economic Crime Authority Handbook *Confiscation, etc. – measures against economic advantages of crime*, p. 41). The fact that the prosecutor words the motion in this way is very important since receivables in criminal actions which constitute a special legal effect of an offence may not be executed until the judgment or order has entered into force (Enforcement Code Chapter 3, section 23, second paragraph). In addition, it takes time before the National Criminal Police requests collection. Where no request for attachment was submitted before the sequestration ends, the Swedish Enforcement Authority must return the sequestered property if the person in question does not have any other debts for which attachment can take place.

In respect of confiscation of property, it should be added that property which has been confiscated is to be sold or, in certain cases, destroyed, by the Police or another authority which executed the seizure when the judgment entered into force. Provisions in this regard are set forth in sections 4-6 of the Confiscated Property and Found Goods (Seizure) Act (1974:1066). Since, as a rule, confiscated property has been seized to secure claims for confiscation, as a rule no execution needs to take place by the Swedish Enforcement Authority.

7.9.2 Right to damages

Complaining witness claims which have been awarded can form the basis for attachment even when the judgment has not entered into force (Enforcement Ordinance, Chapter 3, section 6). The complaining witness, who must personally apply for attachment, can thus do so as soon as judgment has been rendered. A copy of the judgment from the Swedish Enforcement Authority, along with an enquiry as to whether he or she wishes to apply for execution is not, however, sent out until the judgment has entered into force (Enforcement Ordinance, Chapter 2, section 3, second paragraph). Pursuant to section 25 a of the Notice of Judgment (Certain Criminal Cases) Ordinance (1990:893), a decision regarding damages is only sent to the Swedish Enforcement Authority when physical persons are involved.

7.9.3 Receivable taxes

If payment has not taken place when the claim which forms the basis for a distraint order has been established, the Swedish Tax Agency, as well as Swedish Customs, may request execution without first sending out a payment reminder (Tax Procedures Act, Chapter 70, section 2, subsection 2, and Collection Ordinance, section 4, last paragraph). The Swedish Tax Agency may also order advancement of the due date in order to bring about attachment as quickly as possible (Tax Procedures Act, Chapter 62, section 9, second paragraph).

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Chapter 8

International perspectives – mapping, cooperation, and tools

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8.1 Introduction

International cooperation in criminal investigations has become a crucial factor in combating organized cross-border crime. In this chapter, we wish to describe the asset-oriented work conducted by the police, public prosecutor, and customs sectors, as well as the Swedish Tax Agency, the Swedish Social Insurance Agency, and the Swedish Enforcement Authority, which involves an international interface.

Investigations often stop at national borders for the simple reason that the support and assistance available in connection with international police or prosecutor cooperation is unknown. This becomes particularly relevant when we talk about criminals' criminal gains, i.e. the proceeds of crime which are turned over, concealed or through companies (for example) are moved abroad, beyond the reach of Swedish law enforcement authorities.

When Swedish police or customs authorities arrest a foreign perpetrator with a shipment of narcotics in the car on the Swedish side of the Öresund Bridge, this can lead to immediate investigatory or intelligence measures through the international anti-crime networks to which Sweden belongs.

When a criminal investigation begins, distraint may become relevant or there may already be collectible debts with the Swedish Enforcement Authority which are, or become, subject to judicial assistance in another country. At various stages, it is possible for the Swedish Tax Agency, the Swedish Social Insurance Agency, and the Swedish Enforcement Authority to find out about assets abroad or go after money with the assistance of foreign counterparts.

8.2 The police sector's international possibilities

There are a number of organizations, bodies, and tools which law enforcement authorities can contact and use within the scope of their work in tracking and recovering criminal gains. The

networks and offices in Sweden which are represented at the National Criminal Police (Financial Police) and the Economic Crime Authority (Proceeds of crime function) are ARO (Asset Recovery Office) and CARIN (Camden Asset Recovery Inter-Agency Network).

The primary task of the networks is to track proceeds of crime, i.e. search for criminals' assets which may have been moved to, transferred electronically to, or invested – in principle – anywhere in the world. An enquiry is made as to whether the perpetrator owns real property, apartments, vehicles, or boats in another country, or whether he or she is an owner of a company or such-like. In certain cases, this may also apply to bank information, such as foreign accounts, or whether someone has been convicted of any offence.

The information can serve as a basis for future judicial assistance to a specific country in an ongoing preliminary investigation where one wishes to freeze assets due to an offence (confiscation).

There are ARO offices, instituted at the instruction of the EU Commission, in each of the 28 EU Member States. CARIN functions in approximately the same way, but it is an informal network for the exchange of information between police and prosecutors who work operationally in matters concerning criminals' assets in another country.

The numerous member countries of the CARIN network, which was founded in Dublin in 2004, are primarily situated in Europe but there are countries and other parts of the world as well. The member countries outside of the EU are Australia, Canada, Georgia, Gibraltar, Guernsey, Iceland, Isle of Man, Israel, Jersey, Luxembourg, Macedonia, Moldova, Monaco, Montenegro, Norway, Russia, Serbia, South Africa, Switzerland, Turkey, and the United States. A number of international institutions and organizations, such as Eurojust, Egmont Group, the EU's anti-fraud office (OLAF), and the UN are observers to CARIN, and the secretariat is situated at Europol.

Both ARO and CARIN cooperate with other regional networks involved in searching for assets (proceeds of crime). This will be described briefly below.

GAFISUD – Grupo de Acción Financiera de Sudamérica/Financial Action Task Force of South America. The network is also called RRAG (Red de Recuperacion de Activos). The membership of the network comprises a large number of Latin American countries. The Secretariat is situated in Argentina. Their task is to exchange information regarding physical persons and legal entities which involve, for example, suspected money laundering

or serious narcotics offences and searches for assets, i.e. assets originating in a criminal activity.

ARINSA – Asset Recovery Inter-Agency Network of Southern Africa. The network is built up on essentially the same principles as CARIN, i.e. for the purpose of searching for assets. ARINSA is situated in South Africa and its members comprise neighbouring countries.

StAR – The Stolen Asset Recovery Initiative. International efforts to recover proceeds of crime from (particularly) corruption, and return their value to the country of origin. Close cooperation with Interpol, UNODC (United Nations Office on Drugs and Crime) and the World Bank. Approximately 100 member countries.

CARIN arranges annual meetings which result in a number of recommendations to the members regarding the way that effective proceeds of crime work should be conducted. Set forth below are some of the measures which been deemed important in this context.

The effectiveness of measures to divest criminals of their unlawful gains should be strengthened. In all major investigations, the focus should be on recovering the proceeds of crime when possible.

Law enforcement authorities must endeavour to create a Joint Investigation Team/JIT, where a preliminary investigation is conducted between two or more countries simultaneously in the area of “recovery of the proceeds of crime”.

Encourage investigations and mapping being conducted internationally. The purpose of this is to investigate beneficial ownership in companies with suspected straw man situations such that the beneficial owners do not avoid prosecution.

Increase awareness among investigative personnel about how to find the weak points in the criminal networks – the points where they attempt to evade public authorities – and to cooperate operatively in this respect.

The Nordic region has a well-functioning police cooperation agreement. This means that both police and public prosecutors can request assistance in conducting interrogations in another Nordic country without seeking judicial assistance. Questions regarding assets, possession, and other issues may also be asked at interrogations in other countries.

The international police cooperation unit (IPO) at the National Criminal Police is the point of contact for coordination of the Interpol, Europol and Schengen cooperation as well as the

Nordic police and customs cooperation regarding liaison officers. IPO works based on the single point of contact principle (SPOC), which means that the police turn to IPO with requests for assistance in any respect. IPO, in turn, selects which channel to use. The police channels do not replace the more traditional channels but, instead, serve as a complement and both the police and public prosecutor often find them to be speedy.

8.3 The public prosecutor sector's international possibilities

The public prosecutor sector also has access to CARIN and ARO. One significant difference when compared with police enquiries to ARO and CARIN is that a preliminary investigation must be started. In respect of CARIN, the cooperation works such that the prosecutor or investigator in the matter contacts a CARIN contact person who then presents the question to their counterpart in the relevant country. The prosecutor ordinarily receives a response within a few days.

Each country has appointed two contact points – an investigator and a prosecutor. This means that information which is requested prior to a preliminary investigation must be presented to ARO or CARIN at the Swedish Finance Police. Sweden is represented in CARIN through two contact persons: one at the National Criminal Police/Finance Police, and one at the Economic Crime Authority/Proceeds of Crime function.

In procedure, the cooperation functions such that a prosecutor or investigator in a matter where a preliminary investigation has been started contacts one of the two Swedish ARO offices, which then poses the question to the ARO office in the relevant country. The contact takes place using English-language form (Annex A or Annex B) and is sent via Europol's secure communication system, SIENA. The response is usually received within a few days. Current laws require that an answer be given not later than within 14 days and, in certain cases, within 8-24 hours when a person is deprived of liberty, arrested, or detained. (Council Framework Decision 2006/960/JHA)

It is important that the person making the enquiry states the indicia of assets in the country where the enquiry is made. This shortens the handling time. It provides better conditions for obtaining an answer at all. "Fishing expeditions" or other unstructured searches for assets cannot be used. There must be a somewhat concrete circumstance which indicates that one could find assets or other financial information in that country specifically.

8.3.1 Judicial assistance

Judicial assistance abroad can be obtained in respect of interrogations, introduction of evidence in court, sequestration, and more. In conjunction with an enquiry being posed through ARO or CARIN, it is not uncommon that it comes to light that judicial assistance is necessary in order to obtain information, such as account statements. One advantage of using these networks is that the same person often administers both questions regarding proceeds of crime and the matter of judicial assistance, which saves time. Another advantage in first asking ARO or CARIN is that responses from these contacts often come more quickly than those which come through judicial assistance.

An application for judicial assistance can normally be sent directly to a Nordic country, an EU Member State, Liechtenstein or Switzerland. There are also other countries outside of the EU which allow direct contact. Information about such other countries can be obtained from international units at the Prosecutor General's office, the international function at the Economic Crime Authority, the Ministry of Justice (BIRS) or the European Judicial Network (EJN). Information can also be found on the respective authorities' websites or intranet.

In general, for other countries, an application is sent to the Ministry of Justice, Division for Criminal Cases and International Judicial Co-operation (BIRS). BIRS receives, reviews, and forwards enquiries to and from Sweden in matters regarding, among other things, international judicial assistance in criminal cases, extradition for offences, transfer for the enforcement of sentences, international cooperation regarding criminal prosecution, and judicial assistance in civil cases and matters.

In principle, there are no laws governing Swedish prosecutors' possibilities to request judicial assistance abroad. The International Cooperation Act contains only a small number of provisions. Accordingly, in general a Swedish prosecutor requests judicial assistance abroad to the extent permitted by the other state. If, and the extent to which, the Swedish prosecutor can count on assistance from abroad is governed by legislation in the relevant country and such country's international commitments to Sweden. In cases of doubt, international units at the Prosecutor General's office, the international function at the Economic Crime Authority, BIRS, or EJN should be contacted.

8.3.2 The European Judicial Network

Each EU Member State has appointed a number of EJN contact points whose mandate is to serve as active intermediaries in order to facilitate judicial cooperation. These contact points are

set forth at <http://www.ejn-crimjust.europa.eu/ejn/>. The contact points are meant to expedite judicial cooperation and to provide legal and practical assistance.

8.3.3 Eurojust

Eurojust is a body for cooperation for the prosecution authorities of the Member States and was instituted in 2002. Eurojust's primary area of jurisdiction is, in principle, serious organized cross-border crime, but it is also possible for Eurojust to help in conjunction with other offences. The task of the national members is to assist Swedish prosecutors when they need assistance with coordination and cooperation in conjunction with criminal investigations which relate to two or more Member States. Eurojust's mandate is to serve as a link between the different public authorities and judicial systems in the Member States. Contacts are made between Swedish prosecutors and the right authorities abroad. Requested measures are followed up and expedited.

8.3.4 European freezing orders

Assets in the EU which become known or are encountered following, for example, the aforementioned contacts can be secured through freezing. A freezing order is any measure which is taken by a competent judicial authority in the issuing state for the purpose of temporarily preventing the destruction, conversion, moving, transfer, or assignment of such property which may be confiscated or constitute evidentiary material. (Council Framework Decision 2003/577/JHA).

If a preliminary investigation reveals that there might be assets in another EU member state, it is appropriate to begin by asking questions through ARO. It is important to act quickly to enable the property to be secured through a European freezing order. According to the main rule, freezing shall be executed promptly and, if possible, within 24 hours of the time when the recipient prosecutor receives the order and the certificate which must accompany the order. Swedish ARO can assist in communicating measures with the ARO office in the other state. In addition, many countries outside of the EU have corresponding rules to secure motions for recovery of the proceeds of crime. In such cases, applications for judicial assistance are necessary.

Swedish prosecutors are authorised to issue freezing orders for seizure of objects which may reasonably be believed to be important in the investigation of offences. On the motion of the prosecutor, the court takes a decision regarding sequestration pursuant to Chapter 26 of the Code of Judicial Procedure – a Swedish freezing order which pertains to the value of confiscated

property. The EU framework decision regarding confiscation also covers orders for extended confiscation. (Council Framework Decision 2006/783/JHA).

Example:

A criminal investigation is underway in Sweden regarding smuggling of large quantities of narcotics. The prosecutor will be able to seek confiscation of the proceeds of crime for significant amounts of money. In the search of the suspects' premises, account statements for Spanish bank accounts, reflecting significant sums, are found, as are other documents which indicate ownership of a property in Spain. By means of enquiry through ARO, it is quickly confirmed that one of the suspects owns a property in Spain and that the bank accounts exist. The prosecutor request sequestration and the ground for sequestration is to secure execution for a future claim for confiscation of the proceeds of crime. The court's order of sequestration is a so-called freezing order. The Swedish Enforcement Authority is informed.

It is the prosecutor who sends the order, together with a certificate, to the competent authority in Spain for recognition and execution there. By virtue of mutual recognition, the freezing order cannot be questioned by the Spanish prosecutor. The Spanish prosecutor only verifies that the formal requirements have been met. The enforcement authority in Spain then executes the Swedish freezing order immediately. When a confiscation order has entered into force, the Swedish Enforcement Authority applies for execution.

8.3.5 Specifically regarding the United States

In addition to CARIN, which can respond to questions as to whether a suspect has assets in the United States, there is the possibility to obtain certain assistance directly from the FBI. This applies to both the police and the prosecutor. Since the end of 2012, the FBI has had a liaison officer stationed at the US Embassy in Stockholm. The liaison officer can be consulted on issues regarding interrogation, other securing of evidence or admission of evidence, securing of data traffic and data storage, other matters which have a connection to the United States or to any other state where we lack contacts, as well as regarding extracts from motor vehicle registers, payment registers, and property registers. The Drug Enforcement Administration (DEA), with representation in Copenhagen, may also be helpful.

An application for judicial assistance in the United States in respect of bank information must, as per the wishes of the US, be

submitted using a specific form (treaty between the EU and the US regarding judicial assistance).

8.4 Swedish Custom's international possibilities

In many respects, Swedish Custom's possibilities in asset-oriented law enforcement reflect those of the police and the prosecutor in terms of both regulations and work.

Aggravated unlawful dealing in smuggled goods where the penalty may be imprisonment for not less than six months and not more than six years enables the use of extended confiscation. The offence of aggravated unlawful dealing in smuggled goods entails that goods which are the subject of customs offences become "contaminated". Individuals who were not personally involved in the actual tariff evasion but who were involved in the handling of the goods after the tariffs were evaded can also be penalized. In cases where the crime is organized and there is an organization for unloading, distribution, and sale, the individuals who participate in these tasks can also be penalized. Moreover, the possibility exists for criminal law intervention in every level of an organized criminal activity. This criminal dealing in smuggled goods often arises in asset-oriented work (Excise Duty Act, Government Bill 2004/05:149, Smuggling Act, and Penal Code, Chapter 36, sections 3 and 4).

Moreover, conviction for unlawful dealing in smuggled goods can be obtained even in cases where no individual is convicted of a customs offence. In other words, establishing that the goods were the subject of a customs offence can be sufficient to obtain a conviction for unlawful dealing in smuggled goods.

Confiscation is governed by the Smuggling Act, and these provisions have been made applicable to the offences of unlawful movement of excise goods. Goods, proceeds, and property used as a means of assistance and anything which is received as compensation for costs in connection with an offence can be confiscated. The provisions of the Smuggling Act on confiscation are also applied to the offence of unlawful movement of excise goods.

In addition to the aforementioned international networks, Swedish Customs uses PTN liaison officers (*Polis och Tull i Norden* – Police and Customs in the Nordic Region). The cooperation between the EU's customs authorities is governed by the Naples II Convention. Mutual support and cooperation within the scope of criminal investigations regarding violations of customs provisions, for example cross-border unlawful trade with goods

and excise goods are possible within the EU (Council Act of 18 December 1997).

The cooperation also includes participation in a criminal organization and money-laundering which originates in violations of national or EU customs provisions. Customs authorities in the Member States can thus support each other in coercive measures, telephone and money-laundering tracking, seizures, custody, sequestration, and confiscation of the proceeds of crime. This works best in the countries where the customs authorities have such jurisdiction. Otherwise, the tasks must be transferred over to another competent authority.

There are a number of Naples II support requests from Member States which lead to new preliminary investigations in Sweden. In that context, proceeds of assets can be secured in the form of confiscation and seizure.

Example:

One million Swedish crowns in cash is found in conjunction with a customs check outside of Sweden's borders and seized. The vehicle was passing through on its way towards southern Europe. The suspect stated that the money would be used to purchase a house. Based on the Naples II Convention, the enquiring state could obtain assistance from Sweden, where a preliminary investigation was underway, which resulted in sufficient evidence being presented and the money being seized. Based on the preliminary investigation which was underway in Sweden and ties to seizures of narcotics, it was possible to seek extended confiscation and the money was turned over to a competent authority in the state where the seizure took place. Sweden, in turn, will request repayment following confiscation of the money via a request for judicial assistance communicated between the two states' prosecutorial bodies. The proceeds of crime from criminal organizations are thus recovered to the state for the purpose of reducing the organizations' gains.

At present (2014), there are approximately 30 joint Nordic customs and police liaison officers in approximately 20 countries throughout the world who work to combat serious organized crime in an effective manner. Regardless of the country in which they are stationed, the liaison officer works on behalf of the Nordic countries and provides support for proceeds of crime questions at both the intelligence stage and in criminal investigations.

In addition to the cooperation within the scope of the Naples II Convention and PTN, Swedish Customs uses bilateral treaties

with Russia and with the United States, and the Nordic multilateral treaties with Norway and Iceland, in order to combat asset-oriented crime. In addition, Swedish Customs has the possibility of using the EU Treaties within the customs administration area (i.e. ascertaining correct customs and tax charges) with a number of countries outside of the EU.

There are many different actors in the international supply chain for goods, for example manufacturers, exporters, shipping agencies, warehouses, customs agents, shippers, and importers. Swedish Customs conducts certification for security and protection of these actors, and if the company is active on the international level, customs administrations in other countries are contacted in order to clarify that there are no improprieties in the financial or criminal areas. Certification also ensures that the risks in conjunction with the handling and use of Swedish customs laws is minimized (Customs Act, Chapter 5, sections 7-12).

The companies and individuals who are authorized to operate bonded warehouses must verify that there is a financial need, Swedish Customs assesses the applicant's risk of insolvency in conjunction with bonded warehouses, and a credit check can be conducted. In certain cases, the applicant for credit authorization must be able to secure payment of coming customs liabilities (tariffs, agricultural tariffs, and export tariffs to the EU). The point of departure for the credit assessment relates, among other things, to the applicant's financial position, any records of non-payment, the company's status (newly formed or dormant), company structure, and company structure and restructuring following any merger or bankruptcy (Customs Act, Chapter 4, section 8).

8.5 The Swedish Tax Agency's international possibilities

The Swedish Tax Agency has several possibilities for obtaining information in conjunction with taxation. There are different forms for international exchange of communication in respect of taxation (among other things, taxation and judicial assistance treaties, the OECD, the EU's mutual assistance directive, and the Mutual Assistance (Tax Matters) Act). The Swedish Tax Agency may provide information in the form of statements of earnings and deductions to other countries and at the request of other countries. Joint audits and investigations are also possible together with the taxation authority of another country.

Transfer of international statements of earnings and deductions takes place in three different ways:

Upon request – The Swedish Tax Agency requests that the other country collect information. There must be a need for the information for the purposes of investigating a tax subject's income circumstances. Examples of information include information about payments which have been made between tax subjects or information regarding a bank account which is used in the other country.

Spontaneous – Without a request, a country sends information which is deemed to be of interest to the recipient country. The most common form of this is information which is encountered in normal verification activities.

Automatic – Information regarding an individual domiciled or resident abroad, which is transferred to the home state of residence. Customarily pertains to wages, pensions, royalties, interest, dividends, and so forth. There are ordinarily specific treaties or agreements regarding such exchange of information.

Other forms of exchange of information are simultaneous audit or concurrent tax investigations. This means that two or more states agree on a concurrent review. The Nordic countries have drawn up guidelines whereby an investigator from a Nordic country can attend an investigation in another Nordic country. The official attending the investigation cannot exercise any official function in the other country.

It is important to bear in mind that treaties and agreements often contain confidentiality provisions. There may be provisions which restrict the right to use the information for any purpose other than taxation and collection. This means that confidentiality rules must be observed.

Previously in this anthology, distraint has been presented as a tool for asset-oriented law enforcement (chapters 2 and 7). The Swedish Tax Agency applies to an administrative court for distraint. The Swedish Enforcement Authority's possibilities for execution of these interim orders is described in detail below.

As the state's representative creditor, the Swedish Tax Agency can request commencement of insolvency proceedings in another EU Member State. The deciding factor for the state in which a main proceeding can be commenced is where the debtor has their primary interests. Whether the state, through the Swedish Tax Agency, should act to procure that a debtor with international ties is placed into bankruptcy is determined based on the Swedish Tax Agency's guidelines for creditor work (Swedish Tax Agency 2011, "International Bankruptcy Law", section 22 and the Insolvency Regulation).

It is possible for the bankruptcy trustee in a Swedish bankruptcy to take possession of assets which are within the EU and belong to the bankruptcy estate. In Denmark, Iceland, and Norway, a Swedish bankruptcy trustee lacks jurisdiction to exercise compulsion but, with the assistance of a court or other authority, may take possession of property. In Finland, the bankruptcy trustee may take possession of assets just as it may in the rest of the EU (with the exception of Denmark). It may also be possible for a bankruptcy trustee to bring actions for recovery and similar matters in foreign courts.

In conjunction with insolvency proceedings outside of the EU and the Nordic region, the relevant state's own rules apply in respect of, for example, whether the Swedish State can submit a petition for the bankruptcy or whether a Swedish bankruptcy trustee appointed in a Swedish bankruptcy is permitted to take possession of assets in a certain area (Swedish Tax Agency 2011, "International Bankruptcy Law", section 22 and the Nordic Bankruptcy Convention).

8.6 The Swedish Social Insurance Agency's international possibilities

Proceeds of crime which arise due to fraud may lead to a repayment demand, for example in respect of a housing allowance, child allowance, sickness benefit, and annuity. The Swedish Social Insurance Agency should before a proceeding within the EU reclaim social welfare insurance benefits which have been erroneously paid or provided. This type of settlement procedure is also mandatory before an application for foreign execution can be submitted to the Swedish Enforcement Authority. The Swedish Social Insurance Agency can also make corresponding settlements in Liechtenstein, Iceland, Norway, and Switzerland (Swedish Enforcement Authority 2013, section 3.4, Social Security Regulation and parallel treaties).

8.7 The Swedish Enforcement Authority's international possibilities

The Swedish Enforcement Authority contributes to international law enforcement by having assets secured or seized abroad. The Swedish Enforcement Authority is namely the competent authority to transmit and receive applications for collection to and from the Nordic countries, EU Member States, and certain non-European countries such as India and the United States.

Swedish taxes, social insurance charges, customs tariffs, demands for repayment of social insurance benefits, fines, conditional

finances, litigation costs in criminal cases, and confiscations of value may be collected abroad, based on various tools. At an even earlier stage, the Swedish Enforcement Authority may, subject to certain restrictions, turn to Nordic countries and EU Member States with interim orders from Swedish courts in respect of taxes and social insurance charges.

Orders to secure or attach assets may only involve assets within a country's own territory. The Swedish Enforcement Authority investigates whether there are assets to secure or attach in Sweden before a request for foreign judicial assistance can be made.

8.7.1 International execution of judicial interim orders

As explained previously in the chapter (8.3), a prosecutor can apply to have property which is seized abroad frozen for the purpose of recovery of the proceeds of crime. The prosecutor has a statutory obligation to notify the Swedish Enforcement Authority before sending a freezing order to another EU Member State for execution. The prosecutor should have a dialogue with the Swedish Enforcement Authority's competent authority function as early as during the investigation stage in order to clarify whether judicial assistance opportunities abroad will be available at a later stage. The Swedish Enforcement Authority then gives notice of the frozen property when it is time to have the final order executed by a foreign authority.

In those cases where the Swedish Enforcement Authority executes an attachment order for damages in a criminal case and learns of assets in an EU Member State, the Authority must notify the prosecutor. The prosecutor may decide whether the attachment order, which is a Swedish so-called freezing order, is to be executed in the EU. In such case, the prosecutor drafts an application to the relevant state without the Swedish Enforcement Authority serving as an intermediary (Swedish Enforcement Authority 2013, section 4.2.3.1, Freezing of Assets Act and Freezing of Assets Regulation).

In the event of an attachment order which is to be executed in a Nordic country for the purpose of securing assets for payment of future damages, the prosecutor contacts the other Nordic country directly without involving the Swedish Enforcement Authority.

Distrainment for taxes and social insurance charges on the initiative of the Swedish Tax Agency have been addressed in an earlier chapter as well as in this chapter (8.5.2). The Swedish Enforcement Authority can request security measures in other EU Member States based on a distrainment order issued by a Swedish admin-

istrative court to the extent allowed under the legislation of such state. There are also possibilities in the Nordic countries, but in Denmark in particular the utility of the measure must be weighed against the costs of the procedure. (EU Recovery of Claims Directive, Subsidy Act, Social Security Regulation, parallel treaties, Nordic tax assistance treaty, and the Swedish Enforcement Authority 2013, section 3.1.3).

The process is as follows. The Swedish Tax Agency contacts special executions within the Swedish Enforcement Authority with the distraint order which is to be executed. Execution attempts are made in Sweden. The special execution officer prepares a memorandum regarding the steps taken in the execution, what remains to be executed, and other information which is valuable in respect of the execution, for example any property stated to be located abroad. A check should also be made with the Swedish Tax Agency's litigator to see whether it is anticipated that the distraint order will be followed by a taxation decision for a significant amount. Thereafter, the documentation as well as the administrative court's decision regarding distraint and the Swedish Tax Agency's application for distraint (to the administrative court) are transmitted for foreign execution of the application for foreign judicial assistance.

Before the foreign execution is carried out, an assessment is conducted to ascertain whether it is possible or appropriate to request security measures in light of the domestic regulations of various countries (information is available from the EU Commission's CIRCABC database), the status of the matter at the Swedish Tax Agency, cost aspects for the Swedish Enforcement Authority, and so forth. It may also be relevant, if the Swedish Tax Agency has not been able to provide information about foreign assets, to first send a request for information about which assets are known in the other country.

There are a number of impediments in sending distraint orders, for example in relation to EU Member States which do not accept this type of interim execution for receivable taxes which have not yet been established. It is generally significantly more difficult to have Swedish distraint orders executed abroad than at home.

If the Swedish Enforcement Authority decides that an application for security measures is to be sent, it must be done promptly. The competent authority function at the Swedish Enforcement Authority checks all of the prior processing, makes sure that the application has been completed correctly by the foreign execution authority, and checks that all documents are included.

There is no requirement to translate the document, but receiving authorities within the EU are entitled, when necessary, to request that the Swedish Enforcement Authority translate the administrative court order to the official language of the country or another language as agreed. In order to avoid supplementation, the distraint is therefore “bundled” well, which leads to as speedy execution as possible in the other country.

8.7.2 International execution of established receivables

The State’s established and internationally collectible receivables are handled by: the National Police Board in respect of fines, conditional fines, litigation costs in criminal cases, and confiscation; the Swedish Tax Agency in respect of taxes, charges, and social insurance charges; Swedish Customs in respect of customs charges; and the Swedish Social Insurance Agency, the Swedish Pensions Authority, and unemployment benefit funds in respect of demands for repayment of social welfare insurance benefits.

Information regarding assets outside of Swedish borders are highly significant in terms of successful collection. The Swedish Enforcement Authority does not engage in unstructured searches in other countries. It is therefore important that the authorities seeking execution refer to known assets abroad (the Collections Regulation).

At the request of the Swedish Enforcement Authority, foreign authorities may provide information regarding, for example, addresses and assets, or spontaneously regarding refunds of taxes or charges. Information about addresses can lead to contact with, and payment from, the person with payment liability. Using the information, the Swedish Enforcement Authority can also send a collections request to a specific country.

The National Police Board’s receivables

The primary purpose of international criminal law cooperation is to facilitate effective law enforcement. The cooperation is based on various agreements between countries. The Swedish Enforcement Authority can transfer fines, conditional fines, and confiscations to the Nordic countries for enforcement in a very simple and efficient manner. There are no amount limits.

The Swedish Enforcement Authority can transfer Swedish financial penalties to other EU Member States for execution. With the exception of a small number of Member States (which have a EUR 70 minimum) there are no amount limits. “Financial penalties” refers primarily to fines and company fines as stated in the Swedish Penal Code. Execution may take place in one Member

State at a time, which means that the Swedish Enforcement Authority may not carry out collection in Sweden during a pending foreign matter. The amount collected stays in the executing Member State unless an agreement is reached otherwise (Council Decision 2005/214/JHA, Financial Penalties (EU) Act, Financial Penalties (EU) Regulation).

The Swedish Enforcement Authority can transfer the execution of legally enforceable orders for confiscation of the instrumentalities of crime and proceeds of crime which are issued by a Swedish court to another EU Member State. Execution must be prompt and may take place in several Member States simultaneously, including in Sweden. Collected amounts which are less than EUR 10,000 accrue to the executing state. Higher amounts must be divided between the issuing state and the executing state unless otherwise agreed. (Council Decision 2006:783/JHA, Confiscation (EU) Act, Confiscation (EU) Regulation).

As from 1 July 2014, the Swedish Enforcement Authority has statutory support to apply to EU Member States for execution of Swedish orders for so-called extended confiscation where the convicted individual has assets in such state (Report 2013/14: JuU22). As explained previously in the anthology, this constitutes confiscation of proceeds of crime from the convicted individual's criminal activities without the property being linked to a specific concrete offence.

The Swedish Enforcement Authority may transfer financial penalties and confiscation orders to countries outside of the EU provided there is an agreement between Sweden and the relevant "third country" (International Execution Act and Official Government Report 2013:21; International execution of sentences with proposal for new legislation).

Swedish Customs' receivables

Essentially all customs receivables exceeding EUR 1,500 are collected in the EU. The main rule is that the Swedish Enforcement Authority may request collection if the receivable is not contested by the party who is to pay, i.e. there can be no pending review or appeal. Swedish Customs in Sundsvall assists the Swedish Enforcement Authority with supplementation and responses to questions (Recovery Directive, Assistance Act, and Swedish Enforcement Authority 2013).

Sweden has customs agreements which contain collections provisions with several EU Member States and certain non-EU countries. Swedish Customs is, in this respect, the competent authority which itself can apply for collection directly in other countries.

The Swedish Tax Agency's receivables

The Nordic countries have a multilateral tax assistance agreement which covers all taxes, including vehicle tax. The minimum amount for collection is SEK 2,500. In respect of the Nordic EU Member States – Denmark and Finland – the Swedish Enforcement Authority usually applies the Nordic treaty for collection due to the lower amount limits and simpler administration as compared with an application based on the EU Recovery Directive.

In the EU, all taxes and appurtenant charges included in collectible tax account deficits are collected in accordance with the Recovery Directive. The lowest amount limit for collection is EUR 1,500. One main rule in conjunction with judicial assistance is that there is no pending review matter or appeal brought by the party who is to pay.

Based on the Recovery Directive, the Swedish Enforcement Authority may request information in another EU Member State regarding, for example, an address, in order to then send notification to the party with payment liability. Information can first be requested about assets in order to determine whether collection in another EU Member State is justified. Information may also be received spontaneously from another EU Member State (with the exception of the case of value added tax) regarding repayment of taxes for the purpose of the Swedish Enforcement Authority immediately requesting collection for seizure of tax refunds.

The Swedish Enforcement Authority uses established EU forms which are submitted to various mailboxes in the other Member States via a special email system. The cooperation is well-developed and works very well among the competent EU authorities (Recovery Directive, Assistance Act, and Swedish Enforcement Authority 2013, section 3.1).

For the United States and India, the Swedish Enforcement Authority uses double taxation treaties with collection provisions. There are no amount limits. For certain non-European countries, such as Australia, collection may take place based on the Council of Europe and OECD Convention on Mutual Administrative Assistance in Tax Matters.

In the Nordic countries, social insurance charges (i.e. employer's contributions and own contributions, which are included in receivable tax account deficits) can be collected. The amount limit is SEK 2,500. In the EU, the amount limit for requesting collection of social insurance charges in another Member State is EUR 350. There are agreements between the EU and Switzerland and

the EU and Liechtenstein for collection of social insurance charges (Nordic Tax Assistance Treaty, Social Security Regulation, parallel agreement Switzerland – EU and the Swedish Enforcement Authority 2013, section 3.4).

The Swedish Social Insurance Agency's receivables

In conjunction with demands for repayment of social welfare benefits, the Swedish Social Insurance Agency must have attempted to obtain settlement from the relevant social insurance authority in another EU Member State before an application for foreign execution can be made to the Swedish Enforcement Authority. The Swedish Social Insurance Agency's demand for repayment cannot be executed directly; instead the application requires an enforcement order, i.e. a judgment or decision on a payment order. When applying to the Swedish Enforcement Authority, it is important that the Swedish Social Insurance Agency specifically state whether execution should take place in another EU Member State if the person liable for repayment has an address or assets there. In conjunction with demands for repayment from the Swedish Social Insurance Agency, the Swedish Enforcement Authority should therefore be reminded that execution in the EU should be considered in the event that the Swedish Enforcement Authority cannot collect the debt in Sweden. The lowest amount limit for collection in another Member State is EUR 350.

There are agreements between the EU and Switzerland and the EU and Norway which enable the Swedish Enforcement Authority to obtain collection in Sweden and Norway in approximately the same way as within the EU (Social Security Regulation, parallel agreement EU – EEA countries of Iceland, Liechtenstein and Norway, and parallel agreement EU – Switzerland).

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Chapter 9

How do we measure asset-oriented law enforcement?

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“Managing with weak measures of correct objectives may be no more perilous than managing to objective measures of the wrong goals”

(Caulkins and Reuter, 2008)

9.1 Introduction

In this anthology we have, among other things, read about the points of attack, strategies and methods of asset-oriented law enforcement. However, some key issues remain. How do we know that actions taken in asset-oriented law enforcement have the desired effect? How do we follow up the government’s asset-oriented efforts best way possible?

9.2 Why measure?

There are two primary intentions behind measuring asset-oriented law enforcement. The first is to follow up on whether the authorities work efficiently with this orientation, i.e. that they take measures to actively *track, secure, confiscate, and recover criminal gains*.

The second intention is to clarify whether the asset-oriented law enforcement measures which are taken have the desired effect. In other words, we need to know that the strategy and the measures applied work in a way that fulfils their given purpose. In order to be able to answer this question, we must know the purpose of this orientation.

Asset-oriented law enforcement in Sweden must be primarily regarded as a tool for the task of making things difficult for the individuals or groups who devote themselves to criminal activities for financial gain.

9.3 What do we know about the effects of the asset-oriented measures?

In order to understand whether the asset-oriented operations are having the desired effect, it is consequently necessary to evaluate

the degree to which, and the way in which, the operations have made it more difficult for parties who engage in profit-making criminality. To date, there has been no such evaluation of the effects of asset-oriented law enforcement in Sweden. As result, the asset-oriented work is based on an assumption that it affects the stimuli for committing crime. In the absence of empirical research which describes which types of measures are effective against various types of criminal activities, individuals, and constellations, it also becomes difficult to maintain a strategy regarding the various measures.

9.4 How do we know whether the authorities' asset-oriented work is effective?

In the past two decades, the Government has imposed tougher requirements on public authorities in respect of reporting attained operational results. The reporting-back requirements involve illustrating the efficiency in various areas, i.e. the ratio of goal attainment to resource use. In the letters of appropriation for 2012 and 2013, the Government requires the Swedish Police, the Swedish Financial Crime Authority, Swedish Customs, the Swedish Enforcement Authority, and the Swedish Prosecution Authority to report back to the Government their work on proceeds of crime issues:

Each authority shall report the measures which the authority has taken in order to further develop the work on proceeds of crime issues on both the strategic and the operative levels. The authority shall also report and comment on the quantitative results of the authority's work in tracking, securing, confiscating, and recovering criminal gains.

The Government's letters of appropriation are customarily structured such that a target is set and a reporting-back requirement is imposed for each area. However, it is interesting to note that in respect of asset-oriented operations, the letters of appropriation do not contain any target setting for this area but, instead, only a reporting-back requirement. The question is whether this is to be interpreted to mean that the goal of the asset-oriented operations is, quite simply, to find the greatest amounts possible. If this interpretation is correct, it is reasonable to believe (given the aforementioned purpose) that asset-oriented work is based on an assumption that the greater the amount which is secured and recovered, the more difficult it has become for criminal individuals and constellations. However, there are certain problems associated with this perspective, which we will return to in the final summary.

There is also a reporting-back requirement for the multi-authority project to combat serious organized crime. The government mandate for the project includes an instruction to report, each year, the results of the special project to combat serious organized crime. The instruction emphasizes that “it is of particular weight that the project which is now being conducted can also be followed up in the same way as takes place in respect of other police operations”. However, the reporting-back for 2010 pointed out that following up the operations in a similar way is problematic since, in several respects, the conditions diverge significantly from those which typically apply to police operations. One of the arguments mentioned is that results of the special project include not only the work of the police, but also that of other cooperating authorities. Another argument is that asset-oriented law enforcement is a cornerstone of the multi-authority project, and at this time the police did not have any established benchmark for asset-oriented law enforcement.

9.5 What should the report to the Government contain?

Since letters of appropriation or the aforementioned government mandate do not contain any detailed instructions regarding what the quantitative results must reflect, each authority determines the way in which, and the level of detail they wish to use, when reporting the figures. However, one rule of thumb is that the reporting of results must be clear, fair, reliable, relevant, capable of comparison, comprehensible, and transparent (Swedish National Financial Management Authority, ESV 2012:42). When discussing the follow-up and reporting results, a distinction should be made between *performance* and *effects* (ESV 2012:42). *Performance* includes what has been done and generated by the activities, and *effects* are what performance has led to. *Results* are a balancing of *performance* and *effects*. In the absence of good or relevant benchmarks for effects, an outcome may be reported. ESV illustrates this with the following model.



The authorities’ reporting to the Government regarding *performance* within the parameters of asset-oriented law enforcement includes, among other things, number of motions for confiscation, number of motions for attachment, number of asset investigations conducted, number of analyses within the scope of intelligence activities, and distraint orders.

Outcome in these examples means quantity but, in certain cases, may also mean amounts. For example, in its annual report for 2012, the Swedish Prosecution Authority reported 341 motions for confiscation registered with amounts somewhat in excess of SEK 121 million.

In order to understand the *effect*, one must refer to the targets set for the operations and, because the letters of appropriation do not contain any target setting, this has become problematic. Moreover, the authorities' operational plans and annual reports do not contain any specific targets for the asset-oriented work. The targets which are set are general and indicate that the authority is to prioritize asset-oriented work. For example, the Swedish Economic Crime Authority states that it "shall endeavour to recover the proceeds of crime in all cases where the conditions for doing so exist". Swedish Customs and a number of police authorities instead identify serious and organized crime as prioritized areas but list asset-oriented operations as one of several tools in order to "worsen the conditions for conducting serious and organized crime in Sweden" (Police Authority in Stockholm County, 2013).

It is also difficult to find a clearly defined goal for the multi-authority project to combat serious organized crime. The government mandate from 2008 focuses primarily on launching the project and sets the target as "taking measures to ensure efficient and sustainable law enforcement in respect of serious organized crime". The annual reporting for the multi-authority project also does not contain any clearly formulated overall target. However, it is stated that the purpose of the project is to reduce, and in the best case eliminate, the ability of strategic individuals to exercise socially disruptive criminality and to map the networks of such persons. In the project, the designation of "strategic person" is given to individuals who are deemed to be particularly dangerous to society as a result of their capacity and their strategic positions within serious organized crime (National Police Board 2013).

9.6 What do the reports say about asset-oriented law enforcement?

One conclusion that can be drawn from the authorities' results reporting is that it is difficult to obtain any overall picture of the results of asset-oriented law enforcement, since this orientation is essentially based on public authority cooperation in different chronological steps. A coherent follow-up of asset-oriented law enforcement thus requires that results be seen from the perspective of the preceding and subsequent steps in the process. The police's work and its goals and benchmarks differ significantly

from, for example, those for the Swedish Enforcement Authority. This means that there is no recurring theme in the prosecution process where types of offences and categories of offences create a yardstick for comparative purposes. Accordingly, the authorities' annual reports are only a point of entry into a certain phase of the proceeds of crime chain and, for certain authorities, reporting-back essentially involves an *attempt* to track, secure, confiscate, and restore the proceeds of crime. The reporting-back does not say much about how much money is ultimately successfully reached.

Since asset-oriented law enforcement rests on cooperation between different authorities, one can ask whether it is appropriate to report the quantitative results annually at the level of the individual authorities. In the multi-authority project against serious organized crime, an attempt is made to give a picture of the authorities' aggregate performance and outcome based on the entire proceeds of crime chain. However, it should be added that this reporting only covers the operations which are decided upon by the Operational Council (as from reporting year 2013, the outcome of asset-oriented law enforcement in the operative work which is a consequence of intelligence matters decided upon and worked up in the Regional Intelligence Centre are also reported). The reporting thus refers only to a limited portion of the work in *tracking, securing, confiscating, and recovering criminal gains*.

9.7 Closing comments

As this chapter has shown, one area within asset-oriented law enforcement which still has great potential for development is measurement and follow-up of the asset-oriented work. The greatest problem is that it is difficult to use the reports to judge the success of the asset-oriented work. At present, the primary function of the reports is more to make the authorities' work visible and to serve as "stimulus" to show that they are doing as ordered under the letters of appropriation. This "stimulus" was very important when asset-oriented work was something new in Sweden. Operational statistics were necessary, not in the least to make the work visible and thus create incentive for authorities to work in this way (Brå 2008:10). A number of the benchmarks which have been used were probably also generated relatively quickly.

However, now that asset-oriented work has become an increasingly integrated part of the work of the public authorities, it is no longer sufficient for the operational statistics to provide a "receipt" that the authorities are doing as ordered. Some form of answer to the question of which operations have led to the stated

purpose of the orientation, namely making it more difficult for the individuals or constellations involved in profit-making criminality, is necessary.

9.7.1 As long as it increases, it's successful

As the saying goes, *you get what you ask for*. When the Government instructs authorities to report back their work on proceeds of crime issues without providing a clearly set target for the proceeds of crime work, that is precisely what happens. As a consequence, the authorities compile and report information regarding different performances undertaken and different quantitative outcomes.

It is, of course, appealing to measure the success of the strategy in terms of amounts. This provides a concrete sum as a reference point when communicating results. The mathematics are simple; the more assets recovered and the more measures performed, the greater the success. The crime prevention and law enforcement effect is thus measured as the number of measures and recovered pounds and pence. The Swedish National Audit Office, too, uses this simplified view in its review of the State's efforts against profiting from criminality (RiR 2010:26). However, there is a host of problems associated with reporting asset-oriented law enforcement in this manner. Accordingly, we will conclude the chapter by shedding light on some aspects of what we believe should warrant further investigation and development.

9.7.2 Need for relevant points of comparison

One problem with the authorities' focus on number of measures and amounts in the reporting of results is that there are often no relevant points of comparison, which makes it more difficult to evaluate the result (cf. Andersson 2008). In order to be meaningful, results must – quite simply – be related to a norm or a target. In accordance with prevailing accounting principles, results based on only one calendar year are compared to corresponding results during the two preceding years. This means that 2013 is regarded as a success and a confirmation that activities are going in the right direction if the outcome from preceding years is exceeded. More measures than preceding years and greater amounts than preceding years are equated with success. On the other hand, a reduction of the amount is often explained by the fact that there were atypically large amounts in a small number of matters during the preceding year.

9.7.3 Individual authority reporting of a team effort

As described in previous chapters, asset-oriented work is a team effort, and the key phrase is authority cooperation. For example, the criminal intelligence service and regional intelligence centres fill an important function by collecting financial information as early as during the intelligence stage. The preliminary investigation leader must, at an early stage, take a position regarding whether the suspect had financial gains from the offence and investigate the possibilities of confiscating the gains. The proceeds of crime may need to be secured through coercive means, which takes place through motions to courts. The Swedish Enforcement Authority executes judgments and orders. In addition to these criminal law measures, there are other forms of asset-oriented work, for example the Swedish Enforcement Authority checks whether there are any receivables to demand and collect. The Swedish Tax Agency conducts tax audits. The Swedish Social Insurance Agency and other benefits-paying authorities review whether there is any need to demand repayment or damages as a result of erroneously paid benefits.

In other words, a series of different actors and processes are in motion simultaneously, and asset-oriented measures can take place parallel to each other, independent of each other, and as a result of previous measures. Moreover, the duration is long. The measures are carried out at varying intervals and several years may lapse from the commencement of an asset-oriented investigation until recovery of proceeds of crime.

As mentioned, statistics regarding asset-oriented law enforcement are currently limited to the annual reports of each authority. There is no overall compilation of the aggregate work with asset-oriented law enforcement. As a consequence, the information is fragmentary and it is difficult, if not impossible, to survey this area. The authorities' respective reports of amounts are often based on relatively few matters which have a significant impact on the outcome. Individual matters may generate very significant amounts without reflecting the effort expended by the authorities when compared with matters with significantly lower amounts. As a consequence, results are very sensitive to random variations.

The authorities' annual reports for 2012 and the police's reporting on the special project against serious organized crime contain several examples of significant differences in outcome and performance which lead them to the conclusion that no conclusion can be drawn. Moreover, significant variations between years in the authorities' reports of results for asset-oriented law enforcement are not uncommon. For example, in the Swedish Economic Crime Authority's annual report, the Authority reported a reduc-

tion of amounts claimed from SEK 219.9 million to 63.6 million, and confiscated amounts from SEK 58.7 million to 3.7 million from 2010 through 2012. This change is explained by the fact that there were a small number of uncommonly large matters in 2010 (EBM 2013).

Accordingly, there is a need for statistics regarding asset-oriented law enforcement which take into consideration the aggregate efforts on the part of the authorities and the extended time which can pass from the commencement of an asset investigation or the securing of property until the final recovery of an amount. Such an overview requires long time series and a breakdown of the sums into different subcategories. One solution could be to report, when possible, the outcome into aggregated annual periods; this would reduce the likelihood of random errors and thus increase the value of the report.

9.7.4 Is there a reduction in the incentives for committing crime?

Reported amounts and the number of measures do not, however, offer much guidance on the question of whether the asset-oriented work fulfils its purpose and thus contributes to reducing the incentives for committing crime. How, for example, do you determine whether an aggregate outcome of the confiscation of SEK 50 million is a good result?

There is a great risk of looking at the figures with tunnel vision; in the long run, this could also lead to the authorities focusing solely on matters with good financial returns. In order to form an opinion as to whether asset-oriented work has led to the given purpose of the results, the operations must be judged in context. It is not the amounts *per se* which are interesting but, rather, the consequences of the operations on the criminal individuals and their criminal activities. Quantitative lump sums do not take into consideration the strategic value of the secured or confiscated assets. For example, the confiscation of SEK 100,000 for a group engaged in narcotics trafficking may entail a significant portion of the proceeds from the criminal activities, while a financial criminal might regard the same amount as an insignificant loss.

Carrying out relevant measurements of the effects of asset-oriented law enforcement is, however, both problematic and resource-intensive. Moreover, conducting this type of evaluation of effects each and every year can hardly be deemed financially defensible or necessary. In light of the significant resources which the authorities invest annually in asset-oriented work it would, however, be appropriate to base the focus of the strategy on more than an assumption that it has led to the desired effect.

Accordingly, it would be necessary to conduct an evaluation of the effects of asset-oriented work, not the least in order to form a basis for strategic decisions.

9.7.5 Asset-oriented law enforcement as a disruptive strategy

Another important aspect to bear in mind is that the lack of confiscated assets does not necessarily mean that the strategy was not successful. Increased efforts on the part of authorities to map and attempt to reach perpetrators' assets probably has an inhibitory impact on the criminal activities, notwithstanding that the authorities do not fully succeed in reaching the money. The counterstrategies which the perpetrators are forced to employ to protect their criminal income, for example, money laundering and other protective measures, lead to increased costs for their criminal activity (Brå 2007:4, Brå 2011:7, Brå 2011:20). In the long run, this results in it becoming more difficult to earn money from criminal activities. In other words, asset-oriented law enforcement may be an important tool for impeding criminal activities without necessarily generating significant sums of money for the State.

9.7.6 What does the money come from?

Another problem is that the information which is reported is not connected to any specific type of offence but, rather, the reports are on a purely general level. This can be compared with criminal statistics, where reported offences, prosecutions, and suspects in types of offences and categories of offence are reported. Reporting of criminal statistics without connection to the various offences would have been rather meaningless and unusable.

However, this is precisely the type of reporting method used for asset-oriented law enforcement. The outcome of asset-oriented law enforcement is often measured as number of performances and amounts without being connected to a type of offence or category of offence. A first step towards making the reports of results regarding asset-oriented law enforcement more usable would thus be to report the number of measures and outcome, broken down by type of offence. This could provide a picture of the primary type of criminal activity involving asset-oriented work and the magnitude of the recovery of gains of criminality.

Supplementing the figures with a qualitative data would constitute a further step in increasing the possibility of evaluating the figures in context. This could take place through, for example, interviews with individuals at public authorities, follow-up forms, and field descriptions. This could provide increased understand-

ing of the types of work methods, strategies, and measures which work well in certain given contexts and against certain given types of offences. The information could also be used to create benchmarks for the activities which are important in this area.

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Appendix. Benchmarks in the multi-authority project against Serious Organized Crime.

Seizure, other:	State in paragraph form seizure of other, if any
Number of tax matters; desk and audit:	SKV** (commenced during the month)
Number of preliminary investigations:	
Number of debtors:	SBE**, SKV (commenced during the month)
Of whom strategic individuals:	KFM** (commenced during the month)
Claimed amount in action brought for execution:	KFM (commenced during the month)
Matters involving discontinuation of compensation (discontinuation, reduction)	KFM (for which motions were made during the month)
Closed number of tax matters:	SKV (ordered during the month)
Increase of tax after decision, SEK:	SKV (closed during the month)
Distrain order, number:	SKV (ordered during the month)
Distrain order, SEK:	SKV (ordered during the month)
1. Secured assets in distraint cases:	KFM (secured during the month)
Valued at:	
2. Secured assets in preliminary attachment or custody cases:	KFM (secured during the month)
Valued at:	
3. Distrained assets:	KFM (distrained during the month)
Valued at:	
Number of matters with repayment demands	FK** - State quantity
Amount of repayment demands, valued at	FK - State in SEK
Number of actions for damages*	FK - State quantity
Damages, valued at*	FK - State in SEK
Motions for confiscation (number):	ÅM**/EBM** - State quantity
Motions for compensation (SEK):	ÅM/EBM - State in SEK
Number of motions for preliminary attachment, etc. (number):	ÅM/EBM - State quantity
Number of motions for preliminary attachment, etc. (SEK):	ÅM/EBM - State in SEK

* Results measured as from 2014.

** Translator's note: SKV= Swedish Tax Agency; SBE = Tax Offences Unit; KFM = Swedish Enforcement Authority; FK = Swedish Social Insurance Agency; ÅM= Swedish Prosecutorial Authority; EBM = Swedish Economic Crime Authority

Chapter 10

Need – regulatory changes

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10.1 Introduction

Much has happened since 2007, when the Government began to think about mobilization against serious organized crime (Ministry publication 2008:38 and Ramklint, p. 14). Attention has been focused on this endeavour and there is a difference of opinion as to the level of success. Some segments of the Swedish Bar Association have expressed doubt about an intensified cooperation between public authorities (Brandberg and Knutson 2012, p 27 et seq.). In this anthology, the authorities themselves have shown that they actively take measures to track, secure, confiscate, and recover gains arising from criminal activities. The various contributions show that the authorities have succeeded with their matters, but also illuminate what can be improved. Having these areas for improvement collected in one anthology is useful not only for judges and researchers but also for legislators, the media, and others. Representatives from the Swedish National Council for Crime Prevention, the Swedish Economic Crime Authority, the Swedish Social Insurance Agency, the Swedish Enforcement Authority, the Swedish Police, the National Police Board, the Swedish Tax Agency, Swedish Customs, and Lund University have contributed to the anthology.

The authors call attention to many important questions, for example how to define and measure asset-oriented law enforcement, the extent to which public authority cooperation takes place, and whether the available tools are sufficient and appropriate. This chapter is based on these questions. In addition, proposals are provided for public authority improvement, legislation in the field, and allocation of resources to worthwhile areas for research.

10.1.1 Measuring asset-oriented crime

The selection of measurement method is crucial to what results or outcomes can be reported. Delineations between definitions may also become very important for what can be measured. In chapter 1, the description of asset-oriented law enforcement

is modified to apply to the work of recovering the proceeds of crime and crime-related assets. This is the broadest term. It was also observed that the concept of proceeds of crime is deemed to have the same meaning as it does in the provisions of the Swedish Penal Code regarding confiscation. The work of recovering the proceeds of crime is then only attributable to seizure, custody, preliminary attachment, freezing assets, seizing money, confiscation, and extended confiscation (see item 3 in the figure below). The figure thus shows both a broad and a very narrow definition of the term.



In addition to these two definitions, the Swedish Economic Crime Authority's definition can be added to the above figure. It falls between the other two definitions since it also includes damages, confiscation pursuant to the Financial Instruments Trading (Market Abuse Penalties) Act (2005:377), and corporate fines. In addition, it includes proceeds of crime in respect of tax offences (the tax which is not paid). This is placed at number two in the list. The narrower the selected definition, the easier it is to measure the result of the authorities' work, which is clear from chapter 9 of this anthology. Chapter 9 also stresses the importance of being able to measure to see whether the authorities are working in an effective manner and whether the measures which have been taken have had the desired effect. In this context, it is also pointed out that measurement and follow-up are encumbered by significant shortcomings. The anthology also brings to light the difficulty in knowing what to measure when the ambit of the aforementioned concepts is unclear. At present, the various authorities are each able to select the property they wish to follow.

Another difficulty is the question of *who* recovers the assets which originate in criminal activity. If the term *recover the proceeds of crime* only means that assets are taken from the unlawful possessor of the assets and returned to the party who is

legally entitled to them, only the Swedish Enforcement Authority recovers. In addition, in these cases as well, each of the various authorities is able to determine whether assets which originate in crime are involved.

The following case can illustrate the difficulties entailed in measurement.

An individual has been defrauded into paying SEK 500,000 for a tractor which was never delivered. The police investigate the offence and attempt to track assets, to no avail. The public prosecutor charges the seller, who is convicted of fraud. The public prosecutor also represents the complaining witness on the issue of damages and the seller is ordered to pay damages corresponding to the loss incurred by the buyer. The judgment enters into force and the Swedish Enforcement Authority executes an unfruitful attachment. In this case, the proceeds of crime are SEK 50,000 but the amount is not recovered. In this case, the police have thus not recovered any proceeds of crime, but have taken a number of measures which made prosecution possible, some of which could have led to recovery of the proceeds of crime. The Swedish Prosecution Authority has also not recovered anything but a claim to do so was made. This claim can be reported as a result. The Swedish Enforcement Authority has also not recovered anything.

Up to this point, the example has involved the term “proceeds of crime”. Now we will continue, and evaluate whether various authorities have achieved anything based on the wider concept of “asset-oriented law enforcement”. In our example, the seller will be subject to a collectible claim (cf. chapter 7 in this anthology). This measure may be useful in conjunction with a future criminal investigation against the same person where the circumstances are the inverse; in a case in which cash is found when the police conduct a search of premises are there are no grounds in that case to restore proceeds of crime. This presupposes that prior to the search of the premises, the police and the prosecutor checked to see whether there was a collectible claim and, based on the general clause in Chapter 19, section 27 of the Public Access to Information and Secrecy Act, informed the Swedish Enforcement Authority that there was cash which could be used to pay the collectible debt.

In the case set forth above, the police have not recovered anything but their participation in recovery is why we select the wider concept of asset-oriented law enforcement in that case. In respect of the police’s efforts, it is more fair to measure using that metric. The police should be able to receive “assist points” for the pass that led to the result. This would give the police

an increased incentive to expend efforts to inform the Swedish Enforcement Authority and others. At present, the result can only be reported by the Swedish Enforcement Authority, in the Serious Organised Crime project, and by the Swedish Tax Agency (cf. chapter 9).

Chapter 9 also emphasizes that refined measurement methods are necessary in order to enable asset-oriented law enforcement to be conducted in an efficient manner. Accordingly, Brå has been instructed to explore more appropriate ways to measure this work.

When something is prioritized and important but, at the same time, abstract and difficult to measure – particularly for the securing authorities – a clear risk arises that too much focus will be placed on concrete and unambiguous measures. Such measures are well-suited to action plans and they are per se measurable but not always appropriate. One example of this type of concrete and unambiguous measure is that the recommendation is sometimes made that asset investigations be conducted in all cases where someone is to be prosecuted for an offence. It is probably not possible and, in any event, not desirable since in such case there must be a “receivable”, i.e. some ground on which the proceeds of crime which are the subject of the preliminary investigation can be recovered (this also applies in a broader sense, i.e. collectible claims, damages, and suchlike). In principle, where no such grounds exist, no asset investigation should be done unless there is special cause, for example related to the investigation of the offence itself, such as investigating possible motives. Moreover, asset investigations can and should be conducted in the intelligence work. The measurement methods and definitions which will be selected may not be limited to the good work which is conducted within the field of asset-oriented law enforcement. The wrong measurement method can lead to the operations being limited to elements which are measurable. This may lead to the work concentrating on, for example, confiscation.

10.1.2 Public authority cooperation

The Swedish Social Insurance Agency, the Swedish Police, the Swedish Tax Agency, and Swedish Customs are the securing/investigatory authorities. The Economic Crime Authority, the Swedish Tax Agency and the Swedish Prosecution Authority are the moving authorities. The courts are the judicial and deciding authorities, and the Swedish Enforcement Authority is the executing authority. Together, these authorities constitute the so-called proceeds of crime chain (*Sw. brottsutbyteskedjan*). All of them, with the exception of the courts, participate in asset-oriented law enforcement.

Chapter 4 illustrates that the cooperation between the Swedish Police, the Swedish Prosecution Authority, the Economic Crime Authority, and the Swedish Tax Agency has been necessary to secure the proceeds of crime. Chapter 5 also casts light on the significance of such cooperation. That chapter points out that it is possible to achieve a good result through asset-oriented intelligence work. The disappearance abroad of proceeds of crime is seen as a major problem.

During the work on this anthology, it has come to light that secrecy legislation constitutes a crucial impediment to effective authority cooperation (cf. chapter 6). This applies, among other things, to transfers of information between the intelligence stage and the preliminary investigation stage. Legislation in this respect is regarded as relatively difficult to interpret and, moreover, different authorities and officers at authorities interpret the legislation quite differently. This can lead to protracted handling of matters and, in the worst case, valuable information not being shared. With respect to securing money, the time factor is crucial but in other cases as well, the nuisance involved in obtaining information may lead to no attempt being made to look for it. The same circumstance also exists in respect of information between the taxation stage and the preliminary investigation stage and in the relationship between, for example, the police/prosecutor and the Swedish Enforcement Authority.

10.1.3 Tools

In chapter 2, the authors pose the question of whether it would have been better had there been clear regulation of the various tools available to the public authorities. All authorities do not have access to the same tools (cf. chapter 7). The absence of knowledge regarding existing legislation and the available tools has been highlighted in several reports regarding asset-oriented law enforcement, most recently in the National Criminal Police inspection of the police authorities' administration of the confiscation of the proceeds of crime and criminal activity (RPS, Inspection Report 2012:7, p. 3, Brå rapport 2008:10, and Ramklint p. 55). Moreover, it was pointed out in Chapter 6 that in the case of coercive investigative techniques, much information is lost since technology and user habits have developed more quickly than legislation and public authority standard procedure. One example is the way in which smartphones have changed the potential analysis documentation.

It is our hope that this anthology can be used to fill certain gaps in knowledge. However, training alone is not sufficient since the legislation needs to be reviewed.

The anthology addresses several different tools: confiscation, sequestration, custody, seizure, damages, corporate fines, and distraint. In this section, we will look at the need to sharpen these tools.

Confiscation

Confiscation has received special status and appears to have been granted the significance of being a genuine “golden egg” (Träskman 2013). The reason for this can be discussed, but there are a number of studies which show how work has been underway to expand the possibilities for confiscation.

In this context, it bears mentioning that there is no possibility to use freezing in order to execute orders for extended confiscation of proceeds of crime within the EU (Government Bill 2013/14:66, has been proposed that this will be possible with the entry into force on 1 July 2014).

In addition, a study is underway regarding extended confiscation. In its consultation comments, the Prosecution Authority stated that the prosecutor’s evidentiary requirements in respect of criminal activities are more extensive in Sweden than in other Nordic countries (ÅM-A 2006/1452). The hope is that the evidentiary requirement will be lightened in accordance therewith.

Custody and sequestration

In addition to confiscation, custody and preliminary attachment should be made available in order to secure, until such time as the decision in the primary case has entered into force, property which the suspect has transferred to a third party. In its response to the referral for comment regarding ministry publication Ds 2006:17 (regarding Extended confiscation, etc.), the Prosecution Authority pointed out that there “... should [...] exist possibilities to use coercive means such as preliminary attachment and custody against “third parties” as early as at the time when one uses coercive means against the perpetrator, if it can be reasonably believed that there is a claim against “the third party’s” property. In the event such a possibility is implemented, separate provisions governing the circumstances under which can take place and the permissible duration of the measure should probably be required (ÅM-A 2006/1452 p. 7).

Corporate fines

The question of the calculation of corporate fines has been troublesome, in any event in the area of economic crime. Guidelines regarding how to calculate claims for corporate fines have been generated by the legal unit of the Economic Crime Authority. Of course these are not binding, but they may lead to the presenta-

tion of more (and more accurate) claims and thereupon a case law clarification of the legal situation.

Distrain

Brå report 2008:10 states that the distraint imposed by the Swedish Tax Agency is not sufficient in respect of reaching the proceeds of crime. Confiscation ancillary to distraint would be desirable (p. 42). In this regard, one can add that, regardless of the tool used, the criminal gains are attacked. If there are other tools to secure additional proceeds of crime these should, of course, be used.

The difficulty entailed in applying the rules regarding extended confiscation appears in the following Gothenburg District Court judgment (2012-07-27, case no. B 11926-11).

The judgment (p. 405 et seq.) addresses the issue of the limit for extended confiscation. The defendant was found to have committed fraud which resulted in proceeds of approximately SEK 1.5 million. These proceeds were secured and confiscated pursuant to Chapter 36, section 1 b of the Swedish Penal Code. Foreign funds in the amount of approximately SEK 1.4 million, encased in plastic in a safe, were found in the search of the premises. The money was seized and confiscation pursuant to Chapter 36, section 1 of the Swedish Penal Code was sought. The District Court found that the money had been stored under such circumstances that it was clearly more likely than not that it constituted the proceeds of criminal activity. The court stated, however:

“Comprehensive liability in damages, exceeding the amount for which confiscation is sought, . . . is imposed on MG. Moreover, it appears likely that the amounts found at MG’s premises constitute proceeds of specifically the offence of which he was found guilty and assigned liability in damages. To the extent this is the case, confiscation of the amount would entail that MG is ordered to pay both damages corresponding to the proceeds of crime at the same time as they were confiscated. This would have been a disproportionate reaction to the crime. Accordingly, the District Court dismisses the claim for confiscation. The preliminary attachment order is thus revoked to the extent that it was ordered to cover the claim for confiscation.”

The key phrase is “the amounts found at MG’s premises constitute proceeds of specifically the offence of which he was found guilty and assigned liability in damages”.

The District Court refers to the adjustment provisions set forth in Chapter 36, section 1 b, paragraph 4 of the Swedish Penal Code (“Confiscation pursuant to this section may not take place were such would be unreasonable”), but this should not be necessary.

It is not possible to confiscate more than that which was generated by the offence because the property for which confiscation is sought must constitute proceeds of criminal activity. In this case, there is no additional criminal activity other than that for which he is convicted, and the proceeds of this criminality has been confiscated by virtue of Chapter 36, section 1. The extended confiscation is subsidiary and the provision is not intended to recover anything other than that which originates in an offence.

The typical area of application for Chapter 36, section 1 b is criminal activity which may lead to proceeds. However, this is difficult to estimate when the assets are found and when they appear unreasonably large in light of the holder's actual possibilities to have legally developed and maintained such wealth.

In order to achieve successful extended confiscation, it is necessary that the criminal activity could have generated more than that which was subject to confiscation pursuant to Chapter 36, section 1 and it is clearly more likely than not that the property which was found originates in an offence. It is thus not sufficient that property is found under such circumstances that it indicates that it originates from crime. The judgment shows how difficult it is to apply the rules in procedure. A sort of ideal legal situation would be when those who apply legal rules in various ways can predict an outcome based on the existence of certain circumstances. This applies regardless of whether the rules are being applied by the police, defence attorneys, prosecutors, or judges. Similar cases must be handled similarly. This is known as due process. In such an ideal state, the focus is on evidentiary questions (cf. Chapter 6 which addresses the issue of a reverse burden of proof).

The following comment from the Supreme Court case illustrates the difficulty in interpreting, and thus applying, the legislation.

“The statute provides that property which ‘constitutes proceeds of criminal activity’ may be confiscated.” This wording, as well as certain statements in the reasoning, clearly gives the impression that the possibilities for confiscation of property should be limited to concrete proceeds of crime and property which has replaced such property. This would mean that confiscation of property would never be an issue when the proceeds of the criminal activity, such as in the case of tax offences, is not concrete physical property.

“In practice, however, in light of the difficulties of associating certain property to criminal activity which is not specified in detail, such an interpretation would also hardly make possible confiscation of property (cf., e.g., Government Bill 2004/05:135, p. 87). In the alternative, confiscation of value should be calcu-

lated based on the gains which would have been generated from the unspecified criminal activity. However, it is manifest that it is not possible to make any meaningful calculations of the gains generated by unspecified criminal activity (cf. Government Bill 2007/08:68, p. 65). In that light, it must be questioned whether the intention was really that confiscation of property would have such a limited area of applicability and that this can be deemed consistent with the provisions of the framework decision.” (Supreme Court, id, p. 381, item 13).

Similar difficulties have arisen in closely related issues regarding corporate fines (Supreme Court 3/12-12 B 5960-10) and the prohibition on double jeopardy (see, inter alia, Supreme Court 16/7-13, Ö 1526-13 and 29/9-11, B 5302-10).

Unclear legislation is a central problem and if it is not possible to rectify the fundamental error (sufficient clarity), the public authorities involved must create the prerequisites by means of development of their methods.

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Asset-oriented law enforcement is a collective term for all forms of action taken against property arising from criminal activity. The basic strategy for asset-oriented law enforcement is to remove the possibility of enriching crime and block illegitimate gain. If the driving force for economic and serious organized crime is money - and what money can buy – the practicing against crime should have the same focus. In order for this strategy to be successful, appropriate tools are needed.

The authors provide their view on the asset-oriented approach and can contribute to disseminating knowledge about it in a single volume. This anthology is intended to function as a handbook where several key actors help to spread knowledge about how to deal with these issues. The Swedish Social Insurance Agency, the Swedish Enforcement Authority, and the Swedish Tax Agency is already collaborating with the Swedish Police and other law enforcement agencies. Access investigators have become a new occupational group besides police officers, prosecutors and tax attorneys. To “Follow the money” has become an increasingly more important field within criminology.

The following authorities have participated in the work of this anthology: the Swedish Economic Crime Authority, the Swedish Social Insurance Agency, the Swedish Police, the Swedish Tax Agency, the Swedish Enforcement Authority, the Swedish Customs, the Swedish National Council for Crime Prevention, and Lund University.



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