

TECHNICAL ASSESSMENT OF THE
ASSET RECOVERY AND MANAGEMENT AGENCY (ARMA) OF UKRAINE

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Abbreviations

AMO	Asset management office
ARIC	Asset Recovery Implementation Committee
ARIN	Asset recovery intelligence network
ARMA	National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes
ARO	Asset Recovery Office
CARIN	Camden Asset Recovery Inter-Agency Network
CETS 198	Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism
CoE	Council of Europe
EU	European Union
EUBAM	EU Bilateral Mission
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
GRECO	Group of States against Corruption
MLA	Mutual legal assistance
MS	Member State
NABU	National Anti-Corruption Bureau
NACP	National Agency for Corruption Prevention
OSINT	Open source intelligence
PGO	Prosecutor-General's Office
SAPO	Special Anti-Corruption Prosecution Office
SES	State Executive Service
SFMS	State Financial Monitoring Service of Ukraine



SFS	State Financial Services
SIENA	Europol's Secure Information Exchange Network Application
StAR	Stolen Asset Recovery Initiative
STS	State Treasury Service
UAH	Ukrainian Hryvnia
UNCAC	United Nations Convention against Corruption
UNTOC	United Nations Convention against Transnational Organised Crime



1. Introduction

This is a report of the external technical assessment of the Asset Recovery and Management Agency of Ukraine. It analyses ARMA's operational and institutional efficiency, effectiveness and independence. This technical assessment is not a substitute for the assessment and audit required under the ARMA Law.

The report was prepared by a team of independent asset recovery experts: Ms. Jill Thomas, Mr. John Ringguth and Mr. Pedro Gomes Pereira. The EU Anti-Corruption Initiative in Ukraine (EUACI) funded this project and facilitated assistance and support.

The purpose of the assessment was to:

- Obtain descriptive and analytical information about actual results of ARMA's activity;
- Find out whether the internal systems of ARMA have been suitably designed and operated effectively during the evaluation period;
- Identify the internal and external risks for ARMA's effective operation and how they could be addressed. The period of assessment was from the time ARMA's Director was appointed in December 2016 to June 2018.

The assessment was based on the standards and principles applicable to asset recovery, in particular asset recovery offices and asset management offices according to international instruments, recommendations and best practice, including:

- UN Transnational Organised Crime Convention 2000 (art. 12-14, 27, 30);
- UN Convention against Corruption (art. 31, Chapter V);
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism 2005 (art. 6, 7, Chapter IV);
- International standards on combating money laundering and the financing of terrorism & proliferation, FATF 40 Recommendations and Interpretive Notes (art. 2, 4, 30, 31, 33, 38);
- CARIN Recommendations;
- EU Asset Recovery Office Platform ARO Effectiveness Indicators;
- EU Directive on Freezing and Confiscation 2014 (art. 10);
- EU Council Decision concerning cooperation between asset recovery offices of the member States for tracing and identification of proceeds of a crime 2007.

The evidence-based assessment was guided by principles of integrity, objectivity, independence and transparency. Experts carried out their tasks without influence or pressure from ARMA, any other public authorities or other stakeholders. Experts had full autonomy in preparing and reporting their conclusions. During the assessment, the experts acted in their personal capacities and did not represent any positions of the organisations or governments that supported this assessment.

The experts understood ARMA's effectiveness to mean the extent to which its activities met the agency's objectives during the assessment period. The ARMA law provides its main

objectives as a) the identification and tracing of assets that can be seized in the criminal proceedings, b) the management of assets that were seized or confiscated based on the court decision or owner's consent and c) policy development. The assessment also looked at whether ARMA achieved its objectives efficiently by analysing how funds and time had been used to meet these objectives.

This report answers the following key questions:

Key assessment questions

1. To what extent did ARMA's activities correspond to overall aims and objectives of the Agency?
2. To what extent were ARMA's objectives achieved taking into account existent context?
3. To what extent has ARMA been efficient in the use of its resources?
4. What were the main successes and failures of ARMA in achieving its objectives?
5. How did ARMA's leadership contribute to the successes and failures of ARMA in achieving its objectives?
6. To what extent has the legal framework ensured ARMA's institutional and operational autonomy?
7. To what extent has ARMA's institutional and operational autonomy been ensured in practice?
8. To what extent have ARMA proceedings been properly and effectively organized, recorded, quality assured and carried out?
9. What recommendations can be made to improve ARMA's performance in a sustainable way and strengthen its autonomy?

This report is based on the following methodology;

- Study of replies to a questionnaire and other materials provided by ARMA;
- Interviews with ARMA leadership, management and staff (both in focus groups and individually);
- Interviews with SAPO, PGO, Police, NABU and other stakeholders, including international and non-governmental organisations (both in focus groups and individually);
- Two field missions in Kyiv Ukraine: 18-20 June 2018 and 6-10 August 2018;
- A desk review and analysis (list of materials reviewed is attached).

The methodology is briefly outlined in Annex I.

2. Background

Corruption has been a widespread phenomenon in Ukraine since its independence in 1991.¹ The rapid transition in the 1990s from a centrally planned nationalised economy to a market economy allowed for the privatisation of wealth through corruption, exacerbating social inequality.² Moreover, the creation of a wealthy business class which often sought to protect their interests by influencing the government, parliament, media and judiciary.³

The removal of the presidential regime of Viktor Yanukovich in early 2014, after a popular uprising, resulted in the approval of several laws, including the Ukrainian anti-corruption strategy for 2014-2017,⁴ which included, among others, the creation of the National Anti-Corruption Bureau of Ukraine (NABU) and the National Agency for the Prevention of Corruption (NAPC). Several changes were also made to the Ukrainian National Police, and a new law on the State Bureau of Investigation was passed in 2015.

The Ukrainian anti-corruption strategy, however, makes no direct reference to asset recovery or to the need to manage seized and confiscated assets. The only reference to be found on the asset recovery process is in Law 1697-VIII⁵ (NABU Law) to represent in the tracing, seizing, forfeiture and recovery of assets (art. 17(18) NABU Law). While these functions carried out by NABU appear to be an overlap with those of ARMA, it should be highlighted that the former is constricted by its limited scope of activities and jurisdictional competence, while the latter has a much broader competence, defined not by criminal offences under its purview, but by the value of the asset to be managed within the context of any criminal proceeding. ARMA is limited only by the interest of the court of submitting an asset for management by the agency.

The Ukrainian authorities thus established an agency capable of conducting the necessary activities to support criminal investigations with a view to identifying assets. This assistance comes from both their specialised ability to identify assets, with a view to supporting parallel financial investigations to be conducted by the law enforcement authorities, and their mandate to professionally manage seized and confiscated assets. This support therefore enables, on the one hand, law enforcement authorities and the Prosecutor-General's Office (PGO) to identify the nature, ownership and value of assets which are to be seized in the context of an ongoing criminal investigation. On the other hand, ARMA supports courts, law enforcement authorities and the PGO in preserving the value of seized

¹ 2016. *Anti-Corruption Measures in Ukraine After the Revolution of Dignity: Key Legislative Aspects* (Kyiv: Centre for Army, Conversion and Disarmament Studies), p. 6.

² *Ibid.*

³ Ash, Timothy, *et al.* 2017. "The Struggle for Ukraine," *Chatham House Report*, pp. 75-76.

⁴ Ukraine. 2014. Law of Ukraine on Principles of State Anti-Corruption Policy of Ukraine (Anti-Corruption Strategy) for 2014-2017, No. 1700-VII. Official Journal of the Verkhovna Rada, No. 46, of 14.10.2014.

⁵ Ukraine. 2014. Law of Ukraine on the National Anti-Corruption Bureau of Ukraine, No. 1697-VII. Official Journal of the Verkhovna Rada No. 47, of 14.10.2014.

assets – either through active management of such assets through receivers or through the anticipated sale of confiscated assets – in order to sell them for maximum value once they have been confiscated.

The current set up of ARMA aims to align Ukrainian legislation and practice in the field of asset recovery and asset management with several European and international obligations assumed by Ukraine in the area. Furthermore, by creating ARMA, Ukraine is approximating its legislation with existing regulations from the European Union in the field of asset recovery and asset management. It should be underscored, however, that unlike most asset recovery offices, ARMA is neither a law enforcement body nor a prosecutorial agency, but an agency which supports the activities carried out by law enforcement and prosecutorial authorities. For this reason, it does not have the power to conduct investigations into assets; rather, it conducts verifications which support the activities of other law enforcement and prosecutorial authorities.



3. Key Findings

3.1. Key Findings on the Asset Recovery Office

ARMA has been established as the national Asset Recovery Office. If we are to compare it to other national AROs, its domestic asset tracing mandate is comparatively narrow as it is reliant on requests or referrals from other agencies before it can take any action. In its current form, ARMA is supporting domestic investigations but only through the provision of asset tracing, when requested. Initial statistics on requests received and responses provided indicate that this support is effective. However, whether, as a national ARO, it is effectively contributing to an increase in proceeds of crime confiscation is questionable. There is currently no national asset recovery strategy to support ARMA in this regard. It seems reasonable that, when ARMA discovers information that indicates the existence of illegal assets, it should be able to develop this to a point of providing a package to law enforcement agencies on potential crimes and organised crime groups. After a period of proven success, public confidence and legislative amendments enhancing ARMA's autonomy – as recommended in this report – consideration could be given to increasing ARMA's asset tracing mandate.

Although not a law enforcement or judicial (prosecutorial) body, The National Agency, by nature of its asset tracing tasks, carries out investigation. Establishing the agency under a 'special status' and not as a law enforcement or prosecutorial body goes against the global trend. Its status currently suits Ukraine from a domestic perspective but as the agency starts to increase its international activities of making and receiving more asset tracing requests, its status, and the perception other AROs may have of its status, could hinder its effectiveness.

A positively high number of requests were received by the agency in the first 6 months of 2018 (312) and ARMA reported that all requests were either answered or provided with a first response within the 3-day timescale provided for in the law. There were no complaints from requesting agencies regarding the support provided by ARMA.

The level and ease of access to existing databases, registers and financial information, without a court order, is one of the most important effectiveness indicators for AROs. ARMA has achieved a great deal of success in this area. As of June 2018, it reported possible access to 16 public databases and 333 registers. It now offers a considerable advantage over other law enforcement agencies that are also legally mandated to trace assets by providing the possibility of a 'one-stop-shop' for asset tracing. ARMA has also negotiated a high level of access to banking information. The Asset Finding and Identification Department is connected to the email system of the National Bank of Ukraine. On request, ARMA can identify accounts held by individuals based on the requests it receives as well as the transactions made and received through accounts, without the need for obtaining a court order. This is already a broader access than the majority of EU AROs and starts to mirror the access available to many FIUs.

A number of agencies have taken advantage of the broader possibilities that ARMA has, aside from checks in databases and registers, through the analysis of information on the wealth of individuals under investigation. This fits entirely with the mandate of the agency *i.e.* to trace and identify assets and their owners or controllers, for later possible confiscation. This analysis will also assist in identifying individuals with unexplained wealth who may not have previously been visible to law enforcement or prosecutors. This service should be promoted among the agencies which ARMA services, particularly the ones that do not have analytical capacity.

Good cooperation between any ARO and its own Financial Intelligence Unit (FIU) is vital for effective asset tracing. There is currently no legal or practical possibility for the State Financial Monitoring Service (SFMS – the Ukrainian FIU) to exchange information with ARMA. Ukraine is encouraged to resolve this issue to remove such a barrier.

In terms of international cooperation, ARMA has promoted itself excellently outside of Ukraine throughout its establishment phase, linking with the majority of available regional and international platforms and networks. However, on a domestic level further work could be done to highlight the operational international asset tracing possibilities available to Ukraine agencies through ARMA as the contact point. Law enforcement agencies and prosecutors have very little knowledge of the international asset recovery possibilities afforded to ARMA through CARIN, other ARINs and StAR. This is not helped by the fact that Ukraine does not currently have a prosecutorial CARIN contact. As the agency tasked with ensuring the formation and implementation of asset recovery state policy and the only current CARIN contact, ARMA should encourage the most appropriate prosecutorial authority to nominate a prosecutor as the CARIN judicial contact.

Outside of the EU, the competent authorities of non-EU jurisdictions can make operational use of EU AROs by concluding an agreement with Europol. Europol administers the electronic platform (SIENA) used by EU AROs. ARMA's position in relation to cooperation through Europol is that, although Ukraine as a jurisdiction has concluded an operational cooperation agreement with Europol, the ARMA is not recognised as a competent authority by Europol within Ukraine. Its non-law enforcement status may have affected cooperation here, as Europol's mandate is to support law enforcement authorities in their crime fighting efforts across a broad range of crime threats, including asset tracing. Contacts with informal asset recovery networks aside, the EU AROs will see Europol as the operational gateway for ARMA into Europe and the EU AROs. ARMA is encouraged to progress this possibility, which would provide a legal and secure gateway with all EU AROs for the operational exchange of information.

3.2.Key finding on the Asset Management Office

ARMA is the first body in Ukraine to allow for a professional manner to manage seized and confiscated assets. The purpose of such management is to preserve the value of the seized and confiscated assets, so that they may retain their maximum value prior to their realisation. In order to undertake its functions, the AMO must work closely together with

the prosecutor and law enforcement, on one hand, and the professional receivers which will actually manage the seized or confiscated assets.

At present, the Asset Management Office within ARMA has not had sufficient experience that would enable them to set a pattern which would assist them in managing their available resources more effectively. They have also not had the opportunity to manage seized assets held outside the territory of Ukraine.

Notwithstanding, little consideration is given to what property should be seized, how and when it should be seized, and whether it should be seized at all. This is mainly because ARMA is not called in at the early stages to assist prosecutors and law enforcement officials in planning the actual seizure of the property. The way that the ARMA Law has been designed presupposes that ARMA will be called to manage the assets after these have been seized, and upon the discretion of the judge. Art.15 (point 3 part 1) & art. 9 of the ARMA law gives it the mandate to provide law enforcement agencies and prosecutors with methodological support and advice on asset recovery and management. The law states it is one of ARMA functions to help these agencies. The law does not say at which stage this assistance can be provided. There is no provision in the ARMA Law which forbids the Asset Management Department to be more proactive in their relationship with law enforcement and prosecution. Indeed, such proactivity – which would enable them to participate at a much earlier stage - could support the prosecution in their decision making in relation to whether specific assets should be seized.

The asset management model in Ukraine is based on either the anticipated sale of seized assets, the conditions set forth in the Criminal Procedure Code of Ukraine, or the outsourcing of the management of assets to external service providers. The added value of this approach is that ARMA is trying to reduce its immediate costs in relation to the management of assets. However, in the long term, the strategy may become unsustainable or risk prone for ARMA. Much autonomy is given to the evaluators and receivers for the sake of placing the asset into management quicker. However, this may come at a cost of possible collusion between the receiver and the evaluator, or business practices carried out by the receiver which may result in legal liabilities or damages which may have to be paid by ARMA itself, since it is the ultimate responsible agency for the management of assets.

3.3.Key findings on ARMA's independence

The National Agency, within the framework of the ARMA Law and other laws shall be accountable to the Parliament of Ukraine, and controlled by and responsible to the Cabinet of Ministers. The legal framework in which the National Agency sits is complex and there are potential ambiguities and lack of clarity about the precise degree of control which could be exercised by Ministers over the National Agency.

The institutional placement of ARMA, which allows the Head of ARMA (who works under the Prime Minister) to attend the Cabinet of Ministers inevitably raises questions about its

real operational independence of government. The assessment team heard that ARMA is perceived by some as too close to government.

The ARMA Law does not set out the role of ministers in respect of ARMA. However, Art. 2(5) ARMA Law states that the Law on Central Executive Bodies, other laws that regulate the activities of the executive authorities as well as the Law on Public Service **shall** apply to the National Agency and its personnel, “to the extent that does not contradict this Law.” This appears to imply that any interference by ministers in the formation and implementation of state policy in ARMA’s area would contradict the ARMA Law. The assessors did not hear of any operational interference by ministers in the National Agency’s operational work.

The provisions of art. 9 ARMA Law set out the CJS actors who can request ARMA to intervene. This provision arguably safeguards ARMA from being requested to act operationally by ministers or the Cabinet of Ministers. That said, there is no clear statement in the ARMA Law that, in operational matters and casework, the National Agency acts independently and cannot take orders or instructions from ministers.

Though this has never happened, it appears from art. 23 in Chapter III Law on Central Executive Bodies and under art. 21(6) Law on Cabinet of Ministers that, in the absence of specific provisions to the contrary in the ARMA Law, an ARMA Order or by-law could be repealed in full or in part by the Cabinet of Ministers. There are no provisions in the ARMA Law that would contradict such a ministerial action repealing an ARMA order or by-law.

The ARMA is involved in significant levels of reporting to the Cabinet of Ministers. There is a regular flow of information from ARMA to the Secretariat of the Cabinet of Ministers on the work of the National Agency in a monthly report. All ARMA Departmental Heads had been called upon to contribute to these monthly reports, which go to the Prime Minister. The Prime Minister does not set objectives for the Head of the Agency but it was considered by ARMA senior staff that he was well informed about ARMA’s work. It is believed these monthly reports include progress on actions set out in ARMA Action Plans (which are published in the ARMA Annual Report). These Action Plans themselves are first sent to the Cabinet of Ministers for approval. It is reassuring that the initiatives relating to ARMA which appear in the PM’s political action plan were proposed by ARMA.

The selection process for the Head of ARMA appears capable of ensuring that an experienced professional is appointed as Head. The Head of ARMA does not have the power to select his own Deputies but can otherwise select his own staff.

An independent Agency needs to be adequately resourced by government if it is to operate effectively. No formal budget was agreed between the National Agency and the government in 2016. There was some budgetary provision set aside in 2017 for ARMA, though it did not become operational until the third quarter of that year. ARMA did provide a formal independent budgetary request for funding from the State budget in 2018. The request submitted, if the figures provided in the replies to the questionnaire are accurate, was for

UAH 470,006,300, including labour, utility, and energy costs, and equipment procurement for the creation of the Unified State Register of Assets. It would appear therefore that this budget request did not foresee the entire running costs and overheads of the Agency. It is clear that the costs of external providers such as receivers and other managers of assets are being met by the providers themselves deducting their costs from the value/sale of the assets they are managing. Thus, their costs are not a charge on the government at present.

In the event, the 2018 budgetary request was settled at UAH 253,213,400 (approximately Euro 8 million) – which was said to amount to 53.9% of the original request. The Head of the Agency appears to be confident that he will get all that he needs for this financial year and for the next. Achieving this appears to involve ongoing negotiations.

4. Key Recommendations

All recommendations made in this report are important. Nonetheless, the team has made recommendations with higher priority, found below. A full list of all recommendations made in this report can be found in Annex III below.

4.1. Asset Recovery Office

1. In the absence of their own powers to freeze or seize assets, the ARMA should ensure that, when assets that may quickly dissipate are identified, rapid action can be taken for them to be frozen or seized. This will require good inter-agency cooperation with requesting state bodies, in particular state prosecutors who are able to make the relevant application to the court for assets to be frozen.
2. ARMA has made excellent progress in securing access to banking information directly by way of an email to the National Bank of Ukraine. However, the assessment team would suggest caution in allowing ARMA to access details of accounts other than those contained within requests made to ARMA without first obtaining a court order. The access they currently have is already in line with the proposed EU standard for access to banking information by law enforcement and Prosecutorial AROs.
3. Providing analysis of the information ARMA gathers on financial profiles of individuals and groups contained in the requests is a worthwhile service to the agencies that ARMA supports. This service should be promoted among those agencies, particularly the ones which do not have such analytical capacity. ARMA should secure the relevant licence to enable it to use analysis software for mapping the ownership of illegal assets. It should educate its asset tracing staff in the use of available technical analysis possibilities within the agency, with a view to developing a documented track record of their usefulness and ARMA's success.
4. Ukraine should find a solution to allow for the exchange of information between the SFMS and ARMA. Concluding agreements between ARMA and other FIUs would go against the principles of cooperation between FIUs and is not recommended as a good solution. A Ukraine solution should be sought.
5. Greater awareness is needed among investigative and prosecutorial agencies in Ukraine of the international asset recovery possibilities afforded to ARMA. Consideration should

be given to organising national workshops, trainings or seminars, involving all the affected agencies, to address this need. In addition, the communication strategy needs to include awareness-raising in the law enforcement community by ARMA of the possibilities to obtain quick information and intelligence from abroad to assist asset tracing via ARMA's position as national focal point on asset recovery for the CARIN/ARIN networks, the StAR-INTERPOL network on asset recovery, as well as other asset recovery regional networks worldwide.

6. As a priority, for the purpose of operational exchange of information with EU AROs, ARMA, through the Ministry of Foreign Affairs, should continue to negotiate with Europol to add ARMA as a competent authority within the cooperation agreement. This would allow it a legal, secure method of cooperation with EU AROs via the SIENA information exchange platform. In the mid to long term, ARMA should aim to obtain direct access to the EU ARO platform secure exchange system SIENA.
7. The procedure for domestic agencies to make requests to ARMA for asset tracing should be distributed to its stakeholders, to encourage greater use of ARMA's services. A condensed version, in leaflet form for example, could be produced for distribution at meetings, trainings and conferences. The CARIN leaflet (operating procedure) should be translated into the Ukrainian language and expanded to include the role ARMA plays in CARIN requests for international asset recovery.
8. ARMA should consider entering into working arrangements with the relevant central authorities (NABU, PGO and Ministry of Justice) to streamline its international cooperation needs in relation to the seizure, management and confiscation of assets.
9. In the event that the ARMA Law is amended to enable ARMA to represent the interests of Ukraine in foreign jurisdictions, ARMA should ensure that proper cooperation and coordination mechanisms are put in place with the relevant central authorities of Ukraine, to ensure that there is no duplication of efforts and that the international strategy is well coordinated from the Ukrainian side.

4.2. Asset Management Office

1. ARMA should take steps to ensure that it establishes pre-seizure guidelines which are to be observed by the Ukrainian law enforcement agencies and the Prosecutor General's Office (PGO).
2. ARMA should establish guidelines to assist law enforcement and prosecutors in determining under which circumstances assets should be seized in the course of a criminal proceeding, and pre-seizure planning should take them into consideration. Such guidelines should include considerations on the prospect of success; the evaluation and valuation of the property; any value-related requirements to the property; and any overriding law enforcement objectives.
3. ARMA should raise awareness with courts, prosecutors and law enforcement officials that, where the relevant law enforcement authority or prosecutor has the intention of requesting an asset to be managed by ARMA, it should consider its participation as early as possible, in order to support the establishment of a pre-seizure plan.



4. The prosecutor is responsible for ensuring the pre-seizure planning. To that end, the PGO and SAPO should take steps to ensure that courts are aware of the asset management functions of ARMA and request that the management of seized and confiscated assets be handed to ARMA. Moreover, ARMA should be called in as early as possible to support the drafting of the pre-seizure planning where assets subject to seizure will be entered into ARMA for management.
5. All on-line platforms used by ARMA should take steps to ensure that the system of purchasing property through their online platforms has a means of verifying the true identity of the person purchasing seized and confiscated assets with a view to ensuring that they are not re-purchased by the perpetrator.

4.3. Performance Indicators

1. Those responsible in ARMA for the policy development of ARMA's performance indicators should develop qualitative performance indicators in addition to quantitative indicators. They should consult more widely to consider what measurable qualitative indicators can be introduced, which will more fully demonstrate the real benefits to the criminal justice system and public perceptions of it, which are attributable to ARMA's work (e.g. the number of criminal cases identified as high risk in the Ukraine National Risk Assessment – such as high level corruption and embezzlement of State funds – where significant assets have been confiscated following their identification by ARMA; the number of natural or legal persons deprived of assets identified by ARMA in high risk cases identified in the National Risk Assessment).

4.4. Communications

1. A written communications strategy has been developed by ARMA, with the support of the EUACI. This should be reviewed, amended where necessary, finalised and implemented quickly, in conjunction with the development of ARMA's mission statement and qualitative performance indicators which demonstrate the value of ARMA in the criminal justice system. Efforts should be made to coordinate this strategy with domestic partner agencies. It should be reviewed annually and updated as necessary. The messaging should focus on ARMA successes and contribution to the criminal justice process.
2. Consideration should also be given to the appointment of a more highly graded professional Communications Manager to advise ARMA leadership on its public profile. As part of this new role, the Communications Manager could be tasked with examining how other Asset Recovery Offices abroad successfully handle their media relations and make recommendations to the senior management team. He or she should also identify opportunities for involving the Public Council more frequently in promoting ARMA and propose strategies for communicating more effectively with the regions/oblasts. The Communications Manager should be invited to attend Senior Management Team meetings when strategic issues are being discussed which may have an impact on ARMA's public profile and communications strategy.

4.5. Independence and autonomy

1. The ARMA Law should be amended to underline ARMA's operational independence by inserting into art. 9 ARMA Law language which mirrors the provisions of art. 12(1) ARMA Law (in respect of the commissioners of external control). The assessment team advise that the amendment could be drafted in the following way "In the exercise of all ARMA's operational functions the Head of ARMA and ARMA staff act independently and should not receive or fulfil any orders, or instructions from Ministers or persons acting on their behalf, in respect of ARMA's operational activities."
2. To further strengthen ARMA's operational autonomy it should be clarified in the ARMA Law that ARMA orders and by-laws cannot be repealed unilaterally by the Cabinet of Ministers.
3. ARMA should prepare a brief Code of Practice for publication which should be endorsed by the Prime Minister, explaining the legal structure within which ARMA works and which emphasises, that in asset recovery and management policy-making and operational matters it is independent of government. For more transparency of the relationship, this Code could usefully explain the areas in which ARMA is expected to make periodic reports to government as a publicly funded central executive agency with special status.
4. Consideration should be given to an amendment to the ARMA Law requiring this Code of Practice, so that the Code will become a statutory Code.
5. To strengthen ARMA's position as an independent agency, and until such time as it can be funded in part from the realisation of confiscation orders, the National Agency needs to have comprehensive, adequate and transparent budget settlements agreed and included in the State budget before the start of each financial year.
6. For the next 5 years at least ARMA's budget line in the State budget should reflect the estimated full costs of the Agency for the year in question, including the costs of managing seized assets before judicial decisions on confiscation are made in respect of those assets which are managed by ARMA.

4.6. Strategic Planning – National Asset Recovery Strategy

1. An "Asset Recovery Implementation Committee" (ARIC) should be established with the aim of increasing the levels of criminal proceeds recovered. This forum should meet regularly and formally, and ideally it should have a budget. It should agree a collective approach and monitor the implementation of its own recommendations.
2. The ARIC should develop a national asset recovery strategy and monitor national asset recovery performance (and possibly set realistic targets) and coordinate asset recovery training for all relevant criminal justice partners, including the Judiciary.
3. ARMA should also, within this framework, develop its own short and clear Mission Statement, which emphasises its role in increasing public confidence in the criminal justice system through its contribution to confiscation, as well as its capacity to increase revenue for the State which can be applied for public benefit.
4. The Head of ARMA should be appointed as the National Coordinator for Asset Recovery and should Chair the Asset Recovery Implementation Committee

4.7. Strategic Planning – Liaison officers

1. The assessment team recommend the development of policies which will enable multi-agency working in ARMA by the introduction of liaison officers from other agencies. A mapping exercise needs to be jointly undertaken to identify the roles and functions that liaison officers from law enforcement (and possibly from the Prosecutor-General’s Office – PGO, including SAPO) could undertake in ARMA’s work to improve overall law enforcement and prosecutorial effectiveness in seizure and confiscation of criminal assets. Thereafter a pilot scheme to trial the introduction of liaison officers within ARMA should be introduced (with agreed performance indicators). Although seconded to ARMA, these officers should bring with them their own powers. Results should be assessed after no less than 1 year, with a view to making these arrangements permanent.

4.8. Outreach to the courts

1. The ARMA management team should consider collectively how best the lack of references to ARMA by the courts/investigative judges should be addressed. A fresh strategy for dealing with this situation should be prepared. This should involve further outreach by ARMA staff with acknowledged good communication skills. It should also include liaison with those responsible for judicial training to ensure that ARMA’s role is a standard item in judicial training for courts/investigative judges in criminal investigations and in criminal cases.

5. Report Summary

The Asset Recovery and Management Agency (ARMA) is a new agency established to support law enforcement and judicial authorities with the domestic and international tracing of assets which may later be subject to restraint and confiscation, and also with managing and disposing of assets pre and post judgement. The Law of Ukraine on the National Agency of Ukraine for Finding, Tracing and Management of Assets Derived from Corruption and Other Crimes⁶ (ARMA Law) created ARMA as a central executive agency with a special status. This ensures the formation and implementation of state policy in the field of tracing and finding of assets, which can be seized in criminal proceedings, and/or management of the assets, which have been seized or confiscated in criminal proceedings. This is a specific law relating only to ARMA.

The agency was established following a global trend for jurisdictions to target illicit proceeds through the creation of national Asset Recovery Offices (AROs) and national Asset Management Offices (AMOs). This report is a technical assessment of how effective ARMA has been at meeting its own agency objectives and therefore carrying out its national role as Ukraine's ARO and AMO and whether this has been achieved efficiently. Operational and institutional autonomy is important for ARMA's effective functioning and therefore has also been assessed.

The success of ARMA is vital for Ukraine to demonstrate its commitment to targeting organised crime, corruption and terrorism through the confiscation of the proceeds of crime. It must rise to the challenge of performing this function for both Ukraine prosecutions and on behalf of foreign jurisdictions in support of their prosecution and confiscation actions.

The ARMA Asset Finding and Identification Department performs the functions of Ukraine's national Asset Recovery Office (ARO). Its status as a non-law enforcement agency or non-prosecutorial body goes against the trend of European Union (EU) AROs. In comparison to other national EU AROs its domestic asset tracing mandate is comparatively narrow. As an ARO, ARMA is an agency that only responds to requests from other state bodies to trace assets. ARMA's asset tracing statistics for the first year of its operation demonstrate that it is carrying out the functions of the mandate it has been given effectively. However, other jurisdictions have demonstrated greater impact in identifying, freezing, seizing and confiscating criminal proceeds through the use of multi-disciplinary working. These AROs utilise personnel from other agencies, working together, who bring with them their own powers. In order to improve effectiveness and efficiency in targeting illicit proceeds nationally, consideration should be given to developing the structure of ARMA in a way that allows for multi-disciplinary working.

⁶ Ukraine, *Law of Ukraine on the National Agency of Ukraine for Identification, Tracing and Management of Assets Derived from Corruption and Other Crimes*, Official Journal of the Verkhovna Rada, No. 11, p. 129 No. 1021-VIII.

In addition to responding to 'simple' requests requiring one or two data sources to be checked, the Department has taken on complete cases in support of major investigations, providing analysis of the financial profiles of the legal and natural persons involved and the beneficial owners of assets. It has been included in joint operational meetings with investigative bodies and prosecutors for this purpose, indicating a good level of trust between ARMA and the agencies it has supported. With continued marketing of this added value and the success already achieved, the numbers of requests from law enforcement agencies should increase in the forthcoming 2-3 years.

As Ukraine's ARO, ARMA has the important national responsibility for facilitating pre-treaty based international asset tracing. ARMA has invested a great deal of time and budget in forging contacts with international asset recovery networks and partners. There has been considerable assistance provided by the EUACI in this respect, linking it to networks and countries through study visits and participation in meetings and conferences. International asset recovery is known as being technically and legally difficult, and therefore ARMA needs to be well connected internationally for operational requests to be understood and responded to. For a legal and secure operational exchange of information, ARMA's current options are limited. EU AROs (and the CARIN⁷ contact points located within them) use the Europol Secure Information Exchange Network Application (SIENA). ARMA would benefit from being connected to this network.

The number of international requests received by ARMA for asset tracing remains low. The Head of the agency expressed his concern about this. However, this is not unusual for a new agency on the international asset recovery platform. Building trust between a new ARO and other jurisdictions takes time and ARMA should persevere with this. ARMA is doing everything it can to make itself known to the international asset recovery community and should continue to promote its own far-reaching domestic asset tracing possibilities in order to encourage an increase in foreign requests.

While the asset tracing department of ARMA has promoted itself excellently outside Ukraine throughout its establishment phase, on a domestic level further work could be done. During the assessment it was evident that some domestic agencies were not fully aware of the asset tracing possibilities of ARMA, in particular in relation to requests to foreign jurisdictions. Ukraine law enforcement and prosecutors have very little knowledge of the international asset recovery possibilities afforded to ARMA. More awareness raising is therefore needed among pre-trial investigation bodies, prosecutors and the courts of the connections ARMA has to the international asset recovery community.

As Ukraine's national AMO, ARMA is tasked with the management of seized and confiscated assets in criminal proceedings, where the amount or value of the asset is equal to or

⁷ CARIN is an informal network of asset recovery law enforcement and judicial practitioners, involving 54 Member Jurisdictions and 9 international organisations. The network members facilitate operational asset recovery action and make recommendations as to best practice in the field of asset recovery. See: www.carinnetwork.org

exceeds 200 minimum salaries. However, ARMA does not automatically manage assets which have been seized or which are subject to confiscation. This can only occur when the investigative judge so determines in his or her decision to seize or confiscate the assets. The assets may also be transferred into ARMA management when the owner of the asset consents to such management.

Significant seized assets have already been taken into management. The policy is to preserve the value of the assets. Managing assets is achieved through the appointment of receivers or other professionals, who deduct their management charges from the value of the assets, thus avoiding the significant costs that would otherwise be borne by the State. The assessment team had concerns about this policy in the context of the recent introduction in Ukraine of special confiscation. Special confiscation is based on the presentation by the prosecution to the courts, after conviction for criminal offences, of a statement reflecting the overall proceeds, both direct and indirect, from the crimes on the indictment, and the making of special confiscation orders that reflect those real proceeds. It is likely that some confiscation orders based on the real proceeds obtained from the offences may be incapable of complete fulfilment after large deductions have already been taken while assets were under management.

Assets which may be transferred into ARMA management include funds and currencies (banking metals), as well as movable and immovable property. Management is understood as either selling the seized assets in anticipation, and placing the resulting amount into an escrow account, or managing the assets. The sale of seized property, upon consent of the owner, or of confiscated property is carried out by the electronic platform SETAM, which is attached to the Ministry of Justice of Ukraine.

While law enforcement authorities and prosecutors are to value assets in order to apply for a seizure order, ARMA itself does not value assets under seizure. An evaluation is carried out at the moment the asset is transferred into ARMA management, although at present the cost involved is incurred directly by the receiver of the asset to be managed. While such practice may result in increased corruption risks, ARMA has indicated that acting in such a manner results in reduced costs for ARMA itself and allows it to better streamline the process.

A main element missing from the procedures within ARMA in relation to the management of assets is undertaking a pre-seizure planning which would enable the law enforcement authority and prosecutor to establish what property should be seized, how and when it should be seized, and whether it should be seized at all.

ARMA's special status provides the agency with a higher level of autonomy compared to other domestic central executive authorities. The National Agency, within the framework of the ARMA Law and other laws shall be accountable to the Parliament of Ukraine and controlled by and responsible to the Cabinet of Ministers.

The legal framework in which the National Agency sits is complex, and there are potential ambiguities and lack of clarity about the precise degree of control which could be exercised by Ministers over the National Agency.

There is no clear statement in the ARMA Law that, in operational matters and casework, the National Agency acts independently and cannot take orders or instructions from ministers. This should be more clearly spelt out in a further amendment to the ARMA Law, explicitly providing that, in the exercise of its operational functions, ARMA staff act independently and should not receive or fulfil any orders or instructions from Ministers or others acting on their behalf.

The only direct area of external control by the Cabinet of Ministers is in the nomination of one external commissioner for the annual independent external assessment under art. 12 ARMA Law. The assessors express some reservations about the procedures in art. 12 ARMA Law. The professional external audit is valuable but the terms of the professional audit should be decided by the auditors in consultation with the Head of ARMA. Consideration should be given to removing the requirement for the Cabinet of Ministers to approve the terms of the professional internal audit – to distance it from operational issues. The first professional audit should go ahead as soon as is practicable.

The assessment by nominated Commissioners for external control needs further thought. At the very least they should have prepared for them a clear and transparent methodology with agreed benchmarks. This could be done by them in consultation with the external auditors and the Head of ARMA. At present, the Commissioners appear free to devise their own methodology, which could be worryingly subjective.

A negative assessment by the commissioners should not lead to the automatic termination of the contract of the ARMA Head. We consider that the Head should have the opportunity to rectify areas of weakness before such action is contemplated. If it is still felt necessary to have such a power, we advise that it should be only on the basis of 2 or more external assessments with negative findings

ARMA has met numerous judicial challenges, which so far have been largely resolved or ultimately not pursued. More worrying is the recent petition to the Constitutional Court by 56 MPs challenging parts of the ARMA legislation that has so recently been passed by Parliament. Their motivations are unclear. ARMA will vigorously respond to this petition if it is taken up by the Constitutional Court. It is clear, however, that ARMA has opponents in influential quarters and challenges at this level potentially undermine its legal stability, particularly in asset management.

The 2018 ARMA budget was settled at UAH 253,213,400 (approximately EUR 8 million), which is said to be 53.9% of the original request. As the submitted request appears not to have covered the entire costs of the Agency the settlement raises questions. The Head of the Agency appears nonetheless to be confident that he will get all that he needs for this financial year and for the next. It is assumed that achieving this involves ongoing

negotiations to secure resourcing. If this is the case, it is not a sustainable position and not transparent. The budgetary uncertainty which appears to exist may feed perceptions that the government can exercise real control over ARMA's capacity to operate effectively.

The assessors recommend that ARMA needs to have comprehensive, adequate and transparent annual budget settlements. In our view these settlements should also include the costs of managing seized assets before judicial decisions on confiscation are made in respect of assets managed by ARMA. Currently managers are simply deducting their management costs directly from the value of the seized assets they manage. This policy raises some potentially problematic issues which are discussed in the report.

The commitment now of adequate funding from State resources for a fully operational ARMA should be seen by government as an investment.

74% of ARMA's established posts are filled with staff drawn largely from other public institutions, equipping them with many of the competencies necessary for work in ARMA, without much further training. In recruiting its core staff, ARMA has not compromised on the standards it requires.

ARMA does not have its own training department or have a training institution available to it, which is the case for police and prosecutors. The Public Service Training Academy is tasked to train all public servants including ARMA. This training programme does not include specialised trainings on asset recovery or management. In terms of in-house capacity for training, the Human Resources Department could set internal training procedures for the next 1-2 years.

The Public Council which oversees ARMA's work under art. 12(2) ARMA Law, recognises that ARMA fills an important space in the Criminal Justice system. It considers that its biggest achievement so far is simply to have become operational – acting upon requests from law enforcement to trace and find assets quickly, receiving assets into management, and making some profit for the Ukrainian budget. This assessment agrees that ARMA has achieved this while avoiding professional missteps that could damage the reputation of a newly-created body in its start-up phase.

The leadership team is in place with the exception of Deputy Directors, who cannot be appointed directly by the Head. Given that the ARMA Law places personal responsibility on the Head for all the work of his office, we consider he should have the freedom to choose and appoint his own deputies.

The number of references by law enforcement to ARMA is increasing but references from the courts have been very low. More outreach to the courts is necessary to rectify this, and the role of ARMA needs including in judicial training packages.

The assessors consider that the valuable work that ARMA is doing to create a Unified Register of Assets Seized in criminal proceedings is vital for the criminal justice system as a whole. It should result in the availability of reliable statistics on the performance of

Ukraine in seizure and confiscation of criminal assets in cases of high-level corruption and theft of State assets and other major criminal cases. With greater success in this area public confidence in the criminal justice system should be increased. This work on the register would benefit from a new multi-agency strategy on asset recovery and a stronger Committee to monitor performance, develop training on financial investigations and develop a national assets recovery strategy.

Public perception of ARMA is said to remain rather low. ARMA is developing quantitative performance indicators which capture its outputs, but which are not really meaningful to the public. In order to raise public perception, ARMA also needs to develop convincing qualitative performance indicators, which demonstrate the impact that ARMA is having on effective confiscation of assets and the outcomes it is achieving now that it is operational.

The Communications sector does not feature prominently in the structural arrangements of ARMA. Although the EUACI has provided support through the provision of a communication strategy for the agency, it is either not understood or too complicated for the agency's current needs. The National Agency still lacks a clear simple direction in this respect. This important aspect of its work needs stepping up, as the National Agency should be a "good news" story. Public messaging should focus on real ARMA successes, which should include, where appropriate, the valued contributions to financial investigations by law enforcement which are provided by the Asset Tracing and Finding Department of ARMA.

In summary, ARMA has effectively and efficiently achieved its own agency objectives in line with its mandate, supporting investigations with asset tracing and receiving significant assets into management. The Head of ARMA has assembled a motivated and competent young staff, providing a sound base on which to build, for which he deserves significant personal credit. As with any young agency there are improvements to be made and these are further outlined within the assessment.

6. Assessment findings

6.1. Identification and tracing of assets that can be seized in the criminal proceedings

In order to assess whether the Ukraine Asset Recovery Office is effective in contributing to the overall national aim of confiscating more criminal proceeds, it is important to consider the purpose for which it has been established and the role it will play in the asset recovery process. This has implications both on a national, Ukraine level and for other jurisdictions. Establishing a national asset recovery office is not a Ukrainian concept but one which has, fortunately for Ukraine and other jurisdictions considering improving levels of confiscation through the establishment of these specialised offices, been examined and debated nationally, regionally and internationally for the last two decades. It is necessary to assess whether Ukraine has followed ARO best practice and developing international standards.

6.1.1. International Asset Tracing Standards and Best Practice

A key factor in creating an effective asset recovery system lies in the ability to rapidly identify assets. It follows that if jurisdictions cannot locate the wealth accrued by criminals and identify their criminal proceeds quickly, there will not be anything to freeze, seize and confiscate. This is particularly difficult to achieve when assets have been transferred to another jurisdiction. In order to meet the need to identify assets in the most effective way, a global trend has emerged over the last two decades, following the advice of practitioners faced with the challenge, for the establishment of national Asset Recovery Offices (AROs). Regional and international asset recovery policy making bodies have also studied this need, resulting in international recommendations and guidance (FATF, EU Commission, CARIN) encouraging or requiring that jurisdictions should consider establishing multi-disciplinary groups of asset tracing specialists to focus on assets subject to confiscation or suspected of being the proceeds from crime. Recommendation 30 FATF⁸ states that countries should also make use, when necessary, of temporary multi-disciplinary groups specialised in financial or assets investigations.

In 2008, the EU adopted legislation mandating each EU Member State (MS) to establish or designate a national central ARO,⁹ tasked with tracing and identifying assets that may subsequently become the subject of orders to freeze, seize and confiscate. This was following recommendations from the practitioner network Camden Asset Recovery Inter-

⁸ FATF, 2012. *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation. The Fatf Recommendations* (

⁹ Council of the European Union, *Council Decision 2007/845/JHA of 6 December 2007 Concerning Cooperation Between Asset Recovery Offices of the Member States in the Field of Tracing and Identification of Proceeds From, or Other Property Related to, Crime*, OJ L 332/103, 18.12.2007.

Agency Network (CARIN)¹⁰ that both national and international asset recovery requires a centralised, concentrated effort, through the establishment of a centralised office. Although not explicitly mentioned in EU Council Decision, the main purpose indicates an investigatory function and references in the Council Decision indicate that these offices serve the purpose of financial *investigation* to trace assets that may later be subject to freezing, seizure and confiscation. Several jurisdictions in Europe and worldwide have maximised on this concept by establishing multi-disciplinary AROs employing a range of law enforcement officers (police, customs, tax investigators), analysts and prosecutors working together on a national level specifically on asset recovery. These AROs operate as a multi-disciplinary agency, both with selected cases and also to support the asset tracing aspects of regular investigations and prosecutions in external units domestically. Establishing multi-disciplinary AROs is now recognised as a best practice approach to confiscating the proceeds from crime.

The ministry within which such an ARO is located varies within the EU depending on national legislation and pre-existing structures. The majority are either within a police structure (Ministry of Interior) or a prosecutorial structure, which may or may not have responsible Ministers. The obvious need for easy access to law enforcement data for asset tracing has resulted in only one of these EU AROs being situated in an administrative (Ministry of Finance) agency. In jurisdictions that are susceptible to high levels of organised crime and corruption, whereby targeting criminal wealth is a sensitive task, national AROs have been established, often directly under senior Ministerial governance either directly under the Prime Minister in order to afford autonomy as far as possible, or under the direction of a panel of ministers. This allows them to work as a multi-disciplinary team, investigating crime groups and politically exposed persons without external pressures to do otherwise. However, the single national ARO has an 'all crimes' approach and is not established to support, for example, only corruption or only drugs offences.

Notably, international standards do not recommend that national asset recovery offices and national asset management offices (AMOs) should be located together within the same agency. Although there needs to be a close working relationship between the ARO and the AMO, documented best practice in this area indicates that, as the functions are totally different and separate, the offices should also be separate. At the 2008 CARIN Annual General Meeting,¹¹ focusing on the topic of "Promoting the Creation of National Asset Recovery Offices and the Effective Management of Seized and Confiscated Assets", asset recovery experts recommended that in "respect of AMOs, each jurisdiction should consider... establishing the [AMO] office independently from investigation units".

¹⁰ The Camden Asset Recovery Inter-Agency Network – www.carin-network.org.

¹¹ Secretariat, CARIN. 2015. "Camden Asset Recovery Inter-Agency Network the History, Statement of Intent, Membership and Functioning of Carin. Manual," , p. 19.



6.1.2. The Structure and Status of the ARMA as an Effective National ARO

The ARMA Law describes the status of the agency as being “a central executive authority with a special status”. During interviews, the assessment team were informed that the agency was not a law enforcement agency but an executive body with ‘special status’, and that it did not carry out investigations. The National Agency was established to be comparable with EU AROs, in line with EU Council Decision 2007/845/JHA, which clearly includes the investigative process of tracing assets and makes reference to law enforcement (police) methods of exchanging information. Aside from whether it is accepted that asset tracing is an investigative function or not, from an international perspective, other jurisdictions will assume a certain level of investigative capacity if ARMA is being presented as its national ARO. As a minimum, other AROs will expect that the Ukraine ARO will be in a position to access law enforcement data in response to international asset tracing enquiries. Its status may also cause confusion and potential issues when making requests to international partners in other jurisdictions as the foreign ARO needs to clarify its own legal basis for exchanging information with a non-Law Enforcement or judicial ARO.

Although not a law enforcement or judicial (prosecutorial) body, The National Agency, by nature of its asset tracing tasks, carries out investigations. Establishing the agency under a ‘special status’ as an administrative or executive authority and not as a law enforcement or prosecutorial body goes against the global trend. Its status currently suits Ukraine from a domestic perspective but as the agency starts to increase its international activities of making and receiving more asset tracing requests, its status may well hinder its effectiveness.

Ukraine would benefit from establishing a multi-disciplinary ARO, in line with international standards (FATF Rec. 30) and good practice (CARIN and EU ARO Platform Recommendations).

Recommendation: After a period of bedding in and proof of success ARMA should consider its status or its structure allowing it to function as a fully-fledged multi-disciplinary Asset Recovery Office.

6.1.3. Mandate of the ARO

Art. 9 of the ARMA Law prescribes the asset tracing and management functions of the National Agency. Those relating specifically to ARO tasks are:

- Analysis of statistical data, results of researches and other information about the identification and tracing of assets;
- Drafting of proposals to the formation and implementation of the state policy in the field of identification and tracing of assets, development of draft regulatory legal acts on these issues;
- Taking measures on identification, tracing and evaluation of assets as requested by an investigator, detective, prosecutor or court (investigative judge);

- Cooperation with authorities of foreign states the competence of which includes the issues concerning identification, tracing and management of assets, other competent authorities of foreign states and relevant international organisations;
- Participation in ensuring the representation of the rights and interests of Ukraine at foreign jurisdictional authorities in cases related to the return of assets derived from corruption and other crimes to Ukraine;
- Provision of clarifications, methodological and advisory assistance to investigators, detectives, prosecutors and judges with regard to the issues related to identification and tracing of assets;
- Other functions stipulated by the legislation.

Art. 16-18 ARMA law describes the mandate of the National Agency relating to asset tracing for domestic and international requests. ARMA's role is currently to respond to asset tracing requests from pre-trial investigation authorities, prosecutor's offices and the courts, or foreign jurisdictions to trace assets that may later be subject to freezing, seizure or confiscation. ARMA is rather a new body and does not have the status of a law enforcement agency; however, it has been established as the national ARO.¹² In comparison to other national AROs, its domestic asset tracing mandate is particularly narrow. It is an agency waiting for cases to be referred to it before it can take any action. Its effectiveness within the current mandate will be assessed later in this chapter, but it is worth commenting again on whether ARMA's existing mandate meets the criteria of a fully functioning national ARO. Supported by external international experts from donor organisations, in particular the EU, ARMA has placed itself well in the global ARO arena, learning from the experiences of other AROs worldwide. It is therefore not surprising that it recognizes the limitations of its mandate in comparison to other national AROs and has proposed amendments to the ARMA Law.

This knowledge has contributed to past proposed amendments to the law, including to its asset tracing mandate (art. 16-17 ARMA Law).

ARMA also proposed amendments to art. 16(2) and 17 ARMA Law, allowing it to act based on its own findings by 'gathering' information on individuals and legal entities. The extent to which ARMA goes with the 'gathering' of information changes ARMA from a passive to an active agency and again raise tensions regarding its non-law enforcement status. ARMA can either supporting domestic investigations through the provision of asset tracing, responding to the question that has been asked when requested or it can provide a fuller response by 'investigating' all the options available to it. Whether this support is effective will be discussed later in this chapter and initial statistics are positive in this respect. However, whether, as a national ARO, it is effectively contributing to an increase in proceeds of crime confiscation is questionable under the current mandate. It seems completely reasonable that, when ARMA discovers information that indicates the existence

¹² ARMA is both the ARO and the asset management office (AMO) of Ukraine. Section 6.1, however, only deals with the ARO functions of ARMA. The AMO functions are discussed in section 6.2.

of illegal assets, it should be able to develop this to a point of being able to provide a package to law enforcement agencies on potential crimes and organised crime groups, not just answer the one question that has been asked of it.

The ARMA Asset Finding and Tracing Department is the part of the agency that performs the asset tracing functions of ARMA. This is the Department that performs the operational tasks that aim at mirroring the functions of EU Asset Recovery Offices, in line with EU Council Decision 2007/845/JHA. The Provision (or Regulation) on the Asset Recovery Department of the Central Staff of ARMA describes, in greater detail, the asset tracing tasks of the agency.

The Asset Finding and Tracing Department supports the asset recovery process in two areas:

- Asset tracing at the request of national state agencies;
- Asset tracing at the request of foreign jurisdictions.

In drawing a comparison against the EU Council Decision 2007/845/JHA on the (establishment of and) cooperation between EU AROs, ARMA's asset tracing mandate meets the EU standard, insofar as it is mandated to trace assets at the request of a foreign jurisdiction, that may later become subject of a freezing, seizure or confiscation order.

In addition to legislating for the international exchange of information between AROs, the EU also elaborated a list of ARO performance indicators against which it peer reviewed all EU AROs. These indicators (contained as Annex I to this report) intend to ensure that each EU national ARO has the appropriate structure and powers to carry out its functions in the most efficient and effective way. They are based on extensive workshop-based discussions among members of the asset recovery practitioners network CARIN and the formal EU ARO Platform members. This is the experts' 'wish list' for AROs in Europe and can be seen as providing the optimal level of performance for any ARO. Although not a legal instrument, it is a useful list to use when assessing the effectiveness of any ARO.

The first 'effectiveness' indicator in the list of indicators to measure the effectiveness of EU AROs is the level of direct or indirect powers to freeze assets. ARMA's institutional structure and legal basis does not provide ARMA with either direct or indirect powers to freeze assets (as an agency itself). It therefore does not meet this effectiveness indicator. ARMA traces and identifies the assets and provides this information to the requesting domestic or international agency that would then take action to freeze and seize assets. On a domestic level, as long as inter-agency cooperation is good and ARMA has the technical ability to quickly disseminate information on assets that are likely to dissipate back to the requesting agency, this is not an issue. However, ARO experts concluded, during the EU ARO Platform High Level Expert Meeting on Establishing Asset Recovery Offices¹³, that, for international

¹³ The recommendations documenting this are not public, however, this is also an 'effectiveness indicator' for EU AROs (see Annex I).

cooperation, the ability for an ARO to affect a temporary freeze or seizure is important, as the practical barriers around seeking orders to freeze and seize during international cooperation make it more likely that assets will dissipate before the relevant orders could be obtained. This would also not be an issue for a multi-disciplinary ARO as prosecutors and investigators work together and orders requiring prosecutor action can more easily be obtained. In the case of funds in bank accounts, the FIU has the ability to affect a temporary freeze on accounts for a limited time period. This option is often used for those AROs that do not have direct powers to freeze accounts. However, as ARMA does not have a gateway for the exchange of information with the SFMS, as ARMA is not a law enforcement agency, this option is not legally available to it either.

Again, ARMA has recognized this limitation to its own mandate in comparison to other national AROs. In response to the questionnaire, ARMA indicated that their law was not sufficient for effective finding and identification of assets. In addition to requesting powers to 'gather' information, it had originally included proposed amendments under art. 16(3) ARMA Law, the power for the agency to temporarily 'block' assets that may quickly dissipate, for a period not exceeding 30 days. This proposal has, for the time being, been withdrawn.

The National Agency's asset tracing mandate in relation to international asset tracing meets the EU standards contained within EU Council Decision 2007/845/JHA. However, it does not have the powers to collect information on its own initiative or to directly or indirectly effect freezing or seizure of assets, the latter being one of 11 key effectiveness indicators for EU AROs.

Recommendation: In the absence of their own powers to freeze or seize assets, ARMA should ensure that, when assets that may quickly dissipate are identified, rapid action can be taken for them to be frozen or seized. This will require good inter-agency cooperation with requesting state bodies, in particular state prosecutors who are able to make the relevant application to the court for assets to be frozen.

6.1.4. Asset Tracing Capability

The ability to rapidly identify assets is the main function of any effective ARO. ARMA clearly recognises this and as such has invested a great deal of effort during its establishment phase in ensuring that it has a high asset tracing capability. The staff within the Asset Finding and Tracing Department were found to be highly motivated and came from a variety of backgrounds, including state agencies such as police and the FIU. The Head of the Department informed us that his main goal was for ARMA to be mentioned in as many of the top-level investigations in Ukraine as possible. A positively high number of requests were received by the agency in the first 6 months of 2018 (312) and ARMA reported that all requests were answered within the 3-day timescale provided for in the law. There were no complaints from requesting agencies regarding the support provided by ARMA. Establishing a new agency that relies on the engagement of other state agencies, in a

comparatively sensitive area of criminal justice work is hugely challenging in any jurisdiction. In our opinion, the success that this Department has had so far is undoubtedly down to the enthusiastic and persistent approach of the Department Head and his staff.

ARMA has reported that it does not have enough staff to carry out effective asset tracing and finding. In the questionnaire, it reported that more staff are needed due to the high number of enquiries from law enforcement agencies and the necessity to respond to these enquiries within the 3-day time period stipulated in the law. ARMA also expresses staffing concerns regarding the establishment of regional (territorial) ARMA offices, which is a valid concern, if these offices are indeed to be created.

Currently the Asset Finding and Tracing Department has the capacity for 40 staff. At the time of the fact-finding mission in August 2018, 33 of these positions were filled. The assessment team were informed that 31 of these were investigators and 2 were IT staff. 4 of the 33 are focussed on developing the Unified State Register of Seized Assets. This leaves 29 staff available for asset tracing and identification. Assessing the adequacy of resources against perceived demand is challenging in the field of criminal justice. The impact and scale of serious crime is hard to assess and there is no international standard for Ukraine to refer to either to assess the level of 'organised' crime or the resource required to address it. ARMA has provided a set of statistics for 2017 and 2018 on requests received. However, asset tracing requests vary in the amount of work that is involved to respond comprehensively. A request may simply be to check 1 individual in 1 database. Alternatively, ARMA may be given a complete case with a number of suspects and asked to financially profile all of them. The assessment team indeed saw evidence of ARMA providing comprehensive support to larger cases for investigation teams dealing with major cases. Certainly a number of asset tracers will be dedicated to working on these large cases, leaving other staff dealing with the 'one off' enquiries. It is therefore not useful to attempt to compare resources with the statistics provided to us in the questionnaire. The figures are certainly positive but without more information on the extent of the requests it is impossible to assess how long it would take to answer them.

Drawing a comparison with the EU, with the exception of Ireland which is a multi-disciplinary law enforcement ARO and perhaps Bulgaria which is currently undergoing a reorganisation of its ARO, no other ARO in the EU has such high numbers of asset tracing staff. An office of 10 staff, including the Head of the ARO, is seen as being comfortably resourced. Also, ARMA's operational asset tracing staff appear adequately supported by administration staff and therefore should not be distracted by routine necessary bureaucracy, leaving them free to focus on their core functions, i.e. that of accessing databases and building financial profiles of the individuals sent to them for asset tracing.

The assessment team have seen that ARMA plans to expand its geographical reach by establishing territorial offices. art. 2(6) ARMA law includes the possibility for this, although there are no plans at present to start this process. The assessment team were not provided with any information on why ARMA should establish regional offices. The statistics provided

to the assessment team do not show the breakdown of requesting agencies by geographical area, so it is difficult to assess whether ARMA is also being used by agencies outside of the capital or whether law enforcement agencies, prosecutors and courts in the provinces are aware of the existence of ARMA and which type of support it could offer in respect of domestic and international asset tracing. There are advantages and disadvantages of establishing a regional structure. For example, ARMA may become known to and used by a broader number of agencies and therefore receive more requests. The assessment team heard from some organisations during the fact-finding mission that ARMA is not known by the courts outside of the capital for example. However, ARMA expertise and IT are currently concentrated in its headquarters. Moving this to a regional structure may weaken the level of expertise and require additional funding to extend IT to the regional locations.

ARMA is still in its establishment phase and the Asset Finding and Tracing Department only started operational activities in the second half of 2017. Its current intended staff level (40) appears adequate for its current level of activities, in comparison to EU AROs. On an annual basis, ARMA should continue to monitor operational requests and the time these take to answer against its level of resources. The assessment team suggest that the Department should be in a position to produce a baseline track record of activity for the first three years of its existence before more resources are allocated to asset tracing.

Recommendation: The Asset Finding and Tracing Department should continue to monitor the number of operational incoming and outgoing requests, and the time it takes to answer these, producing a year on year baseline figure over 3 complete years. This should be compared against Department staff levels prior to increasing the number of staff above 40.

6.1.5. Access to Public and Private Data Sources

Assets cannot be traced and identified without swift access to a high number of data bases and registers. The level of access to existing databases and registers and ease of access to financial information formally or informally, without a court order, are two of the most important effectiveness indicators for AROs.

ARMA has achieved a great deal of success in this area, in both access to state registers and public registers. As of June, it reported possible access to 16 public databases and 333 registers. Although this is a huge amount, the Department still has the strategic goal for 2018 to increase the level and ease of access to data sources. This is the main task of the agency's ARO Department and to have poor access would of course be a complete failure. However, the assessment team believe that ARMA has focused in on its key mandate by securing access to as many databases as possible. It now offers a considerable advantage over other law enforcement agencies that are also legally mandated to trace assets by providing the possibility of a 'one-stop-shop' for asset tracing. When assessors directly asked investigators from the police and NABU why they would use ARMA when they had the powers (and departments in some cases) to trace assets themselves, they told us that it took more time for them to go to the various agencies and public data sources

individually. The possibility to ask one agency (ARMA) for asset tracing and have all state and public registers and databases checked, with a potential response within 3 days, was a huge advantage for them and allowed their cases to progress far quicker than before. The statistics for 2017/2018 show that agencies have recognised this and are making an increasing number of requests. There are also some police units and law enforcement agencies that simply do not have the understanding or knowledge of how to access sources for the purpose of asset tracing and ARMA has already started to fill this knowledge gap.

ARMA reports that it currently has access to the following state registers:

1. The Unified State Register of Legal Entities and Individual Entrepreneurs and Public Organizations of Ukraine;
2. The State Register of Proprietary Rights to Immovable Property, the State Register of Property Rights to Immovable Property, the State Register of Mortgages and the Unified Register of Prohibitions of Real Property Transfer;
3. The Unified Register of Powers of Attorney;
4. The State Register of Encumbrances Over Movable Property;
5. National Automated Information Systems;
6. Integrated interdepartmental information and telecommunication system for control of persons, motor vehicles, and cargos crossing the state border (Arkan system);
7. Unified register for automated registration of tractors, self-propelled chassis, self-propelled agricultural, road building, and land-improvement machines, agricultural machines, and other mechanisms;
8. The Unified State Register of Declarations of Persons Authorized to Perform Functions of the State or Local Governments;
9. The State Civil Aircraft Register;
10. The State Shipping Register of Ukraine;
11. Judicial Book of Ukraine;
12. Database of the State Enterprise "Ukrainian Intellectual Property Institute";
13. Automated information and reference systems, registers and databases kept (administered) by the National Securities and Stock Market Commission (according to information received by the National Agency);
14. The Unified Registry of Debtors;
15. SFS information databases;
16. Email of the National Bank of Ukraine to receive banking secrecy from banking institutions.

Recommendation: Increasing access to registers and databases should remain a strategic objective for the Asset Tracing and Finding Department, as this is a core function of ARMA.

6.1.5.1. Ease of Access to Databases and Registers

The best possible access an agency can have is access to a data source's register or database directly from the asset tracer's desk. ARMA reported direct on-line access to 20

databases and registers. ARMA continues to negotiate MoUs with agencies to increase this. For example, one of the most important data sources when tracing assets, but often the most difficult to access, is information from the state tax authorities. ARMA has concluded an MoU with the State Fiscal Service (SFS) and it currently receives information by sending written requests. Although the access is there, this is clearly not an efficient method of making and receiving requests. ARMA has therefore started negotiations with SFS to gain remote access for certain information.

Where ARMA does not have direct on-line access to data sources, requests made to ARMA are gathered together on a daily basis and a member of staff travels to the relevant agency and logs-on to their database to make the check. Although effective, this is clearly not the most efficient method of obtaining information. ARMA should work towards systemizing requests, at least between State agencies. A single point of contact system could be used and a secure electronic platform for the exchange of information between state agencies established.

Recommendation: ARMA should continue to negotiate with agencies for direct on-line access to information required for asset tracing. At least for State agencies, ARMA should consider introducing a single point of contact system and electronic platform for the exchange of information between ARMA and the relevant agency. This should remain a strategic goal for the Asset Finding and Identification Department.

6.1.5.2. Access to Banking/Financial Information

Another important effectiveness indicator for AROs is their ease of access to financial information. This issue has been high on the international agenda for several years, resulting in a proposed Draft EU Directive on access to financial information by law enforcement. This Directive will grant law enforcement access to central bank account registers (5th Money Laundering Directive¹⁴ proposes that jurisdictions should establish national bank account registers). ARMA has negotiated excellent access to banking information. The Asset Finding and Identification Department is connected to the email system of the National Bank of Ukraine. It is already sending sanitised versions of requests to identify accounts held by individuals based on the requests it receives. The approach taken in the majority of EU jurisdictions is that this access should be allowed in order to confirm that an account exists, the number for the account and whether it is a live or dormant account. Any further information sought, for example statements and the details of actual transactions to and from the account are usually obtained by way of a court order. This is also the extent of the Proposed Directive. In rare cases, the ARO does have access to information on transfers, without a court order, but these AROs are law enforcement agencies. ARMA's access does go further than this and it can, on request, access the

¹⁴ European Parliament, 2018, #65980

transactions made and received through accounts without the need for obtaining a court order. This is already a broader access than the majority of EU AROs and starts to mirror the access available to FIUs.

In addition, ARMA is requesting greater access and would like to be able to see the account details for the account to which the transactions were made to. ARMA believes that this is not a breach of bank secrecy as they are involved in asset tracing at the request of a state agency within the framework of the ARMA law. A number of FIUs have this possibility, however, ARMA is not an FIU.

Recommendation: ARMA has made excellent progress in securing access to banking information directly by way of an email to the National Bank of Ukraine. However, the assessment team would suggest caution in allowing ARMA to access details of accounts other than those contained within requests made to ARMA without first obtaining a court order. The access they currently have is already in line with the proposed EU standard for access to banking information by law enforcement and prosecutorial AROs.

Similarly, ARMA have previously suggested amendments in the law allowing the agency to covertly monitor accounts for the purpose of its asset tracing activities. The ability to covertly monitor accounts is indeed an International Standard (art. (7)(2)(c) and (19) CETS 198).¹⁵ However, this is an investigative technique intended to assist with investigations. As such it is usefully listed in CETS 198 under the headings of Investigative Assistance (art. 7) and Investigative Powers and Techniques (art. 19). While assessors agree jurisdictions should have this possibility, it is an investigative technique that should be possible for a law enforcement agency, following application by a competent authority or prosecutor to the court. The assessment team agree that the ability to monitor accounts for a specified time period would provide asset tracing possibilities, but this power would normally be used during the investigation of a predicate offence. Identifying assets would be a by-product of this, albeit a very useful one.

Recommendation: The assessment team would recommend that, under its current status and mandate, ARMA does not propose amendments to its law allowing it to covertly monitor accounts. If its status changes in the future, for example to an independent law enforcement agency, ARMA could consider adding this power to its tool-box. Alternatively, ARMA could consider seconding staff from law enforcement agencies, therefore giving it access to these investigative powers.

6.1.5.3. Collation and Analysis of Information

¹⁵ CoE, *Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism*, CETS No. 198 of 16 May 2005, in force 1 May 2008.

Following the allocation of requests by the Asset Finding and Tracing Department Head, asset tracers follow the steps to be taken to trace assets which are explained in the operating procedures (Handbook) created by the Department. They complete a template indicating the stages of the process, also developed by the Department. The template lists all available registers and data bases that may be checked and contains, as an annex, forms that need to be completed for court.

The assessment team were informed that a strategic goal for the Department is to systemise and automate as much of the primary data collection phase as possible, minimising human involvement. This seems a reasonable data collection and analysis strategy. The following ARO development strategy was presented to us:

FINANCIAL ANALYSIS STRATEGIC GOALS

1. Purpose:

- a. Develop common algorithms for finding and tracing of assets, using financial analysis;
- b. Introduce the latest technologies and automatic means of data collection and processing;
- c. Staff development in the field of audit and financial analysis.

2. Means:

- a. Courses and seminars focusing on Microsoft Excel, Microsoft Access and SQL tools;
- b. Courses and seminars on the subject of eDiscovery and Data analytics;
- c. Development of video training courses on the use of modern financial analysis tools and software;
- d. Development and preparation of guides for the finding and tracing of assets for employees;
- e. Trainings for staff on the subject of audit, finance, financial reporting, complex analytics and asset search with leading audit firms (KPMG, PwC, Deloitte, EY, etc.).

For enquiries that generate large volumes of data, the Department has chosen to use I2 as an analysis software. It is currently using the free trial from IBM while negotiations are underway to obtain a licence for this software. During the fact-finding mission, the assessors were shown an example of a case that has benefited from the use of the I2 analysis software to demonstrate links, associations and connections between the entities in the case, based on asset ownership. The assessment team were told, both by ARMA and the agency involved in the case, that the requesting agency was highly appreciative of the support it had received from ARMA through the analysis of information on the wealth of individuals under investigation.

This is clearly an area that the Head of the Department would like his staff to develop further, as it provides ARMA with the opportunity to deliver a broader service than only checking databases. It also fits entirely with the mandate of the agency *i.e.* to trace and

identify assets and their owners or controllers, for later possible confiscation. This analysis will also assist in identifying individuals with unexplained wealth who may not have previously been visible to law enforcement or prosecutors.

Providing analysis of the information ARMA gathers on financial profiles of individuals and groups contained in the requests is a worthwhile service to the agencies that ARMA supports.

Recommendation: ARMA should promote the possibilities it has to provide analysis on the financial profiles of individuals and groups among the agencies it supports, particularly the ones which do not have such analytical capacity.

Recommendation: ARMA should secure the relevant licence to enable it to use analysis software for mapping the ownership of illegal assets.

Recommendation: ARMA should educate its asset tracing staff in the use of available technical analysis possibilities within the agency, with a view to developing a documented track record of their usefulness and ARMAs success.

6.1.6. Asset Tracing Response Times

Art. 17 ARMA law states that requests (both domestic and international) must be answered “within the shortest possible period of time but no later than within three business days from the day the request has been received, or during any other longer period of time specified therein”. This is a relatively short period, however with the correct access to data sources and processes in place and the appropriate level of resources and priority setting in respect of requests received, the assessors believe that it is achievable. The Department also has the opportunity to provide a ‘first answer’ within the 3 days and follow-up with additional information if necessary, or delay the answer, as long as the requesting agency agrees.

Statistics provided to us indicate that a response had been provided for all requests within the 3-day time period. In 2018, 8 domestic requests had taken longer than 30 days to deliver a final result. This may go some way to understanding the number of larger requests ARMA is dealing with. This is an encouraging statistic and shows that requesting agencies have trust in ARMA’s ability to provide a good service, by requesting more than simply ‘single’ checks but asking for ARMA to develop intelligence packages containing financial profiles which take longer than 3 days to prepare.

International cooperation in the field of asset recovery is notoriously complicated and slow. The EU has recognised this and introduced legislation to reduce the time it takes to receive an answer to requests for assets to be traced. The need for this is obvious and has already been highlighted in this assessment. If an asset is not located quickly (and seized or frozen if necessary) it will move or be transferred to another owner before the authorities are able to take action. The European standard for responding to asset tracing requests between EU AROs is contained with the EU ARO Council Decision concerning cooperation between

Asset Recovery Offices¹⁶ through a reference it makes to the so-called Swedish Initiative on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.¹⁷

It is interesting to note here that although the EU remains silent on the status and location of EU AROs, the international cooperation basis in the EU legislation for AROs clearly refers to 'law enforcement cooperation'. Ukraine is not an EU Member and therefore this has no legal relevance to its ability to cooperate, however in practice, foreign AROs may make an assessment on their ability to respond to ARMA requests based on its 'special status'.

The EU 'Swedish Initiative' states that, where the ARO has a direct access to the database or register containing the information it should respond to urgent requests within 8 hours and non-urgent requests within 1 week. In all other cases, requests must be answered within 14 days.

The timeframe in which ARMA is legally obliged to answer requests is in line with the EU standard. ARMA has met these timeframes and there have been no complaints from domestic authorities or international partners regarding the time it takes ARMA to respond.

6.1.7. Spontaneous Dissemination of Information

During the course of their asset tracing activities, following receipt of a request, asset recovery offices are likely to discover information on crimes or criminal enterprises not previously known to the investigator or prosecutor, or the existence of unexplained wealth on individuals not subject to the investigation they have been requested to support. This information should naturally be disseminated to the relevant jurisdiction or domestic agency for them to take action. The EU recognises that this is a necessary function for any ARO in terms of domestic cooperation and as such has included a provision in the ARO Council Decision 2007/845/JHA for the spontaneous dissemination of information to happen internationally also.

The current ARMA law does not explicitly permit the agency to disseminate information spontaneously. It is not clear whether this is legally possible for the agency or whether any dissemination is only possible as the result of the receipt of a request.

Recommendation: ARMA should be in a position to spontaneously disseminate information it discovers relating to possible criminal activity, assets suspected to be the proceeds from crime and unexplained wealth on both

¹⁶ Council of the European Union, "Council Decision 2007/845/JHA of 6 December 2007 Concerning Cooperation Between Asset Recovery Offices of the Member States in the Field of Tracing and Identification of Proceeds From, or Other Property Related to, Crime."

¹⁷ Idem, *Council Framework Decision 2006/960/JHA of 18 December 2006 On Simplifying the Exchange of Information and Intelligence Between Law Enforcement Authorities of the Member States of the European Union*, OJ L 386/89, 29.12.2006.



domestic and international level. This will allow law enforcement agencies, prosecutorial authorities and foreign jurisdictions to take the necessary action to investigate crime and freeze, seize and confiscate assets.

On receipt of an asset tracing request, the Department registers it in the 'self-made' case management system it currently uses. This system identifies whether entities contained within requests have previously appeared in past or 'live' requests. It is normal for asset recovery offices to identify, at this point, that individuals or assets mentioned in one request are also subject of another request made by another agency or jurisdiction. From an investigation and prosecution point of view, this is highly valuable information. It is also highly sensitive. It is vital that a system is in place to deal with this eventuality. To do nothing is at best unprofessional as it could interfere with the prosecution process and at worst could put investigators in danger due to a potential 'blue-on-blue' situation. The assessment team were informed that the law prevented the dissemination of pre-investigation information to other agencies, which is also necessary. However, there are systems and processes used by law enforcement to avoid the dangers of multiple agencies investigating the same individuals and maximise the benefits of combining information.

Recommendation: ARMA should seek advice from external law enforcement specialists on methods of dealing with multiple requests on the same legal or natural persons or assets, in order to find a suitable practical and legal Ukraine solution to this common situation.

6.1.8. Inter-Agency Cooperation

The procedure for inter-agency cooperation for the exchange of information relating to asset tracing and identification is conducted based on a Joint Order (No 115/197-o/297/869/857 of October 2017) concluded between ARMA and PGO, NABU, the State Security Service, the Ministry of Internal Affairs and the Ministry of Finance.

Introducing the use of a new agency into practice in a jurisdiction is not an easy task. Explanations may be required on the need for such an agency and what it can do. Assessors were informed that for one domestic authority, it took one and a half years for them to agree to sign the Joint Order with ARMA and it one year to gain access to the court register. It is again only down to the determination and perseverance of the Department for Asset Finding and Identification that this was achieved. The ARMA Law and Joint Order remove any legal barriers for ARMA to operate as Ukraine's national Asset Recovery Office and receive requests for asset tracing from domestic authorities and exchange information with them. The challenge for any agency that performs a function that can also be carried out by other agencies is to convince them to use the agency for this purpose.

In order to understand whether domestic authorities and agencies recognised the added value ARMA could bring, the assessment team asked a number of agencies why it had sent requests to ARMA for asset tracing, rather than carried them out themselves or sent them via another channel, for example to the FIU or the courts.

The NABU investigators explained that, while they did have their own access to certain databases, ARMA was able to access a far greater number of data sources and had already demonstrated that this could be done far quicker than through their own agency. The staff at the Asset Tracing and Finding Department of ARMA believed that NABU did have access to similar data sources as the ARMA but that they used them to gather evidence in support of their criminal investigations rather than for asset tracing with a view to confiscation.

The police investigators who spoke with the assessment team had used ARMA during their investigations. They stated that it was ARMA's easy access to banking information which they found as the greatest advantage. This cuts down on the extremely lengthy process of obtaining court orders to access banking information. ARMA were able to provide the investigative teams with not only the account details but the 'traffic' across the account. However, they stated that what they really needed was for ARMA to have access, not only to the list of transactions on an account but the account details behind particular transactions (one step further). ARMA is not able to access this (see section 5.1.3.2 on Access to Banking and Financial Information). The police use ARMA rather than the FIU as it sees all the transactions on an account, whereas the FIU provides information only on single transaction.

Staff at the General Prosecutors Office did not believe that ARMA has any greater access to information that it does have itself. However, ARMA can carry out bulk requests to registers and data sources, whereas the PGO must do this individually. They agreed that ARMA has a simplified access but felt that there was no context to the checks they were carrying out. They did have positive results after using the ARMA but still felt that they could do this themselves. The overall assessment of the PGO was very negative. However, it was clear that the prosecutors who spoke with the assessment team appeared not to fully understand the international asset tracing mandate of ARMA and in fact had a very out-dated understanding of how to engage with their own international partners for the purpose of tracing assets for subsequent confiscation. Their negative impression of the agency is more likely down to ignorance on their part of what ARMA has to offer.

Recommendation: The ARMA Asset Finding and Identification Department should continue to promote the possibilities for asset tracing, in particular in relation to international cooperation to encourage greater use of ARMA by domestic authorities.

The Special Anti-Corruption Prosecutors Office (SAPO) had used ARMA in support of large cases it was dealing with and were also very complementary regarding the service they had received from the Department. However, this did not happen immediately. SAPO staff were cautious about disseminating sensitive information to ARMA as they were not certain what they would do with it. They requested meetings with the ARMA staff before sending any request, to clarify what they wanted ARMA to do. They still believe that this caution and potential reluctance exists between the agencies, due to lack of trust and concerns

around security of information. However, they were hopeful that this could change through personal, one-to-one working between SAPO staff and ARMA staff.

Recommendation: To encourage greater use of ARMA’s asset tracing capabilities, ARMA asset tracing case officers should be assigned to particular prosecutors and law enforcement officers, in order to build trust between the agencies.

6.1.8.1. Cooperation with the State Financial Monitoring Service of Ukraine (FIU)

Good cooperation between any ARO and its own FIU is vital for effective asset tracing. Asset recovery practitioners within the ARIN community have documented best practice relating to the need for an effective gateway for the exchange of information and intelligence between the FIU and national AROs and ARIN contact points. This is particularly important for effective international cooperation. At the time of this assessment there were no legal provisions for the FIU to exchange information with ARMA. The assessors were informed that arrangements were underway to address this barrier, but no further information was provided on what these arrangements may be. There was a suggestion that ARMA could conclude its own agreements with FIUs in other jurisdictions in order to circumvent the need for cooperation with its own FIU. There are well developed international standards and guidelines on international cooperation between FIUs. Adding another layer of cooperation from Ukraine to another jurisdiction’s FIU would not be in-line with the principles of this cooperation and may cause confusion between Ukraine FIU and its counterparts.

Recommendation: Ukraine should find a solution to allow for the exchange of information between the SFMS and ARMA. Concluding agreements between ARMA and other FIUs would go against the principles of cooperation between FIUs and is not recommended as a good solution.

ARMA explained that the most common way of receiving asset tracing requests from domestic agencies was by way of a letter sent via the general mail and received by the ARMA mail room together with all the other mail. This is the least effective and most inefficient way to get information from another agency. It is a credit to the operational staff that they have made this system work.

Recommendation: ARMA should consider reducing timescales for exchanges of information between agencies from days to seconds through the introduction of a secure electronic platform for the sending and receiving of asset tracing requests, at least between those agencies that are most frequently making requests.

Inter-agency cooperation is clearly happening in relation to the exchange of operational asset tracing requests. The statistics indicate a reasonable number of requests for such a

new agency and investigators and prosecutors have reported successful results from their asset tracing requests to ARMA. The staff who spoke with the assessment team from these agencies provided several suggestions to improve cooperation and develop better practice in the area of asset recovery in Ukraine. As discussed under the policy section of this assessment, there is currently no regular platform for investigators and prosecutors from the various agencies to meet and discuss these ideas. Establishing an asset recovery committee would resolve this by providing a platform for these issues to be discussed.

6.1.9. International Cooperation

International Asset recovery requires a high ability to engage with other jurisdictions across the world to quickly trace assets that have been transferred to jurisdictions other than the investigating and prosecuting state. Without the ability to understand this and carry out international asset recovery, a jurisdiction will only confiscate a fraction of available assets or material benefit. Considerable focus is placed, within international and Council of Europe (CoE) standards, on jurisdictions' ability, efficiently and effectively, to request and respond to other jurisdictions' requests, to trace, freeze, seize and confiscate instrumentalities, proceeds derived from criminal activity and property of equivalent value to criminal proceeds (art. 13, 14, 18(3)(g), 27(1)(b) UNTOC;¹⁸ art. 53-57 UNCAC;¹⁹ Chapter IV CETS 198; Recommendation 38 FATF). International asset recovery is a legally and procedurally complicated process which requires effort and perseverance on the part of requesting and requested states.

The responsibility for facilitating international asset tracing in Ukraine rests with ARMA and the PGO Central Authority. In addition, exceptionally, art. 545 of the Criminal Procedure Code of Ukraine²⁰ also permits NABU to act as a central authority in relation to mutual legal assistance (MLA) matters in criminal proceedings within its investigative jurisdiction. The assessment team were unable to meet with representatives of PGO Central Authority or the NABU staff dealing with formal international requests during the fact-finding mission, in order to assess the level of cooperation between them and ARMA.

ARMA has invested a great deal of time and budget in forging contacts with international asset recovery networks and partners. As a new agency this was and perhaps is still needed. ARMA has greatly benefited from the support of the European Union Anti-Corruption Initiative who has funded a number of study visits to the European Union Member States (including the Netherlands, Ireland, Spain and Romania), a networking event of the StAR initiative in Canada and a Swedish international expert resident in

¹⁸ UNODC, *United Nations Convention Against Transnational Organized Crime and the Protocols Thereto*, UNGA Res. 55/25, United Nations Convention against Corruption, UN Doc. A/RES/55/25 (8 January 2001).

¹⁹ *Idem*, *United Nations Convention against Corruption*, UNGA Res. 58/4, United Nations Convention against Corruption, UN Doc. A/RES/58/4 (21 November 2003).

²⁰ Ukraine. 2012. "Criminal Procedure Code of Ukraine," *Official Journal of the Verkhovna Rada*, No. 9-10, No. 11-12, No. 13 of 20 November 2012 No. 9700-V, of 13 April 2012,



Ukraine under the EU Advisory Mission (EUAM) Project, who was the CARIN law enforcement contact in his own jurisdiction. This enabled ARMA to be introduced swiftly to a number of CARIN jurisdictions and regional ARIN Secretariats. The ARMA International Cooperation Department currently only deals with the strategic development of ARMA, in respect of foreign jurisdictions, networks and organisations. Operational international cooperation in relation to asset tracing does not take place within the International Cooperation Department but within the Asset Finding and Identification Department.

Recommendation: ARMA should consider establishing two separate operational international cooperation units, one within the Asset Finding and Identification Department and one within the Asset Management Department. The current International Cooperation Department could then be re-named as the International Relations Department as it is not handling any operational requests. This may eliminate any confusion for foreign jurisdictions over areas of responsibility.

ARMA's primary operational function in international asset tracing is that of pre-MLA or treaty-based cooperation to trace and identify assets that may later be subject to confiscation. It performs these tasks in-line with the mandate of EU AROs. Art. 18 ARMA Law describes this operational cooperation. Art. 16(2) includes provisions on sharing strategic international asset tracing information, such as experiences and good practice. Both these articles mirror those within the EU Council Decision 2007/845/JHA.

Art. 16(3) ARMA Law explicitly lists ARMA as being the Ukraine contact within the Camden Asset Recovery Inter-Agency Network (CARIN). CARIN is an informal network of expert practitioners which, although plays a vital role in *facilitating* operational asset recovery, has no legal basis in itself, is not a legal entity and does not offer a 'CARIN' secure platform for the exchange of information.

The EU has developed its own mechanisms for the exchange of strategic and operation information between EU MS AROs and those AROs from jurisdiction that has concluded cooperation agreements with Europol.

The EU AROs were established, on the advice of the practitioner network CARIN, to provide a legal secure method for EU AROs to exchange operational asset tracing requests. The EU ARO Platform is the formal platform which meets twice a year to discuss strategic ARO issues and does not facilitate operation exchange of information. There is a clear distinction between the mandate of the AROs and the mandate of the ARO Platform, one is operational the other strategic. Being a member of the ARO Platform does not automatically provide a legal basis for Ukraine ARMA to exchange operational asset tracing requests with the EU AROs.

Outside of the EU, the competent authorities of non-EU jurisdictions can make operational use EU AROs by concluding an operational agreement with Europol. Europol administers the electronic platform (SIENA) used by EU AROs. ARMAs position in relation to cooperation

through Europol is that, although Ukraine as a jurisdiction has concluded an operational cooperation agreement with Europol, ARMA is not recognised as a competent authority by Europol within Ukraine. Its non-law enforcement status has no doubt affected cooperation here, as Europol's mandate is to support law enforcement authorities in their crime fighting efforts across a broad range of crime threats, including money laundering and asset tracing. Contacts with informal asset recovery networks aside, the EU AROs will see Europol as the operational gateway for ARMA into Europe and the EU AROs. ARMA has already recognised this and taken steps to take advantage of this opportunity.

ARMA reported that it has started negotiations with Europol to amend its cooperation agreement with Ukraine in order to include ARMA as a competent authority. As Ukraine has already been assessed by the Europol cooperation agreement data protection mechanism, adding ARMA as a competent authority technically should not be problematic.

Recommendation: For the purpose of operational information exchange with EU AROs, ARMA should continue to negotiate with Europol, through the Ministry of Foreign Affairs, to add ARMA as a competent authority within the cooperation agreement. This would allow it a legal, secure method of cooperation with EU AROs via the SIENA information exchange platform. ARMA should obtain direct access to the EU ARO platform secure exchange system SIENA.

Recommendation: The reference to CARIN should be removed from the ARMA law as CARIN is not a legal entity and therefore should not be mentioned within any domestic, regional or international legislation.

Outside of the EU, the most common legal possibility for jurisdictions to cooperate at the pre-treaty stage for asset tracing is the use of Interpol. Interpol is the international organisation that, under its own constitution, facilitates international law enforcement cooperation. The assessment team did not have the opportunity to meet with the Interpol-NCB (National Central Bureau) during the fact-finding mission to assess the level of cooperation between ARMA and Interpol. However, it was reported to us that during international cooperation between ARMA and another jurisdiction, ARMA was advised that cooperation would only be possible if ARMA directed its request via Interpol. This solution worked and the request was successfully received. This is an excellent example of ARMA assessing the legal and secure possibilities for international cooperation and finding the best solution for both jurisdictions. This type of approach to decide on the best possible method of international asset tracing cooperation is what CARIN contacts do on a daily basis.

ARMA reported that it has already been granted access to the Interpol secure communication system for exchange of information on asset searches (I-SECOM). This is the platform used by the StAR network of contacts point, established to target the assets stolen through corruption.

Recommendation: ARMA should develop a close cooperation with the main Interpol information exchange mechanisms as an option for the exchange of international asset tracing requests that do not relate to corruption and where the other jurisdiction is not a member of StAR.

ARMA is the designated law enforcement CARIN contact for Ukraine. The Head of the Asset Finding and Identification Department, is the 'front face' of CARIN for Ukraine in the CARIN network. This is a good choice as he clearly understands and is able to articulate asset recovery and the situation in Ukraine. Incoming and outgoing asset tracing requests are allocated by him to the asset tracing team depending on the request. Currently the number of requests received is relatively low (2 in 2018), so this is easy to handle. However, as this number increases, as the experience of the assessors show that it will, the Department Head should consider nominating a small team (no more than 2 staff members) as the international asset tracers. This will allow the Department to build up its own knowledge on the possibilities to trace assets in various jurisdictions.

Recommendation: The Head of the Asset Finding and Tracing Department should nominate one or two members of his team to be the international asset tracers to enable the Department to build up knowledge on the possibilities to trace assets in other jurisdictions. This will happen through more regular handling of international asset tracing requests.

The Head of the National Agency expressed his concern about the low level of international requests made to ARMA for asset tracing. In our opinion, this is not unusual for a new agency on the international asset recovery platform. Building trust between a new ARO and other jurisdictions takes time and ARMA should persevere with this. ARMA is doing everything it can to make itself known to the international asset recovery community. The only potential issue may be that of its non-law enforcement status. ARMA should continue to promote its own far reaching domestic asset tracing possibilities in order to encourage an increase in foreign requests.

Recommendation: No legal barriers exist to prevent ARMA responding to international requests to trace assets. ARMA should continue to build relationships with foreign asset recovery practitioners with a view to increasing incoming asset tracing requests.

While ARMA has promoted itself excellently outside of Ukraine, with the help of EU donor assistance, throughout its establishment phase, on a domestic level further work could be done. During the fact-finding mission, it was evident that domestic agencies were not aware of the asset tracing possibilities of ARMA, in particular in relation to requests to foreign jurisdictions. Law enforcement agencies and prosecutors have very little knowledge of the international asset recovery possibilities afforded to ARMA through CARIN, other ARINs and StAR. More awareness raising is therefore needed. This is not helped by the fact that Ukraine has not yet nominated a prosecutorial CARIN contact. As the agency tasked with ensuring the formation and implementation of asset recovery state policy and the only

current CARIN contact, ARMA should encourage the most appropriate prosecutorial authority to nominate a prosecutor as the CARIN judicial contact.

6.2. Management of assets that were seized or confiscated based on the court decision or owner's consent

6.2.1. International Asset Management Standards and Best Practice

Similar to the initial considerations concerning AROs indicated in section 6.1.1 above, the concept of a specialised body for the management of seized and confiscated assets has been discussed at the national level for over two decades. As a result, several instruments at the regional and international levels provide for guidance on the functions, roles and responsibilities of an Asset Management Office (AMO). Its main purpose is to ensure that assets which have been seized and are subject to confiscation do not lose their economic value.

The United Nations Convention Against Corruption (UNCAC) does not require its States Parties to establish AMOs. Rather, art. 31(3) UNCAC requires them to regulate the management of seized and confiscated assets, or property whose value corresponds to the proceeds of crime (art. 31(1)(a)-(b) UNCAC). While the establishment of an AMO under UNCAC is not mandatory, its Technical Guide²¹ provides initial guidance in relation to three main issues that should be considered when implementing art. 31 UNCAC:

- i. The need for appointment of skilled professionals, pursuant to the type of property to be managed. In turn, where monetary instruments are to be managed, these are to be transferred into an escrow account;
- ii. The mechanism for management of seized and confiscated assets should contain adequate oversight measures, as well as checks and balances;
- iii. Appropriate mechanisms for compensation of the owner of the seized property should be put in place, where the seized property is ultimately not confiscated.

The Financial Action Task Force (FATF) recommends that States establish effective mechanisms that will enable the competent authorities to effectively manage proceeds and instrumentalities of crime, including property of corresponding value, and arrangements for coordinating seizure and confiscation proceedings, which should include the sharing of confiscated assets.²² These mechanisms should be applicable both in the context of

²¹ UNODC, 2009. *Technical Guide to the United Nations Convention Against Corruption* (Vienna: , pp. 97-98.

²² FATF. 2012. "Best Practices on Confiscation (Recommendations 4 and 38) and a Framework for Ongoing Work on Asset Recovery," , p. 28.

domestic proceedings, and pursuant to requests by foreign jurisdictions.²³ FATF notes that an ideal asset management framework should have, among others, the following characteristics:²⁴

1. **A framework** for managing or overseeing the management of seized and confiscated property. This should include designated authority(ies) who are responsible for managing (or overseeing management of) such property. It should also include legal authority to preserve and manage such property.
2. **Sufficient resources** in place to handle all aspects of asset management.
3. **Appropriate planning** taking place prior to taking seizing action.
4. There are **measures in place to:** properly **care for and preserve** as far as practicable such property; (ii) deal with the **rights of third-parties**; (iii) **dispose** of confiscated property; (iv) keep **appropriate records**; (v) take **responsibility for any damages** to be paid, following legal action by an individual in respect of loss or damage to property.
5. Those responsible for managing (or overseeing the management of) property have the capacity to **provide immediate support and advice to law enforcement at all times in relation to seizure**, including advising on and subsequently handling all practical issues in relation to seizure of property.
6. Those responsible for managing the property have **sufficient expertise to manage any type of property**.
7. There is **statutory authority to permit a court to order a sale**, including in cases where the property is perishable or rapidly depreciating.
8. There is a mechanism to permit the **sale of property with the consent of the owner**.
9. **Property that is not suitable for public sale is destroyed**. This includes any property: (i) that is likely to be used for carrying out further criminal activity; (ii) whose ownership constitutes a criminal offence; (iii) that is counterfeit; or (iv) that is a threat to public safety.
10. In the case of confiscated property, there are **mechanisms to transfer title**, as necessary, without undue complication and delay.
11. In order to ensure the transparency and assess the effectiveness of the system, **there are mechanisms to:** (i) track seized property; (ii) assess its value at the time of seizure, and thereafter as appropriate; (iii) keep records of its ultimate disposition; and, (iii) in the case of a sale, keep records of the value realised.

²³ *Ibid.*, 26

²⁴ *Ibid.*, p. 28.

Art. 6 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism²⁵ (CETS 198) contains a specific provision for the management of seized property. Art. 6 CETS 198 aims at ensuring that seized proceeds and instrumentalities of crime are properly managed and preserved. While CETS 198 allows States Parties to remain free in the manner of determining the best way of ensuring an adequate management of the assets, it encourages States Parties to set up of a national body in charge of the management of seized assets, which may constitute an appropriate way of implementing this provision.²⁶

Art. 10(1) Directive 2014/42/EU²⁷ obliges Member States of the European Union (EU) to take measures to establish a centralised office, a set of specialised offices or equivalent mechanisms which ensure the adequate management of property which has been seized with a view to possible subsequent confiscation.

The objective for establishing AMOs under art. 10(1) and recital 32 Directive 2014/42/EU is to ensure that the economic value of assets which have been seized are preserved. Moreover, under art. 10(2) and recital 32 Directive 2014/42/EU, the management of assets is understood to also include the possibility to sell or to transfer property prior to their final confiscation. Notwithstanding, Directive 2014/42/EU does not specify the types of assets which can be sold in anticipation and leaves the matter for each Member State to decide.

In relation to the collection of statistics, art. 11(1) Directive 2014/42/EU notes that Member States should collect and maintain comprehensive statistics from the relevant authorities. Such statistics should include: (i) the number of seizure orders executed; (ii) the number of confiscation orders executed; (iii) the estimated value of property seized with a view to possible subsequent confiscation; and (iv) the estimated value of property recovered at the time of confiscation.

In turn, art. 11(2) Directive 2014/42/EU should also collect the following statistics in relation to the: (i) number of requests for seizure orders to be executed in another Member State; (ii) number of requests for confiscation orders to be executed in another Member State; and (iii) the value or estimated value of the property recovered following execution in another Member State.

6.2.2. Legislation and procedure for Asset Management in Ukraine

²⁵ CoE, "Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism."

²⁶ Idem. 2005. "Explanatory Report to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds From Crime and on the Financing of Terrorism," . 77-78}

²⁷ European Parliament; and Council of the European Union, *Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the Freezing and Confiscation of Instrumentalities and Proceeds of Crime in the European Union*, OJ L 127/39, 29.04.2014.

ARMA is the national asset management office (AMO) of Ukraine. Pursuant to art. 19(1) ARMA Law, ARMA is to manage assets seized in criminal proceedings, including injunctive relief, where the amount or value of the asset is equal to, or exceeds 200 minimum salaries. In such instances, art. 23 ARMA Law notes that ARMA is responsible for monitoring and keeping record or court decisions on confiscation, special confiscation, satisfaction of claims in favour of the state in criminal proceedings in which it managed the assets.

In order for the asset to be managed by ARMA, one of three conditions need to be met (art. 19(1), second paragraph, ARMA Law):

- i. Upon the decision of the investigative judge, in relation to assets which have been seized;
- ii. Upon decision of the court, in relation to assets which have been confiscated; or
- iii. Upon consent of the owner.

Furthermore, where the assets have been accepted into management by ARMA, they are to be registered in the Unified State Register of Assets Seized in Criminal Proceedings, foreseen in chapter IV ARMA Law.

6.2.3. Pre-Seizure Planning

Pre-seizure planning should occur prior to undertaking any action to seize any assets, as it consists of anticipating and making decisions about **what** property should be seized, **how** and **when** it should be seized and, **whether** it should be seized at all.

It does not appear that ARMA, in particular its Department for Asset Management, has any provisions or guidance to its staff, law enforcement and prosecutors in relation to the need and manner by which pre-seizure planning is to take place in relation to assets which may be subject to seizure within a criminal proceeding, their subsequent management in accordance with art. 19 ARMA Law, with a view to the confiscation and realisation of such assets. The lack of such guidance from ARMA may be due to the fact that ARMA does generally not participate in the seizure of assets. Rather, it is responsible for managing the assets after they have been seized by the court and the responsibility of such management is vested upon ARMA by the decision of the court.

Recommendation: ARMA should raise awareness with courts, prosecutors and law enforcement officials that, where the relevant law enforcement authority or prosecutor has the intention of requesting an asset to be managed by ARMA, it should consider its participation as early as possible, in order to support in the establishment of a pre-seizure plan.

6.2.3.1. Purpose of Pre-Seizure Planning

Pre-seizure planning provides an opportunity to conduct financial analyses to determine net value of assets which may be subject to seizure or confiscation and to review title or ownership issues which may delay or prevent disposing of an asset in a timely manner

following confiscation.²⁸ It enables sufficient time to plan for care of the assets, assess the level of difficulty in handling such assets, identify any special requirements needed to preserve the assets and mitigate any risks associated with the management of such assets. Moreover, pre-seizure planning ensures that the different law enforcement agencies, prosecution and the AMO work together as a team, ensuring that the seizure of assets is done in an efficient and cost-efficient manner that is consistent with the public interest.²⁹

Recommendation: ARMA should take steps to ensure that it establishes pre-seizure guidelines which are to be observed by the Ukrainian law enforcement agencies and the Prosecutor General’s Office (PGO).

Pre-seizure planning should take place well in advance of any action taken to seize and confiscate assets. It entails a detailed discussion among all relevant agencies and pertains to all potential issues which may affect the seizure, management, confiscation and realisation of each asset targeted.³⁰ Thus, such discussions should seek to answer the following questions:³¹

- *What is being seized, who owns it, and what are the liabilities against it?*
This question includes determining the extent of what needs to be seized, e.g., whether the contents of an immovable property are also to be seized.
- *Should the asset be seized or even targeted for confiscation?*
This question relates to the cost-effectiveness of the seizure order, or whether seizure should be pursued due to criminal policy considerations, regardless of the risk of depreciation of the asset.
- *How and when is the asset going to be seized and confiscated?*
This question seeks to determine whether an immediate seizure is sought, or whether postponing it would not impact in the preservation and protection of public interest.
- *What management and disposition problems are anticipated, and how will they be resolved?*
This question seeks to anticipate any issues in relation to the maintenance, management or realization of the assets.
- *If negative net value, management, and disposition problems are identified, what are the alternatives to confiscation?*
This question seeks to review options which may be available to preserve the public interest while minimising any risks associated with management costs.
- *Is any negative publicity anticipated?*
This question relates to whether a public relations strategy should be put in place in order to clarify to the general public the basis of the seizure of the asset.

²⁸ USDOJ. 2016. “Policy Manual: Asset Forfeiture Policy Manual,” , p. 21.

²⁹ *Ibid.*, p. 24.

³⁰ *Ibid.*, p. 22.

³¹ *Ibid.*, p. 24.

Attention should be given to the fact that ARMA does not have the authority to manage all of assets which are seized in the course of criminal proceedings. Indeed, art. 19(1) ARMA law expressly indicates which assets may be subject to management by ARMA. Moreover, even where the assets meet the criteria established by art. 19(1) ARMA Law, management by the National Agency is subject to the discretion of the court, which may choose to do so. While this approach may be effective from the point of view of rationalising work within ARMA, it may generate a risk of being unable to determine which authority is holding and managing seized assets, resulting in increased uncertainty and inefficiency.

To that end, such risks may be mitigated once the Unified State Register of Assets Seized in Criminal Proceedings, foreseen in art. 25 ARMA Law, is established. The register will be critically important to not only being able to locate which asset is being administered by who, but also to know its management cycle, the costs associated with the management, and its current value under management.

6.2.3.2. Lead Responsibility

As has been noted above in section 6.2.3 above, ARMA will only manage assets which have been transferred to it by decision of an investigative judge or court, as the case may be. Thus, it does not participate in the steps prior to the actual seizure of assets. Moreover, as there appears to be no regulation or guidance on pre-investigation planning, which itself is not foreseen in the ARMA law, it is not possible, *prima facie*, for ARMA to take the lead responsibility for the development of a pre-investigation plan. Notwithstanding, developing a pre-seizure planning is instrumental for the effectiveness of the management of the assets by ARMA, as has been discussed in section 6.2.3.1 above.

Ultimately, the responsibility for the pre-seizure planning rests upon the prosecutor, who is also responsible for leading the investigation (art. 36(2) Criminal Procedure Code Ukraine).³² It is therefore the prosecutor who must ensure the property and timely pre-seizure planning occurs during criminal proceedings, particularly during the pre-trial investigation. Notwithstanding, all pre-seizure planning meetings should include, at a minimum, the prosecutor, the law enforcement official in charge of the investigation and, where applicable as the assets will be submitted to ARMA for management, the ARMA official responsible for the management of assets. Finally, the aforementioned Unified State Register will enable ARMA to review trends and threats, feeding them into the pre-seizure planning it conducts together with law enforcement and prosecutors.

Recommendation: The prosecutor is responsible for ensuring the pre-seizure planning. To that end, the PGO and SAPO should take steps to ensure that courts are aware of the asset management functions of the ARMA and request that the management of seized and confiscated assets be handed to ARMA. Moreover, ARMA should be called in as early as possible to support the

³² Ukraine, "Criminal Procedure Code of Ukraine."

drafting of the pre-seizure planning where assets subject to seizure will be entered into ARMA for management.

6.2.3.3. Initiating pre-seizure planning

There are numerous factors that should be taken into consideration in the decision to seize property:

- **Prospect of success in the confiscation proceeding.** The prosecution should be consulted to assure that there is sufficient evidence to allow for the seizure of assets. The prospect of success should furthermore include a realistic assessment of the validity of potential defences that could ultimately defeat the seizure or future confiscation.
- **Evaluation of property.** The type of property involved, and its value should be considered and analysed. The analysis should be a realistic estimate of the condition and value of the property, the extent of interest in the property, and the potential validity of third-party claims. Moreover, ARMA and ARMA appointed receivers should be consulted to discuss possible problems with the property's storage and preservation during the seizure of confiscation proceedings. If it is likely that third parties, such as lienholders or victims, will be entitled to relief from the forfeiture, or if the costs and difficulties of storage, preservation, and disposition will be unduly burdensome, it may be ill-advised or wasteful to seize the property and attempt to confiscate it. The same is true if the target property has a low monetary value or is in poor condition.
- **Net equity requirements.** Which are understood as the difference between the current market value of the property, as appraised, minus third party rights, rights of victims and other expenses resulting from the management of the seized or confiscated asset. To that end, ARMA should elaborate guidance on the minimum value requirements needed to enter an asset into management, interpreting the rules contained in art. 19 ARMA law.
Notwithstanding, the minimum net equity requirements may be waived in individual investigations to serve an overriding law enforcement objective such as: (i) failure to seek forfeiture of some of the assets will cause Ukraine to take an inconsistent position its criminal confiscation policy; or (ii) the seized assets are an integral part of the criminal operation and the failure to seek forfeiture of the asset will allow the criminal operation to continue.
- **Law enforcement objectives.** The purpose of forfeiture is not to make a profit, but to provide a remedial mechanism to impose liability on persons who knowingly or consensually consent in the illegal use of their property, or in the acquisition of criminally derived property. Therefore, even if the property has little value, its forfeiture may serve legitimate and overriding law enforcement and community objectives by depriving the perpetrators of its use and availability.

Recommendation: ARMA should establish guidelines to assist law enforcement and prosecutors in determining under which circumstances assets should be seized in the course of a criminal proceeding, and pre-seizure planning should comment. Such guidelines should include considerations on the prospect of success; the evaluation and valuation of the property; any value-related requirements to the property; and any overriding law enforcement objectives.

6.2.4. Valuation of Assets

Chapter III ARMA Law contains provisions in relation to the management of the following types of assets which have been seized in criminal proceedings: (i) funds and banking metals (art. 20 ARMA Law), relating to funds in cash and non-cash forms in any currency, including banking metals; and (ii) movable and immovable property, including securities, proprietary and other rights (art. 21 ARMA Law).

During the on-site missions, ARMA noted that it does not value assets. The responsibility for valuing assets rests with the prosecution and law enforcement officials, which must indicate to the court when applying for a seizure order the amount of damage resulting from the criminal action as well as the assets which may satisfy such damage. Beyond the initial valuation given by the prosecutor and law enforcement official at the time for applying for a seizure order, ARMA additionally conducts a valuation of the assets which are entered into its management. In this case, ARMA appoints a person to evaluate the asset, which is, according to current practice, paid directly by the receiver. While the assessment team noted that such a procedure may entail corruption risks, such as a collusion between the evaluator and the receiver, ARMA noted carrying out the evaluation in such a manner allows them to save their limited budgetary resources while streamlining the process.

Ultimately, however, the best approach and good practice would be to have ARMA, the lead law enforcement official and the lead prosecutor establish a pre-seizure plan whereby not only the value of the asset would be established prior to the seizure, but also would allow all parties involved to understand the risks involved with the seizure of such assets. The costs involved in pre-seizure planning, in this case, could be withdrawn from the proposed asset forfeiture fund (see section 6.3.2.1 below).

6.2.5. Storage, Sale and Disposal

The ARMA Law enables the National Agency to either sell seized assets, or to manage them. The sale of assets follows the provisions contained in art. 100 Criminal Procedure Code of Ukraine, which states that assets in the form of large items or large lots of goods where storing it, in view of its bulkiness or for other reasons, is either impossible without excessive difficulty or where the cost of storing of it in special conditions is not commensurate with their value, may be sold, subject to the consent of the owner. By exclusion, all other items are to be managed by ARMA.

The sale of seized property (upon consent of the owner) or confiscated assets, is carried out through the electronic platform SETAM, a platform attached to the Ministry of Justice of Ukraine which is responsible for the online sale of seized and confiscated assets. According to the SETAM representative interviewed, once they receive the information from ARMA (in relation to seized assets), or the SES (in relation to confiscated assets), the information is placed in the SETAM platform for sale. Security is guaranteed through blockchain technology.

Notwithstanding, the SETAM official noted that there is no requirement to prove identity to register in the SETAM platform. Verification of the identity of the person is done at the moment of transferring the title of ownership, which must be done physically. A challenge in this regard was noted by the experts, as the SETAM official further confirmed that the purchaser did not have to physically come to collect the title, as someone with powers to represent the purchaser could come to collect the title of the property purchased. As a result, there may be a risk of abuse in relation to this aspect of the SETAM procedure, since the perpetrator from whom the asset was seized or confiscated could conceivably re-purchase the property. SETAM noted that this was not necessarily a problem, since the State would be getting the money resulting from the sale of the asset. While this may be true, it may contradict criminal and asset confiscation policy from Ukraine.

Recommendation: All on-line platforms used by ARMA should take steps to ensure that the system of purchasing property through their online platforms has a means of verifying the true identity of the person purchasing seized and confiscated assets with a view to ensuring that they are not re-purchased by the perpetrator.

6.2.6. Use of External Service Providers

During the on-site mission, ARMA officials noted that it does not physically manage the seized and confiscated assets within the ARMA premises. Rather, assets are placed into ARMA management, and then ARMA outsources the management to external service providers.

It is unclear the manner by which the current receivers have been appointed. While it has been noted that the receivers participated in a public examination to be placed in the roster and to be used on an as needed basis, caution is advised in the manner which the receivers are given assets to manage. It is unclear at this stage whether there are guidelines in place which allow for ARMA to determine which receiver should be used for the management of which property.

6.2.7. International Cooperation

During the interviews conducted for the preparation of this report, the relevant ARMA staff noted that, to date, ARMA has not received court decisions requiring ARMA to manage assets which have been seized and are located outside the Ukrainian territory. For this

reason, it is not possible to assess the effectiveness of the measures taken by ARMA in relation to the management of assets outside Ukraine.

It should be noted that the ARMA Law does not contain explicit provisions which enable ARMA to represent the interests of Ukraine in foreign jurisdictions in relation to assets which directly or indirectly originate from Ukraine and which have an illegal nature. To that effect, ARMA desires to amend the ARMA Law in order to explicitly allow it to take measures to find, trace, seize and manage assets found outside the territory of Ukraine, for the purposes of confiscating such assets.

Notwithstanding, as the ARMA law presently stands, it is required to coordinate its actions with the prosecutors and courts to ensure that it is able to locate, seize, manage, confiscate or realise assets which are outside the territory of Ukraine. This is because ARMA is neither a party to the criminal proceedings nor is it a criminal investigation body. As such, any actions pertaining to the management of assets outside the territory of Ukraine would necessarily require ARMA to coordinate its actions with the relevant authority with powers to issue a request for mutual legal assistance (MLA).

Recommendation: ARMA should consider entering into working arrangements with the relevant central authorities (NABU, PGO and Ministry of Justice) to streamline its international cooperation needs in relation to the seizure, management and confiscation of assets.

Recommendation: In the event that the ARMA Law is amended to enable ARMA to represent the interests of Ukraine in foreign jurisdictions, ARMA should ensure that proper cooperation and coordination mechanisms are put in place with the relevant central authorities of Ukraine, to ensure that there is no duplication of efforts and that the international strategy is well coordinated from the Ukrainian side.

6.3. Policy development

6.3.1. Policy making mandate

Art. 2 ARMA Law states that ARMA “ensures the formation and implementation of the state policy in the field of tracing and identification of assets, which can be seized in criminal proceedings”.

Its operational ARO functions are described later in the legislation, under art. 9, and essentially include asset tracing at the request of international and domestic pre-trial investigation agencies, prosecutors and the courts, as well as supporting these agencies prior to the freezing, seizure and confiscation of assets.

Although the policy making mandate of the Agency is stated in the law at the very beginning, to date, the majority of policies being developed have not focused on asset

recovery in Ukraine overall but on the Agency itself, including the drafting of amendments to the ARMA Law with a view to increasing ARMA's efficiency and effectiveness.

6.3.2. A national Asset Recovery Strategy

During the fact-finding missions, the ARMA assessors were assisted by a number of local asset recovery experts from several agencies. These local investigators and prosecutors demonstrated a good understanding of the legal and procedural requirements needed to recover the proceeds of crime in Ukraine. What was (and is) missing is a **collective understanding** of the legal and procedural requirements needed to recover the proceeds of crime in Ukraine and a **collective policy commitment** to increase the levels of criminal proceeds recovered.

There is no real forum for local asset recovery experts to discuss and agree the legal and procedural requirements needed to recover the proceeds of crime in Ukraine. This not only impacts on the effectiveness of the National Agency to trace and manage assets but also impacts on the country in its efforts to confiscate more criminal proceeds. To support a more effective multi-agency asset recovery strategy, ARMA, as the Agency with the statutory policy lead in this area, should propose that a new multi-agency Asset Recovery Committee is introduced.

Establishing a national committee at the earliest stage possible would also assist in making appropriate decisions on how to develop the National Agency.

Recommendation: An "Asset Recovery Implementation Committee" (ARIC) should be established with the aim of increasing the levels of criminal proceeds recovered. This forum should meet regularly and formally, and ideally it should have a budget. It should agree a collective approach and monitor the implementation of its own recommendations.

6.3.2.1. Asset Recovery Implementation Committee Membership and remit

Membership of the ARIC should include all agencies that are (or should be) concerned in each phase of the asset recovery process: ARMA, PGO (investigations and International Cooperation), Military Prosecution Office, SAPO, NABU, Police Inspector (Asset Recovery Section), Economic Police Inspector, SFMS (international cooperation and financial intelligence department), customs investigator, tax inspectorate, State Investigation Bureau Investigator.

The Committee should monitor national asset recovery performance (and possibly set broad targets for each agency), and coordinate asset recovery training for all relevant criminal justice partners, including the Judiciary. This Committee should therefore involve the Judiciary at senior level, together with representatives of the relevant law enforcement and prosecutorial agencies and ARMA. It should produce a national Asset Recovery Strategy, which reflects the policy of all law enforcement and prosecuting agencies to

pursue the assets in all major proceeds-generating criminal offences and corruption and seek confiscation orders, and ARMA's role in preserving the value of seized assets and managing them efficiently until the conclusion of criminal proceedings.

Recommendation: The ARIC should develop a national asset recovery strategy and monitor national asset recovery performance (and possibly set realistic targets) and coordinate asset recovery training for all relevant criminal justice partners, including the Judiciary.

Recommendation: ARMA should also, within this framework, develop its own short and clear Mission Statement, which emphasises its role in increasing public confidence in the criminal justice system through its contribution to confiscation, as well as its capacity to increase revenue for the State which can be applied for public benefit.

Arguably, one of the first tasks of the ARIC could be to lobby Parliament for a Criminal Asset Forfeiture Fund, to be formed from recovered criminal assets.

The importance of providing a budget for the Committee to meet and perform its tasks cannot be overstated. The purpose of a budget is to:

- Encourage attendance at Committee meetings;
- Facilitate necessary institutional change to increase asset recovery;
- Facilitate accurate national asset recovery statistics.

6.3.2.2. Role of a National Coordinator for Asset Recovery

Good practice in other jurisdictions is to appoint a National Coordinator for Asset Recovery. A senior official should be appointed to give the Committee both gravitas and direction. As ARMA has the legal mandate to "ensure the formation and implementation of the state policy in the field of tracing and identification of assets, which can be seized in criminal proceedings", it is recommended that the Head of the National Agency should be appointed as the National Coordinator for Asset Recovery and should Chair the Committee.

Recommendation: The Head of ARMA should be appointed as the National Coordinator for Asset Recovery and should Chair the Asset Recovery Implementation Committee

6.3.3. Payments to receivers and managers of frozen assets

One area of ARMA's work where policy appears to have been developed since the commencement of operations (in the absence of a clear regulation in the ARMA Law) relates to payment of receivers or other managers of property seized. The assessment team had assumed before their fact-finding mission that all management costs were being paid directly by ARMA. This is not the case.

Management charges are apparently being deducted by the managers themselves from the sums they are managing (which will in most cases be before any final confiscation orders are made). This certainly avoids ARMA making large payments to receivers, which would seriously inflate the ARMA budget. But this policy could still present problems. Leaving aside whether it could be challenged legally on the basis that receivers arguably are benefiting from “poisoned fruit”, there is a practical issue arising from the introduction of special confiscation orders that also needs to be considered. With special confiscation, judges should make confiscation orders reflecting the real proceeds, direct and indirect, that have arisen from the criminal offences and which have been traced through ARMA’s work and law enforcement financial investigation. With significant payments etc. to receivers and other managers while the property is frozen, it seems possible that some big confiscation orders may be incapable of realisation in full because of the deducted sums for management. In these circumstances, it would be inequitable for a court to impose an additional prison sentence because the defendant cannot pay the order in full.

There have been discussions on the possibility of making ARMA at least partially self-funding, for example with 15% of confiscated proceeds going to ARMA. If this was taken forward through new proposals to amend the law, some of these funds could be used to pay managers of frozen assets directly while assets are frozen and avoid the potential difficulties described above. This issue is discussed beneath in the important context of ARMA funding from central government. A recommendation on deducting management fees while property remains frozen is made as part of our overall recommendations on the appropriate funding of ARMA by central government.

6.3.4. Capacity building on financial investigation

It was not entirely clear whether ARMA policy-makers were making policy solely for ARMA purposes or more broadly – helping to make national policy on asset recovery more effective across the board. The assessment team think ARMA can and should contribute to this broader process.

Assessors consider that ARMA is well placed, both legally and practically, to take a leading role in driving asset recovery effectiveness more generally, at both the operational and strategic levels.

At the operational level, a number of law enforcement interlocutors thought that they could benefit considerably from training by ARMA officials with skills in financial investigation. Building on the two comprehensive trainings that have already been conducted by the EUACI. The 2017 MONEYVAL report³³ identified the serious lack of financial investigations in many major proceeds-generating cases. Lack of financial investigative expertise is a criminal justice problem in Ukraine. It would thus be a worthwhile initiative for the criminal

³³ MONEYVAL. 2017. “Anti-Money Laundering and Counter-Terrorist Financing Measures Ukraine: Fifth Round Mutual Evaluation Report,”

justice system as a whole, if ARMA, where resources permit, begins to offer financial investigative training to law enforcement bodies that request it. ARMA staff would need to build its own capacities first. Train-the-trainer courses could be delivered to a key number of ARMA staff. Such an ARMA initiative could also help to improve ARMA's communications and cooperation with law enforcement generally.

Recommendation: Where resources permit, ARMA is encouraged to pursue a policy of proactive provision of financial investigative training to law enforcement by some ARMA staff with the appropriate trainer skills.

6.3.5. Register of Seized Assets

One of the major criminal justice system policy initiatives was taken in Chapter IV ARMA Law, which mandates the National Agency to form and keep the Unified State Register of Assets Seized (and confiscated) in criminal proceedings. The implementation of this policy by ARMA with the support of partner agencies is crucial for the measurement of national performance on asset recovery. ARMA was apparently funded in 2018 to proceed with this work and work on the register is progressing. The Head of ARMA anticipates that the funding stream from government will continue for 2019 in order to bring this important project to fruition.

There are other policy and strategic considerations for ARMA in addition to the introduction of this Register that flow from this initiative, such as the development of a multi-agency national asset recovery strategy. This issue does not appear to have been fully considered as yet by ARMA or the relevant agencies collectively.

6.3.6. Performance Indicators

The other area related to policy development which needs serious consideration is performance indicators. The statistics provided at the end of ARMA's replies to the questionnaire are helpful but reflect quantitative data – mainly **outputs** (replies sent, amounts frozen, assets under management etc.). It seems to us that it is necessary for some more thinking to be done, particularly for public messaging, on the **outcomes** of ARMA's activities.

The only outcome-related indicator the assessment team heard about relates to the money ARMA makes or will make for the State budget. This is obviously important to government, and possibly it is a crucial measure by which Ministers will define ARMA success. There are other ways of defining ARMA success, which also need to be explored as a matter of policy.

Given the lack of public confidence in the criminal justice system generally (particularly with regard to the perceived leniency of prison sentences for high ranking persons who are convicted for corruption and theft of State assets) the imposition of seriously deterrent confiscation orders should be a "good news" story and a criminal justice objective.

ARMA is contributing significantly to the development of many major investigations through the Asset Finding and Tracing Department. This valuable analytical work should, in due course, lead to successful investigations and convictions with **very significant confiscation orders**. This aspect of ARMA's work (albeit as part of the process) needs to be publicly acknowledged and more widely recognised.

Public confidence in the criminal justice system can be slowly rebuilt when high level criminals are routinely stripped of their wealth whatever prison sentences they receive.

Public recognition by some other agencies of ARMA's work on big cases is beginning to happen (see section 6.7 below). But it would also facilitate this process if the qualitative aspects of ARMA's work (which contribute to increasing public confidence in the criminal justice system) are also captured systematically in ARMA's own performance indicators. Examples include the number of major confiscation orders involving public figures that were achieved with significant ARMA input; the man-hours that go into the finding and tracing of assets domestically and globally by ARMA staff in such cases; capturing positive changes in public perceptions of corruption as a result of ARMA's work and impact.

There is a need for creative thinking about performance indicators in the senior management team. The assessment team feel sure that ARMA officials should be able to identify other measurable indicators which the public can understand as relevant, demonstrating ARMA's real contribution to the criminal justice system and the development of public trust in the rule of law. Some examples are offered: the number of criminal cases identified as high risk in the Ukraine National Risk Assessment – such as high level corruption and embezzlement of State funds - where **significant** assets have been confiscated following their identification by ARMA; the number of natural or legal persons deprived of **significant** assets identified by ARMA in high risk cases identified in the National Risk Assessment. The ARMA should decide the threshold for the identification of cases in these categories where "significant assets" have been seized/frozen, managed and then confiscated, ideally involving figures with maximum public impact.

Recommendation: Those responsible in ARMA for the policy development of ARMA's performance indicators should develop qualitative performance indicators in addition to quantitative indicators. They should consult more widely to consider what measurable qualitative indicators can be introduced, which will more fully demonstrate the real benefits to the criminal justice system and public perceptions of it, which are attributable to ARMA's work.

6.3.7. Security vetting

The policy on security vetting was considered. It is only undertaken for class B managers and above.

As noted, some staff in the Asset Finding and Tracing Department are working closely with some law enforcement authorities, like SAPO. ARMA is producing detailed and well-

appreciated intelligence packages for them which map the whereabouts of traced assets and linked persons. It was suggested to the team that there should be comparable levels of vetting for at least some of the people working on these tracing issues as are applied to SAPO officers. With the same levels of vetting and requirements to maintain pre-trial secrecy as SAPO, it may be possible in future to involve some ARMA staff in pre-seizure planning. It is unlikely that SAPO and other law enforcement officers working on sensitive cases would risk ARMA officials being parties to pre-seizure planning without the same levels of vetting as they have for their ARMA collaborators. As building closer relationships between ARMA and law enforcement is an ARMA priority then the levels of vetting for staff members working on sensitive cases with law enforcement should be reconsidered. Involving ARMA staff in the future in some pre-seizure planning, where this is appropriate to facilitate the enquiry, would be a signal of growing law enforcement trust in ARMA.

Recommendation: The merits of increasing the vetting levels of ARMA staff dealing with SAPO or other sensitive law enforcement investigations and pre-seizure planning should be re-considered if closer working relationships are to be developed with law enforcement and prosecutors on sensitive cases.

6.4. Record keeping, case management and IT capacity

6.4.1. Record Keeping and Case Management

Within the Department for Asset Finding and Identification, incoming requests are registered in the Department's own case management system. The current case management system is essentially an Excel spreadsheet. Registering cases, including the details of all entities known, allows a cross check to be made with previous requests to generate a 'hit' against data already known by the agency. It will be particularly important to check incoming requests against the Unified Register of Seized Assets, once it is operational. Although adequate for ARMA's needs at the moment, a more sophisticated case management system, able to automatically cross-check data against the Unified Register and possibly other 'in-house' registers is required. This should be separate from the Agency document management system currently being introduced. The agency document management system should not contain operational information. This will provide better tools for the distribution and monitoring of the Department operational workload and provide enhanced statistics. The current system does not easily leave an electronic footprint, so it is not easy to identify who is viewing the data which is essential for data security.

Recommendation: As a priority, ARMA should source a more appropriate operational case management system for its Asset Finding and Identification Department.

6.4.2. IT Capacity

The Asset Finding and Identification Department is negotiating access to analysis software enabling them to continue to offer analysis of legal and natural persons' financial profiles and asset ownership. They are currently using the IBM I2 software licence offered as a free trial. Although arguably costly, this is the most popular analysis software used by analysts. Analysis software provides ARMA with the ability to add value to investigations by delivering a service they do not have access to within their own agencies.

Recommendation: ARMA should progress the purchase of a licence for analysis software for mapping the financial profiles of legal and natural persons and the true beneficial owners of assets.

6.4.3. An ARMA forensic laboratory

An ARMA strategic goal is to purchase equipment to establish a forensic laboratory capable of extracting data indicating the existence or locations of assets, from technical devices such as mobile phones and computers. The Head of the Department for the Finding and Identification of Assets informed us that law enforcement authorities already have access to forensic laboratories but that they are used to collect evidence and not intelligence on the existence of assets. During our meeting with police investigators, (without being prompted) they informed the assessment team that, as they do not have access to a forensic laboratory, it would be useful if ARMA had one. They explained that this would avoid the need for them to call on external experts to extract data from technical devices, which takes 6 months to 1 year. The Head of the agency informed us that he intended to purchase the equipment for the forensic laboratory, indicating that he agreed with the need within ARMA.

The issue is not whether Ukraine should have a forensic laboratory. It is important for law enforcement authorities to have access to this possibility for a variety of reasons, not only to trace and identify assets. The question is whether it should be part of the ARMA. The process of extracting information from technical devices is indeed a forensic process. However, analysis of the information obtained arguably constitutes investigation and would normally be carried out by a law enforcement officer. Access to a forensic laboratory is not an effectiveness indicator for EU AROs.

6.5. Statistics

An elementary way to assess the effectiveness of any system is to review relevant statistics. In general, based on the assessors' experience, a system that does not have readily available statistics is (a) not using performance policy and (b) not conducting the activity in a systemic way. In order to use statistics as an accurate measure of effectiveness, the statistics need to be comprehensive and collected in a standard way at a common point.

In respect of asset tracing, the Asset Finding and Identification Department collects statistics on:

- the number of cases dealt with,
- the quantity of assets found,
- the number of incoming requests,
- the number of outgoing requests,
- the requesting agency and jurisdiction,
- the requested agency and jurisdiction,
- the time taken to answer incoming and outgoing requests,
- the number of domestic databases and registers accessed,
- the number of foreign databases and registers accessed.

The statistics provided in the questionnaire indicate that 69 requests were made in 2017 and in 62 cases asset were found. In 2018, 312 requests were made in total and in 251 cases assets were found. The Military Prosecutor's Office made 151 of the total requests made in 2018 and 126 of these requests assets were identified. This appears to be a particularly high 'positive hit' record all round.

For international enquiries, ARMA received 2 requests in 2018 from foreign jurisdictions and in both cases assets were identified. In 2017, ARMA sent 10 requests to CARIN contacts and assets were identified in 8 of these cases. In 2018, ARMA sent 20 requests to CARIN contacts in foreign jurisdictions and in 15 cases assets were identified.

6.6. Organisational capacity of ARMA

6.6.1. Operating Procedures

6.6.1.1. Asset Tracing

A business process has been developed by the Asset Finding and Tracing Department to map the agency's internal asset tracing process, from the receipt of a request from a domestic agency or international authority through to sending a response. This procedure is regularly updated. For example, when access is granted to a new resource, this possibility is added to the procedure. All asset tracers have a copy of the business process, or operating procedures. The document contains a template for Department asset tracers to complete for each enquiry. In addition, all staff either already have attended an OSINT course, or will in the future and have access to the OSINT Handbook.

Work is distributed to staff in the Department by its Head, based on the investigator's knowledge and expertise. The assessment team were informed that the Head of the Department had plans to include more information in the document (which he described as a Handbook), suggesting that it is a constantly evolving procedure.

The internal procedures for the ARMA asset tracing Department appear to result in the successful processing of requests. No complaints were received by the stakeholders making requests. However, the challenge for ARMA seems to be to encourage stakeholders to make requests both domestically and internationally. ARMA's Action Plan 2017 includes an objective to "Develop operational guidelines for referring cases to ARMA, with selections

being made on the merits and facts of the case and the evidence available". It is not clear whether this refers to asset tracing, management or both. It is a valuable objective covering both the process for agencies to make a request and the procedure for ARMA to accept a request (whether it meets the criteria for asset tracing etc.). The assessment team did not have access to this procedure if it has already been prepared (deadline was October 2017).

Recommendation: The procedure for domestic agencies to make requests to ARMA for asset tracing should be distributed to its stakeholders, to encourage greater use of ARMA's services. A condensed version, in leaflet form for example, could be produced for distribution at meetings, trainings and conferences. The CARIN leaflet (operating procedure) should be translated into the Ukrainian language and expanded to include the role ARMA plays in CARIN requests for international asset recovery.

6.6.1.2. Asset Management

It is unclear whether the business processes for the Asset Management Department have been written down, as these have not been made available to the experts. Notwithstanding, the processes whereby an asset is given into management to ARMA is relatively clear in the ARMA Law in relation to assets found in the territory of Ukraine. Less clear is the role that ARMA can play in the seizure, management and confiscation of assets found outside the territory of Ukraine. To that effect, amendments to the legislation are being proposed to the ARMA Law to explicitly give ARMA the mandate to undertake such actions abroad.

Furthermore, the process whereby the receivers have been appointed is not fully clear, and steps should be taken to ensure that they such appointments are made in a transparent manner.

Finally, in relation to the realisation of confiscated assets and the anticipated sale of seized assets, these are carried out by SETAM, on behalf of ARMA. As has been discussed in section 6.2.5 above, concerns remain in relation to the identification of the person who is purchasing the seized and confiscated assets.

Recommendation: The Asset Management Department of ARMA should take steps to ensure that there is an effective pre-seizure planning put in place in relation to assets which may be subject to seizure. Such pre-seizure planning would ensure, or at the very least, mitigate several risks associated with the management of seized and confiscated assets.

6.6.2. Strategic Planning

Strategic planning understandably in the start-up phase of a new Agency is (inevitably) secondary to getting the office up and running. In the early stages ARMA has been focused on staffing up, implementing the ARMA law and reporting to government.

As noted, the major longer-term strategic thinking appears to have gone into proposing and drafting amendments to the ARMA Law. It was thus prudent of management to obtain commitment from government to the amendments package by putting this activity into the Prime Minister's Action Plan. As will be seen at 6.9 beneath the Cabinet of Ministers is well aware that a package of amendments is being developed, in accordance with the ARMA'S statutory remit on the formation of State policy in the field of finding and tracing assets.

How widely strategic issues for inclusion in the legislative amendment package within ARMA was discussed within the top leadership team was unclear. The assessment team heard that the Heads of Departments and the Head of ARMA regularly have meetings but rarely are all the management team together in the same meeting. Assessors were told that meetings involving the Heads of Departments tend to be *ad hoc* single task-oriented events.

It was considered by some interlocutors that budget preparation and staffing issues may bring the whole management team together, which seems sensible. While these issues may broadly be categorised as strategic issues, assessors were unclear whether there had been *ad hoc* management meetings of all Heads of Departments on other longer-term strategic issues for ARMA.

As noted beneath at 6.6.3, the assessment team consider that there is merit in more collective discussion generally by the full top management team. While the Head of ARMA is of course responsible for the overall direction of ARMA and is the final decision-maker, the assessment team do consider that collective discussion is particularly relevant for all long-term strategic issues. While this may be happening sometimes in practice on an *ad hoc* basis, it is better to institutionalise this by timetabling a strategic policy discussion at least every three months by the senior management team to which any of them can table issues for discussion in advance.

Recommendation: All long-term strategic issues should be brought to the senior management team for full collective discussion. Such strategic policy discussions are advised to be held at least on a three-monthly basis.

6.6.3. Regional offices

One issue which, in our view, merits an early collective strategic discussion is the commitment in the legislation and in public documentation of ARMA to the development of regional offices.

While the assessment team did not have the opportunity for very meaningful discussions on this issue with ARMA staff, it was mentioned that regional offices would promote greater ARMA visibility. This is undeniable. Regional offices could also promote closer contacts with police and courts. However, its expertise, in particular in the area of asset-tracing and financial analysis, and IT are currently concentrated within the one main office. Moving this to a regional structure may weaken the level of expertise and require additional funding to

extend IT to the regional locations. Assessors are at present unconvinced that the benefits of such a development at this point outweigh the disadvantages. ARMA officers can be assigned responsibilities for relations with particular areas without necessarily moving them there. To do so would break up an office which is still developing its own institutional identity, and where senior management is still close to their staff.

A discussion senior management team discussion should be scheduled to discuss the strategy on this before further commitments on the issue are made. It would need a paper to be prepared, setting out the commitments that have been made to this development, and an up-to-date costs/benefits analysis to be prepared for such a strategic discussion to be an informed one. One consideration that might be explored is whether any budget set aside for this project could be better applied to the direct payment of those that are appointed to manage seized assets.

Recommendation: There should be a strategic discussion by the leadership team of the costs and benefits of a move to regional offices at this time before this project is taken further.

6.6.4. Collective commitment to making the Unified State Register of Seized Assets work

As noted, there is an opportunity for a more strategic national approach in relation to assets recovery generally with the formation of the Unified State Register next year of seized and confiscated assets. The aim should be that a register is created to which numerous agencies input data from which reliable, consistent and reconciled national statistics can be produced on the real performance of Ukraine on asset recovery and management. The achievement of this ambitious aim will require complete commitment and support to inputting the necessary data by all participating agencies.

Recommendation: To ensure commitment from all participating agencies to the delivery of the Unified State Register of Seized Assets, the requirements for inputting data by the relevant agencies should be the subject of Orders or Decrees signed by the Heads of all the involved agencies. Common language for these orders or decrees should be agreed jointly after discussion by all involved agencies at the ARIC. All relevant Heads should monitor the performance of their staff in inputting the required data.

ARMA (as the owner of the Register) should, in our view, prepare this draft Decree.

6.6.5. Leadership and Management

Freshly appointed managers at all levels in newly-created institutions which begin operations too quickly are often overwhelmed by their new tasks. They find themselves operating (sometimes in a hostile environment) without the institutional memory and experience that most offices take for granted. This can result in early mistakes being made

which damage the new institution's long-term reputation, and a crisis management mentality taking hold.

Broadly ARMA seems to have avoided these pitfalls. The team commend the step by step approach to planning and recruitment taken by the ARMA Head during the months between his appointment in December 2016 and the effective commencement of ARMA operations.

6.6.5.1. Recruitment, induction and career development

The Head, rightly in our view, decided to focus firstly on the recruitment process to ensure there was a core of competent and trusted people around him as senior manager. It is recognised by us that this was not an easy process, as ARMA is a unique public institution in Ukraine, requiring a range of specialist skill sets. In the implementation of his recruitment policy, the ARMA Head appears to have been quite successful so far. Top management identified the core skills, competencies and experience ARMA requires. They decided to look largely for motivated younger people with energy and enthusiasm for this type of work. All candidates for operational jobs in ARMA were (and are) required to have a basic level of knowledge and understanding of current Ukrainian legislation regulating the National Agency and the general legal framework on asset recovery and management. They are also required to demonstrate their abilities to express their opinions logically and reasonably. Beyond this, the recruitment process focuses on the specific competencies required for the main operational departments. Thus, for the Finding and Tracing Department interviewers were (and are) looking for candidates who can demonstrate additional competencies including: financial literacy and the ability to read balance sheets; financial analytical skills and practical skills in financial investigations. For this department recruitment is also specifically targeting specialist investigators that have worked on corporate and tax issues, including tax inspectors and insolvency officials. For the International Department, legal skills and experience in international cooperation are being sought. For the Asset Management Department, experience in management and disposal of criminal assets is clearly relevant and persons with some experience in these areas are also being sought (though the domestic pool of available experience is probably smaller in this area than for other departments).

29 ARMA staff, who already had some of the relevant skills, were transferred from other institutions to ARMA in 2017 and 5 in 2018. The remainder of the staff have been appointed through open competitions.

The open recruitment process has been a major undertaking, with large numbers of applicants for all available posts. 16 competitions have taken place so far to fill vacant posts. The Head has been closely involved with this process.

The ARMA Head and his Personnel staff appear broadly to have secured for ARMA able people, with some relevant experience. That experience has been largely gained from working in other Ministries and State bodies, including the FIU, the Ministry of Justice and

the State Executive Service. While no deputy directors have yet been appointed, all the Heads in the main departments are in place and present as competent and dedicated. They too appeared to be supported by broadly competent staff within their departments.

Initially recruitment may have been helped by a salary structure, which was, rather unusually, set out in the ARMA Law. At the time the Law was enacted the salaries appeared attractive in the domestic context with bonuses for good performance as part of the salary structure. With the benefit of hindsight, the leadership of ARMA now considers that putting the salary structure into the Law may have been a mistake. Apparently ARMA salaries are actually lower in some cases now than in other parts of the public administration. This is unsatisfactory for an Agency that needs to recruit specialist skills.

Recommendation: The salary structure for ARMA needs to remain competitive.

ARMA is not yet up to its full establishment level. 16 competitions for B and C grades were held between April 2017 and May 2018. Rarely has the number of vacancies advertised in each competition resulted in an equal number of appointments. This is despite a large number of applicants – 1297 in all for 125 positions. The numbers meeting the standards set for competing were equally high - 839 for the 125 positions.

The fact that available posts were not filled in each competition means that ARMA has not compromised on the standards and competencies it requires in its staff members. It has not filled posts quickly in order to reach its establishment level. This cautious approach seems to us to have been reasonable, as ARMA recruited its core staff. To August 2018, 96 persons³⁴ are now in post and operating, which represents 74% of its current establishment level of 130. This is an improvement from the position reported in the replies to the questionnaire (reflecting the position at the beginning of June 2018, when 69.2% of the establishment level were in post).

However, the fact remains that the current staffing level is still below the percentage that might have been expected by this time. It is important that the quality of staff appointed should remain high. The replies from ARMA seem to indicate that recruiting people with the skill sets required will continue to be a long process.

The assessors recognise the virtue of appointing persons initially who come with all, or nearly all, the necessary skills and who thus do not need much on-the-job training. Though if (or when) this pool of potential ARMA employees dries up, it would seem reasonable to us to adjust the recruitment policy slightly to take more people with the **potential** to be expert in the relevant sector, but who will need more in-house training and in-house mentoring before they are fully operational. Given that there is now a critical mass of qualified in-house staff, they themselves should (in theory) be in a position to give more

³⁴ It is understood that the figure had risen to 97 as of 27 August 2018.

of their time to training and mentoring new staff. It seems to us to be important that existing staff should be used more in training and mentoring roles, particularly as ARMA considers it will need in future many more new staff - over and above its current establishment level. Thus, it will need to "grow its own" staff more.

In this context, as far as could be ascertained, such inception and induction training as there is, apart from the standard civil servants' training, was limited to that provided by external providers and by participation in external events. Such external training and awareness-raising on asset recovery and management issues is, of course, helpful. However, it is no substitute for regular, focused inception/induction training programmes, relevant to the needs of all new staff members, which are led in-house by people who can explain how things work in practice in ARMA. Ideally induction training should be supported by personal training plans agreed between new staff and their line managers. It is advised that these training plans should be monitored by their line managers to ensure that the required training actually takes place. In our view it is often beneficial to couple this with in-house "mentoring" of all new operational staff by more experienced colleagues below the Head of Department – sometimes called a "buddy system". This should encourage more team working and knowledge sharing within the departments.

Motivating and retaining staff involves ensuring that there are possibilities for internal staff movement and staff development. As the staff grows, ways also need to be developed to share knowledge of the work in each department transversally across operational departments, so that staff have better possibilities for mobility by level transfer for career development or for promotion to other departments.

It is unfortunate that the staff manual is (or was in August) still a work in progress. New staff currently do not have readily available to them an overview of all the practices and procedures in the office. Production of a staff manual should be a priority for a new agency with young staff, a big workload, and which is still actively recruiting.

Recommendations: It is recommended that the staff manual should be expedited, published and kept up-to-date.

Steps should be taken to introduce a rolling programme of in-house induction courses for all new staff members led by experienced ARMA staff in the operational departments. It is advised that these courses should include presentations of the work of each department and the major issues they have to tackle. Operational practices and procedures set out in the staff manual may also require coverage in these courses. A rolling programme of in-house developmental training should also be considered to encourage mobility between departments.

Detailed personal training plans for new staff in the operational departments should be agreed with their line managers, who should have responsibility for

ensuring that they are followed up by appropriate in-house training (or supplemented by external training).

All new staff should also have a mentor formally assigned to them (below the level of the Departmental Head) to support them for the first year at least.

Ways should be developed to share more information transversally within ARMA about the work in each department to encourage internal mobility and career development.

With the embedding in the office of more in-house training and mentoring, it should then be possible to adjust the recruitment policy as suggested above to take more people who may not yet have all (or most of) the necessary skills but who have the potential to be competent ARMA officials.

Recommendation: Consideration of an adjustment to the recruitment policy should be given, when in house training and mentoring is embedded, in order to recruit more people with the potential to be competent ARMA officials with necessary training and development.

While these management issues need addressing, the assessors recognise that a great deal has been achieved in a very short time. Several interlocutors, including the Public Council, told us that they considered that ARMA's greatest achievements since it was set up were - that they had managed to handle their business, that they had started to manage assets, and had provided some income to the State budget. Moreover, as noted above, through the selection of competent and, in some cases, quite experienced staff, ARMA appears to have avoided the professional missteps that might have damaged its reputation in the early stages of its work. This is no small achievement as it is vital that confidence and trust in ARMA's professionalism is built up among its stakeholders. There is a sound staff base on which to build.

6.6.5.2. Structure

The assessment team requested an organigram (organisational chart) of ARMA for an overview of the structure, given that some divisions have been created and then were cancelled. The team received in September a helpful document on the functions of the departments and divisions, but unfortunately it was not really an organisational chart of the type that had been requested so the detailed picture in respect of which divisions report to the Heads of which department is not entirely clear.

There are four core departments.

The Asset Finding and Tracing Department ensures State policy-making and implementation in the area of tracing and finding all assets capable of seizure and confiscation in criminal proceedings. It has 40 positions assigned to it, of which at the time of the fact-finding mission 33 were in post.

The Asset Management Department is responsible for State policy-making and implementation in the area of asset management. It has 21 positions assigned to it, of which 15 are in post.

The International Department is responsible for all issues related to international cooperation, which includes a significant representational role at international meetings. It has 12 positions assigned to it, of which 6 are in post.

One comment is made here about the representational role of the International Department. As is doubtless clear to ARMA management, it is necessary that the International Department carefully feeds back to the operational departments and management what they learn from the meetings which they attend. No doubt this issue will be covered in the appraisal process in respect of staff in the International Department.

The team note that there may also be meetings which the International Department normally attend that would benefit from the selective attendance of specialist experts from the main operational departments. This does not merit a formal recommendation however, management should bear this in mind to ensure that ARMA interventions in international forums always carry the weight that they should.

The Legal Department has 15 positions assigned to it of which 11 are in post. The legal Department appears to have the lead role in organising and participating in State policy-making on asset recovery and management issues, representing the ARMA before Ukrainian courts and handling civil litigation. As noted, it has had a major role in preparing draft amendments to the ARMA Law.

The departments that support the core departments have been subject to various structural changes during the start-up period. Though we have received some conflicting information in this area, currently the following arrangements on the support side appear to be as follows.

The Human Resources Department has 5 positions and is fully staffed. It is responsible for recruitment and personnel, and improving professional competencies.

The Finance, Support and Accounting Department is responsible broadly with the Head of ARMA and the Departmental Heads for budgetary planning and monitoring. It has 9 positions assigned to it. 7 are said to be in post.

The Correspondence management, Resource support and Procurement Department is a general support department which has 13 positions assigned to it, 12 of which are filled.

The Division of organisational and analytical support to the Management, has 9 positions assigned. 6 persons are in post. The Communications sector has apparently been set up as part of this division. It is unclear, in the absence of Deputy Directors, whether the Head of this division reports directly to the Head of ARMA. (*please confirm*). It would appear that the Communications "sector" (which appears to be one person together with the Head

of the Division) is not afforded particular prominence in the overall structure. This is discussed further at section 6.7 below.

There is also now an Internal Audit Specialist since February 2018 and a chief Corruption Prevention specialist, who report directly to the Head of ARMA. Their staffing and impact on the work of ARMA are considered further beneath.

In conclusion, the overall way the National Agency has broadly been structured seems to be logical and the staff numbers assigned to the Departments and Divisions seem appropriate. The departmental structure, however, can often lead to staff operating in silos. Several of the recommendations above on transversal sharing of information between departments are aimed at minimising the negative consequences of silo working.

6.6.5.3. Levels of decision-making

In the early stages of a new office it is inevitable that many decisions will be referred up to the Head of the Office. Some offices however can maintain this culture for a very long time. It is for the Head of the Office to decide when he or she is sufficiently confident in the skills and judgment of his senior staff that more decisions can be delegated, so that the Head becomes more able to manage the Agency through his or her senior staff.

It is suggested that a lot of decision-making in practice involves consultation with the Head of the Office.

The assessment team did not have long enough discussions with individual staff to form a considered view as to whether the balance of consultation with top management is the right one or not at this stage of ARMA's development. Nonetheless the team advises that, if this has not yet been considered, that there may be merit in developing a "levels of authority document" as a broad guide to staff upon what issues/decisions they should normally consult their own divisional Heads, departmental Heads or indeed the Head of Office.

Consultation can be of 2 types: consultation because the decision requires to be taken at a particular level; or consultation where the decision is not required to be made at a higher level but it is one, perhaps of some sensitivity, of which more senior managers should be made aware in sufficient time to allow them to intervene if necessary.

Recommendation: If guidance on levels of authority in decision-making has not already been considered, a levels of authority document on decision-making and consultation with senior staff should be developed, as described in the report.

6.6.5.4. Budgetary delegation and budgetary monitoring

It was very welcome to hear that Heads of Departments are actively involved in the annual budgetary planning exercise and prepare their own budgetary proposals for consideration by the Head and Chief Accounting Officer for the next financial year.

The budgetary process and the settlements achieved are considered at the end of this report under section 6.9, where the autonomy of ARMA is considered in detail. Recommendations are made in that section, which if accepted, might go a long way to increasing ARMA's independence and effectiveness.

With this in mind some consideration has been given in this section to the role that senior managers (departmental heads within the leadership team) might have in exercising budgetary control.

It was not clear what authority departmental heads have in committing expenditure themselves – given what the assessment team consider to be the unstable budgetary situation that ARMA is in. In many countries, senior managers below the level of the budget holder (who usually is the head of the agency) are granted delegated authorities to commit expenditure within that part of the annual budget that is allocated for their activity. This section of the report is thus based on the premise that there is a realistic budget settlement for the Agency which is known at the beginning of the financial year. If these circumstances prevail, it is less resource intensive for the budget holder not to have to authorise every financial commitment.

Recommendation: [If this has not already been done] Consideration should be given to delegating levels of financial authority to departmental heads, subject to them actively monitoring the budgetary position in their departments and being aware of the impact that each budgetary commitment is making to the overall outturn in their areas of responsibility.

The assessment team were informed that the Heads of Departments did not receive monthly information on how much expenditure they had actually committed in the current financial year either in real terms or as a percentage of the annual budget allocation for their departments. It is considered that it would assist Heads of Departments to plan expenditure better and to avoid potential overspending if they receive monthly budgetary management reports showing committed expenditure by their department in the previous month and the percentage of their total annual departmental budget remaining. It may assist Departmental Heads if the budgetary position is a standing item on senior management agendas³⁵.

Recommendation: Consideration should be given at the appropriate time to Heads of Departments receiving monthly budgetary management reports so

³⁵ The team has been advised that since the onsite missions heads of structural units were provided with some analysis of expenses and balances of unused funds in respect of structural ARMA units in an official note of 31.08.2018.

that they can monitor their committed expenditure as a proportion of their overall annual budget to be alert to potential overspends. It may assist if the budget is a standing item on senior management team agendas.

6.6.5.5. Collective leadership, thematic responsibilities and management meetings

As noted at section 6.6.2 above, senior management meetings tended to be mainly single-issue focused and *ad hoc* and not necessarily involve all Heads of Departments at the same time. Given that this is a new Agency and the Head has a fixed term, in the interests of building up institutional memory and continuity, it seems to us that a more collective approach to the leadership of ARMA may be beneficial.

The assessment team do not propose any radical changes to the way the office works but encourage consideration of a more structured approach to senior management meetings and more collective leadership.

It was unclear if any of the senior managers had any thematic office-wide responsibilities, other than for their own departments. If they do not, consideration should be given to an effective distribution among senior managers of themes that cross departmental lines. Training is a good example. One person cannot be responsible for this alone but the relevant senior manager could be supported by a training officer and a team/committee of operational staff who provide input and guidance on the types, frequency and possibly the content of in-house training that is required across the departments. The Head of Department with responsibility for the training theme could report back periodically on the status of the in-house training programme to the senior management team.

The same goes for the Policy Manual when it is promulgated. The Head of the Legal department, for instance, might be given responsibility for obtaining feedback on it from staff and developing a team to review the content as required, and report back to the senior management team periodically on the status of the Policy Manual.

Similarly, departmental Heads might have thematic responsibilities for liaising at their levels with other criminal justice system stakeholders and keeping the senior management team apprised of issues that are of common interest.

As for senior management meetings, one meeting at least per month should be held where it is expected that all senior managers should attend. Meetings such as these are usually more productive where a schedule of regular meetings is set for several months in advance, agendas are planned and papers circulated well in advance of each meeting.

Agendas for regular management meetings might include a mix of standing items and thematic items - such as training issues every 2 months. Standing items might include: communications from the Head; personnel; budget; brief round-ups by the Heads of the Departments on the status of major issues within their departments.

Performance Issues for senior management, such as reviews of performance indicators and statistics on referrals by stakeholders, audit results (financial and systems/performance related checks), progress on the unified register of seized assets and communications policy might be taken as agenda items every 2-3 months.

Clearly the Head ultimately will make final decisions on policy but collective discussion within the leadership team should be encouraged prior to this as far as possible, particularly on strategic issues.

Most of the major decisions taken will require communication by the Head of ARMA directly to all staff. Beyond that, it should be the general responsibility of Departmental managers to keep their staff informed about non-confidential items discussed at senior management level, including through departmental meetings, where questions can be raised by staff on the implementation of decisions taken by senior managers. Departmental performance issues can also be addressed in those meetings.

Recommendation: There should be regular senior management meetings where all senior managers participate, the agendas for which could include a mix of standing items and other thematic issues. A distribution of cross-cutting themes between the departmental heads is proposed, for which they may take the lead responsibilities in discussions in senior management team meetings. While major decisions taken by senior management will require communication by the Head of ARMA directly to all staff, general responsibility for keeping staff informed about non-confidential issues discussed at senior management level should be with the departmental heads. The Heads of Departments are encouraged to hold regular departmental meetings to discuss the implementation of decisions taken by senior management and to discuss departmental performance.

6.6.5.6. Appraisal

A modern and sophisticated appraisal process has been put in place by 2 ARMA orders, which the team has considered. The process allows for mid-year reviews and the first full appraisals for all staff will be undertaken by line managers between October and December 2018. The appraisal process requires line managers at the beginning of the reporting period to set each staff member 2-5 "tasks", (which are assumed to be similar to objectives) for the reporting period. It is required to agree key indicators/competences on which performance appraisals will be based when the tasks are set. Some competencies, like knowledge of the legislation and professional knowledge, are required of both B and C grade civil servants, though B grades will be assessed on a wider range of competencies, including leadership, work organisation and personnel management and effective decision-making. Staff will be marked on a scale 0-4. A marking between 0 and 2.49 denotes a negative appraisal. 3 is positive, and 4 is excellent. Appraisals are expected also to indicate where there are defined training needs. There is an appeals procedure.

As most ARMA managers will be new to management, it is important that they receive training on this system. In many systems a manager is not allowed to perform appraisals unless he or she has been properly trained. Even with training, managers can underestimate the impact that the appraisal process can have on relationships between the manager and the staff member, particularly if feedback is given badly.

It is unclear if the Head of ARMA is subject to an appraisal process. He appears to have no formal line manager who sets him tasks/objectives, which is understandable given the independence that is required of him. It is assumed that the annual independent review provided for in the Law is intended to replace any formal assessment. This statutory review process is considered beneath under section 6.9.

Recommendation: It is advised that all line managers should receive formal training on the appraisal process, and on handling appraisal interviews and task/objective-setting.

6.6.5.7. Internal Audit

As noted, to assist management to exercise effective control over the Agency's performance a Senior Expert on Internal Audit has been appointed and started work in February 2018. The expert was not available for discussions during the fact-finding visit. It is understood that she was recruited primarily to implement the general internal audit standards required by the Ministry of Finance. The team have seen her job description and had sight, in summary, of her first report.

The tasks assigned to her are lengthy. They include defining the objectives of internal audit and expected results, and coordination of internal audit units (if available at the National Agency). This appears to assume that the Senior Expert appointed may develop a larger audit sector, subject to resources being available. The team has not seen any document which sets out clearly the current priorities of internal audit and expected results. They may be defined in the Expert's appraisal tasks.

What is expected of the Internal Audit should be clearly defined, as there are many areas, not only financial, which would benefit from an audit or audit-like process covering systems and performance. The Head of ARMA needs reassurance on systems issues such as appropriate file handling, security of documents, appropriate use of IT etc. It was unclear to us whether these issues were also the responsibilities of Internal Audit or the professional Heads of Departments or others. Similarly, on performance issues the Head needs reassurance on timeliness and quality of ARMA interventions and on decision-making quality. How these issues are being systemically tackled is unclear.

So far, the Expert's role appears confined to the Ministry of Finance's important requirements on financial controls. As such she has completed one financial and conformity audit covering the accuracy of accounting reports and budget reporting during public procurements.

The assessment team were advised, in the replies to the questionnaire, that there were no violations in 2017 and in the first 5 months of 2018 of the public procurement, budgetary and accounting laws by ARMA, which is encouraging.

Assessors received an undated summary of the first audit report. The Expert has provided the Head with a conditional positive opinion, as some unspecified **risks** of violating procurement principles were apparently detected and improvements to the internal control system were recommended, though precisely how serious the risks were or what improvements were recommended are unclear. **Risks** of violations and actual violations of procurement principles/laws are separate issues and it is important that lessons are learned from this first internal audit. Assessors were informed by the auditor that all recommendations contained within the report had already been implemented.

The assessors conclude that one person producing one audit report in 6 months does not point to strong internal audit control on the financial side as yet. Internal Audit needs reinforcing to ensure that broader and more regular financial control checks are being made in ARMA, given the sensitivity of issues with which ARMA deals related to procurement, selection of managers and use of public funds. A full programme of prioritised issues for financial audit for the next year needs developing and agreeing with the leadership of ARMA and implementing.

Recommendation: The role of Internal Audit should be clearly defined. Ideally it should cover systems and performance controls, as well as financial controls. If internal audit is to be limited to financial controls then other arrangements need to be put in place for systems and operational performance controls. The full range of systems, performance and financial controls that need to be in place in ARMA should be resolved quickly by the senior management team.

In any event, the staffing for financial auditing needs reinforcing to ensure that broader and more regular financial control checks are being made, given the sensitivity of issues with which ARMA deals related to procurement, selection of managers and use of public funds. The Senior Expert on Internal Audit should make proposals to the leadership team as to the priorities for financial audit for the next year and, when agreed, implement these audits as resources permit.

6.6.5.8. Corruption Prevention

The National Agency stated in its replies that it pursues a policy of zero tolerance towards corruption, and ensures that all staff members receive copies of a "Warning" document drawn up by Personnel which appears to summarise the relevant national legal instruments covering corruption prevention. The National Agency leadership have appointed a Senior Expert on Corruption Prevention, with whom the team met. His tasks include developing and implementing activities to prevent corruption-related violations in ARMA and to ensure

proper controls. The Corruption Prevention Expert regularly liaises with anti-corruption agencies in other public administrations.

In particular, he has to notify the Head if he is aware of signs of corruption-related violations. Assessors were advised that he had not found any such violations and not made any notifications.

He is also able to provide staff with assistance in completion of their declarations of assets. No information was provided on how timely the declarations were submitted from ARMA staff. The Corruption Prevention expert should monitor this issue as part of his workload.

The Corruption Prevention Expert, according to his job description, bears personal responsibility under the Laws of Ukraine for “low quality work” and/or (in English translation) “undue implementation of his duties”, as well as inactivity or lack of action on prevention.

It is assumed that these are standard conditions for all experts in this field within the civil service. If so, it appears to us to be unfortunately worded. Arguably, it could encourage the Expert not to perform his job too robustly. Even if this language is the same in the job descriptions of all Corruption Prevention Experts in the civil service, it is still cause for concern. This wording should be revisited, if necessary by the civil service commission. It appears to us to be very challenging for any official to strike the right balance in the performance of this mission in the light of such an equivocal written specification.

If this language in the job description is unique to ARMA, it should be revised to leave no doubt that the expert should perform his job diligently and professionally. Attaching personal liability to the role can only encourage a very cautious approach. Thus, the job description does not equip the expert with the correct motivation to develop and effectively implement the strongest anti-corruption controls at present.

ARMA has undertaken a corruption risk assessment, although the assessment team have not seen this. The Corruption Prevention Expert is advised to develop ARMA specific measures to manage these risks. This should include clear guidance for ARMA staff on ethical issues arising in the context of ARMA’s work and an articulation of ARMA’s integrity policy coupled with an ARMA code of conduct. The NABU guidance to staff and its codes of conduct may provide models for ARMA. It would be helpful if the Corruption Prevention Expert makes ARMA staff aware of all reports and recommendations by the various international monitoring bodies and international technical assistance providers to Ukraine, in particular the Council of Europe’s anti-corruption monitoring body (GRECO) in respect of Ukraine.

Recommendation: The language of the Corruption Prevention Senior Expert’s job description should be revisited to remove equivocal language as to how the job is to be performed.

Personal liability in this role is unhelpful to the mission and should also be reconsidered.

The Corruption Prevention Expert, together with senior staff, should develop specific measures to mitigate identified corruption risks, to include clear guidance on ethical issues in the context of ARMA's work and a clear articulation of ARMA's integrity policy, together with an ARMA code of conduct. These documents should be agreed with the ARMA leadership. It is advised that they should be introduced to the staff in a general office meeting, led by the Head of ARMA and the Senior Expert on Corruption - so it is clear to all staff what is expected of them.

The Senior Expert on Corruption should make ARMA staff aware of all reports and recommendations by the various international monitoring bodies and international technical assistance providers to Ukraine, in particular the Council of Europe's anti-corruption monitoring body (GRECO) in respect of Ukraine.

Professional Level and Skills of Staff

As noted earlier, the team were generally impressed with the professionalism of most of the staff that they met. Many of them have worked in other organisations and have brought technical skills with them. The challenge for the future will be to capture those skills for new staff so far as they can be reduced to writing in guidance on practice and procedures. The staff manual is critical in this process.

Some of the issues related to this have already been addressed in the section on leadership and management. A number of the managers are new to management and have quite large commands. They should all undergo management training courses in the coming year if they have not already undertaken them, as poor management practice can be demotivating.

It seems to us that, in a new organisation especially, it is important that staff avoid working in isolation or in silos as far as this is possible. They need to share (within the limits of official secrecy) professional issues with their colleagues and managers to solve problems. Departmental Heads are encouraged to hold regular meetings with staff, not only to inform them of decisions taken by management, but to discuss work problems in their departments - which should encourage greater staff interaction. Representatives of other departments could also be invited from time to time to share information about the work in their departments. This should encourage a broader understanding of all ARMA's work, encourage career development, and facilitate staff transfers when this is necessary.

6.6.6. Training

6.6.6.1. Asset Tracing

ARMAs staff have received both the required standard civil service training (as new recruits to the agency) and extensive specialised training in asset tracing and management. This

has taken place through attendance at external training events, conferences and seminars, and also in Ukraine. Through attendance at these events, ARMA staff have benefited from the knowledge delivered by foreign asset recovery and management experts.

There is a considerable gap in the knowledge of ARMA's domestic partners on the opportunities ARMA can offer for international asset recovery cooperation. There is very little knowledge on the process of international asset recovery cooperation in general in fact. This gap needs to be addressed.

Recommendation: Further training events or international asset tracing seminars should be organised to specifically inform Ukrainian pre-trial investigators, prosecutors, in particular the PGO staff and the central authority of the opportunities for asset tracing using ARMA and possibilities to progress freezing, seizure, confiscation and asset sharing through engagement with the international asset recovery community.

6.6.6.2. Pre-seizure planning

As has been discussed earlier in this report, ARMA does not presently conduct, or participate in, pre-seizure planning (see section 6.2.3 above). Pre-seizure planning is a fundamental step in the process of managing assets, for the reasons previously indicated.

Pre-seizure planning training should be conducted not only for the relevant ARMA staff, but also to relevant law enforcement officials and prosecutors, with a view to enhancing the asset management capacities of ARMA. Furthermore, such training would increase the visibility of ARMA in asset management matters, as well and demonstrate the added value of bringing in ARMA at an earlier stage of the pre-trial investigation.

Recommendation: Specific and targeted training on the management of assets should be provided to ARMA and a selected group of law enforcement officials and prosecutors. These in turn could be trained to replicate the knowledge on the subject matter, thereby ensuring retention of knowledge and that skills are institutionalized.

6.6.6.3. Valuation of assets

The valuation of assets is currently conducted by law enforcement and prosecutors for the purposes of presenting a seizure order to court. On the other hand, when assets are transferred to ARMA for management, it outsources the valuation of the asset to the service provider responsible for the management of the asset. As a result, ARMA plays no significant role in the actual valuation of the asset. Having an understanding on how to value assets is an essential component of the pre-seizure planning, as well as relevant to ensure that the valuation generated by service providers are accurate and reliable.

Recommendation: ARMA should take steps to train its relevant staff on how to conduct valuation of assets for the purpose of pre-seizure planning, as well

as to ensure the accuracy and reliability of actions undertaken by the service providers managing seized assets.

6.6.7. Monitoring and Evaluation

It was unclear from the replies to the questionnaire what the process is internally of reporting to the Head on the performance of each department. Each Head has tasks assigned to them through the appraisal system, but beyond that it is unclear what their objectives are and how they are monitored on a monthly or other basis by the Head.

The replies to the questionnaire indicate that no operational and results-based monitoring and evaluation system has been developed yet. Despite this, there are detailed quantitative performance indicators which are reported in the Annual Report – including descriptions of the types of assets traced and found (apartments, vehicles, office real estate etc.), numbers of requests considered, numbers of seized assets transferred to management of the ARMA, and total values of assets managed, though systems to quickly assess values of seized assets seems to be work in progress. The Head of the Asset Finding and Identification Department described the strategic goals he had set for the year (2018). These included the development of financial analysis, improving international inter-agency and law enforcement cooperation, increasing OSINT knowledge, automation of systems and increasing access to registers and databases. The evaluation of performance in achieving some or all of these goals within the Department was still in the planning process.

There is transparency in the Annual Report on use of public funds, budgetary outcomes and any deviations from the planned budgetary dispositions. Presumably these figures have been generated for the purposes of the Annual Report but the leadership needs to see performance indicators on at least a quarterly or even monthly basis and a system of regular collation of key performance indicators needs to be introduced so managers can assess performance on an ongoing basis.

As yet there has been no system prepared to monitor the work of appointed managers.

ARMA also reports in its Annual Reports on the priority tasks it identified for itself for the year. These reports are general in nature.

The Head of ARMA reports on ARMA's activities to Parliament, where he can be questioned on the work of the previous year. The last time he went to Parliament the report was simply noted.

Additionally, there is regular reporting to the Cabinet of Ministers generally on their work and specifically on those ARMA initiatives that appear as actions in the Prime Minister's Action Plan.

Issues for inclusion in governmental action plans with proposed targets on which to report are firstly prepared within ARMA. ARMA's proposals for inclusion and proposed targets are generally accepted by the secretariat to the Cabinet of Ministers. Examples include target

establishment levels; sufficient financial resourcing; access to domestic databases; progress on the State Register of Seized Assets; drafting by-laws; and joining international cooperation networks focused on asset recovery.

The team has had the opportunity of considering two of these reports on governmental action plans to which ARMA has provided updates. The issues they cover relate to: ensuring the institutional and functional capacities of ARMA and ensuring efficient operations. Mostly they are able to report that targets are achieved, though targets such as the State Register of Seized Assets clearly take longer than one reporting cycle to achieve. The team was advised that the Cabinet of Ministers has not raised any issues on ARMA's reports under these plans.

Recommendation: In conjunction with other work recommended by the team to develop qualitative performance indicators, a simple system should be introduced of monthly reporting to the Head on workloads and key quantitative and qualitative performance indicators.

These reports should be analysed and considered on a monthly basis by the management team collectively to identify resource implications, trends and areas where performance needs further attention.

A system to monitor the work of appointed managers should be devised and implemented.

6.7. ARMA's Communication Strategy

In the 2017 Annual Report ARMA lists "ensuring effective communication with the media and society on achievements and problems" among its priority tasks. As noted above on the structure of ARMA, the Communications sector does not feature prominently in the structural arrangements of ARMA. This does not mean that communications and public messaging are not part of ARMA's work to achieve public support for its mission. Work on communications started on an organised basis last November. There have been press briefings by the ARMA Head, meetings with public activists, business associations and NGOs. ARMA has a website with news items on it, a Facebook account and a presence on Twitter. A number of broadly positive examples of media stories about ARMA were examined. The assessment team were informed that the events surrounding the Gulliver case made ARMA famous. The Communications sector in that instance reacted quickly with live internet feeds to relay the intimidation taking place to prevent the execution of a court order permitting ARMA to take possession of major business premises to manage the enterprise. That said, these initiatives appeared to us as rather *ad hoc* and were not based on any agreed formal and written Communications Strategy. A draft strategy had been prepared, as part of technical assistance provided by EUACI but this was not followed up by implementation.

At least one interlocutor stated that that NABU is perceived as more open to the media than ARMA. Some noted, rightly or wrongly, that 90% of the population are unaware of ARMA's existence. So there clearly is work to be done. Ultimately success in this area will depend on getting the messaging right, so action recommended earlier on identifying qualitative performance indicators which reflect the real contribution that ARMA makes to the criminal justice system is crucial as a starting point.

One interlocutor pointed out succinctly ARMA's dilemma in public relations: information provided on selling and managing assets "is a bit boring" for the general public. Such information is only about outputs which are technical, when the messaging needs to be about successful ARMA outcomes from this activity - for the criminal justice system.

One news item on the website highlighted assets being handed back to an acquitted defendant. This was hailed a success as the assets had not lost their value. Perhaps in the context of Ukraine this is quite important, however it is hard to see how this was a success story for the criminal justice system.

The Communications sector is instructed not to source the Finding and Tracing of Assets Department for stories, which is quite understandable when there is a compelling need for investigative secrecy during enquiries. That does not, however, mean that when investigations and prosecutions are concluded that ARMA should not be given public credit for its work on big cases, as has recently happened in a press briefing led by NABU. More of this type of "good news" communications should be prioritised. Consideration should therefore be given to relaxing the instruction to the Communications sector regarding the work of the Finding and Tracing Department could be relaxed, with appropriate safeguards.

Recommendation: Consideration should be given to the Finding and Tracing Department proactively engaging with the Communications sector at the appropriate time (when investigative secrecy is no longer relevant and there is no risk of prejudicing criminal proceedings) to identify their successes for selective media coverage, either jointly with investigators/prosecutors or separately. In either case the Legal Department should always be consulted and approve what ARMA can say publicly about completed cases.

Recommendation: The ARMA website should be developed further to better inform ARMA's internal and external partners of the added value ARMA brings. It should include information highlighting the role ARMA has played in successful cases.

Communication to law enforcement

Information provided to law enforcement by ARMA about asset recovery networks which can assist law enforcement through ARMA needs more proactive communication by the ARMA staff. One law enforcement body at least still considered that the lengthy process of formal mutual legal assistance requests in financial investigations was the only way to

obtain information from abroad in asset tracing. Knowledge of the CARIN network, for which ARMA is the national focal point, and its possibilities for quick information on asset tracing and recovery by law enforcement needs much wider dissemination by ARMA among domestic authorities investigating criminal proceeds. ARMA is also an asset recovery focal point for INTERPOL and regional asset recovery networks worldwide. These possibilities also need to be communicated more widely to law enforcement. More suggestions on awareness-raising and increasing knowledge on international asset recovery is contained in other parts of this report.

Recommendation: The communication strategy needs to include awareness-raising in the law enforcement and prosecutorial community by ARMA of the possibilities to obtain quick information and intelligence from abroad to assist asset tracing via ARMA's position as national focal point on asset recovery for the CARIN network and INTERPOL on asset recovery, as well as other asset recovery regional networks worldwide.

6.7.1. Rethinking and producing a communications strategy

In the round, on the communications issue, there needs to be a major re-think on messaging, on the creation of meaningful qualitative performance indicators, and on an ARMA mission statement. These documents should give the Communications sector more positive material with which to work in its promotion of ARMA.

Firstly, there needs to be a strong, relevant and useable strategy. Although the EUACI is providing much needed ongoing support to ARMA on this, as yet the results are not positive.

An appropriate written Communications strategy needs finalising quickly, bearing in mind the issues raised in this report. Efforts should be made to coordinate the ARMA strategy where possible with relevant strategies of law enforcement and prosecutorial authorities. Once the strategy is produced, it should be implemented, reviewed annually and updated, as required.

All staff should be made aware of the strategy. Ideally it might be launched in a meeting of all ARMA staff – perhaps involving stakeholder agencies as well - so ARMA staff can see that there is buy-in to the ARMA strategy by other agencies.

It is advised that this important work needs elevating in the ARMA structure. It would benefit from the appointment of a more highly graded communications manager (at least head of division level) to lead the Communications sector, preferably someone with media experience.

The job description for a more senior Communications manager would need careful design. The role should be articulated as the provider of advice to management on the media implications of all ARMA's work. The objective would be to raise ARMA's public profile appropriately - always bearing in mind legal limitations on information that can be disclosed.

As part of this work the Communications Manager could be tasked with examining how other Asset Recovery Offices abroad successfully handle their media relations (without creating legal difficulties for their agencies) and make recommendations to the senior management team. He or she should also identify opportunities for involving the Public Council more frequently in promoting ARMA and propose strategies for communicating more effectively with the regions/oblasts. The Communications Manager at whatever level should be invited to Senior Management team meetings when strategic issues are being discussed that have implications for ARMA's public profile.

It was encouraging to hear that the Communications sector was already thinking about the media coverage that should accompany the launching of the State register of Seized Assets. This event should be approached as a major media opportunity for showcasing ARMA's role in the system. The mission statement and the modified performance indicators ideally should all be in place by that time.

The team considers that the public profile of ARMA need not be carried entirely by the Head. Those who have had media training know that it can be a steep learning curve, particularly for lawyers. None-the-less, the Head should undertake some media training if he has not already done so. Some of the other senior staff who are identified as good communicators should be media trained for future deployment in media events, interviews and presentations.

Recommendations: A written communications strategy should be finalised and implemented quickly, in conjunction with the development of ARMA's mission statement and qualitative performance indicators which demonstrate the value of ARMA in the criminal justice system. Efforts should be made to coordinate this strategy with partner agencies. It should be reviewed annually and updated as necessary. The messaging should focus on ARMA successes and contribution to the criminal justice process.

Consideration should also be given to the appointment of a more highly graded professional Communications Manager to advise ARMA leadership on its public profile. As part of this new role, the Communications Manager could be tasked with examining how other Asset Recovery Offices abroad successfully handle their media relations and make recommendations to the senior management team. He or she should also identify opportunities for involving the Public Council more frequently in promoting ARMA and propose strategies for communicating more effectively with the regions/oblasts.

The Communications Manager should be invited to attend Senior Management Team meetings when strategic issues are being discussed which may have an impact on ARMA's public profile and communications strategy.

The ARMA head and other staff with good communication skills should undertake media training so a wider range of ARMA staff can be deployed in

media events, interviews and presentations to promoter ARMA initiatives and success stories.

6.8. External Perception of ARMA (including Public Perception)

As noted in other parts of this report, the strong message that the assessment team received from several interlocutors was that ARMA's visibility is still low with the public. In practice this perception has not been tested in any scientific way, as no surveys on the impact of ARMA have yet been commissioned.

There remains still significant passivity in some parts of law enforcement and the Judiciary towards ARMA – particularly in referring cases to ARMA in the way the ARMA Law intends. This problem can and should be addressed by more outreach and direct contact by ARMA with the relevant bodies. It is advised that individual members of the leadership team with acknowledged good communication skills are tasked with taking this necessary work forward.

On overall confidence and trust in ARMA, the Public Council articulated what the team assumes to be the case – that ARMA is about getting the proceeds off major criminals and therefore should enjoy public support as it is a good news" story. Better communication of ARMA's successes is crucial to achieving such an outcome and several recommendations have been made in this report to improve messaging.

Broadly the Public Council appeared to think that ARMA had made a reasonable start and that it fills an important space in the criminal justice system that needed to be filled. They have had access to legal documents prior to adoption and publication and to policy documents. Their comments have sometimes been taken on board and, where they have not been accepted, Council members have received motivated responses. While the relationship between ARMA management and the Council is still developing, it is characterised by the Council as constructive. It now can observe the selection process of ARMA staff.

It can also perform a valuable role as mediator between ARMA and those who have had their assets frozen.

It can and does raise public awareness about ARMA's role. It appears to be positive about the creation of ARMA, recognising its centrality in the system to fight corruption and to deprive all major criminals of their illicit assets. The public Council has the potential to help shift public perceptions of ARMA and confidence in the criminal justice system as a whole.

Recommendation: To increase levels of public support for the work of ARMA the team encourages greater engagement by ARMA management and the ARMA Communications sector with the Public Council, particularly on opinion-forming in respect of the vital role ARMA is playing in rebuilding public confidence in the criminal justice system.

A frequently expressed view from most interlocutors was that no one wants another law enforcement authority in Ukraine. This can be interpreted as meaning that some fear, or do not want an ARMA with more intrusive powers, with the potential at least for abuse and/or corruption. That view would perhaps find support with Transparency International and the NGO community. It is noted in this context, with approval, that ARMA fully consulted Transparency International on the proposed amendments to the ARMA Law and appears to have taken on board some, if not all, of their concerns. In practice therefore ARMA has been quite transparent about its thinking in this process.

It is very important that ARMA is seen as effective and is trusted by the public and international counterparts.

It will never achieve public trust until the public understand its role better and the positive impact it is making on asset recovery, particularly in respect of those that steal State assets. The Communications Strategy discussed above, together with collaborative work on a multi-agency basis on asset recovery, as proposed, is, in our view, the way forward on building public trust in ARMA and all criminal justice system institutions.

ARMA is developing its international contacts in an appropriate way. It might be helpful for the ARMA leadership to solicit feedback from international counterparts as to how its representatives perform and are perceived in international forums, as well as the feedback they receive on the speed and quality of information they provide to their counterparts.

Recommendation: To assist and inform the further development of ARMA's public profile it is recommended that a public survey on the impact of ARMA is commissioned in the coming months and is repeated after two years to identify changes. ARMA is advised to solicit feedback from its international counterparts on the performance of its officials in international forums. There should be further outreach to the investigating judges and courts which have yet to make references to ARMA, as detailed in the recommendations beneath on independence and autonomy.

6.9. The autonomy of ARMA.

6.9.1. To what extent has the legal framework ensured ARMA's institutional and operational autonomy?

Firstly, it should be recognised that it is never easy to articulate fully in legislation (or in other documents, like Codes of Practice) the relationships between government and those public bodies (funded by government) which are set up to exercise legal functions independently and autonomously. Difficulties in understanding the relationships between autonomous public officials and their responsible Ministers is not unique to the Ukrainian system.

One of our English colleagues pointed out that, in England and Wales, the Director of Public Prosecutions (DPP) is "superintended" by the Attorney General (AG), who is a lawyer,

member of Parliament and a Minister who attends Cabinet. The DPP is an appointed public official for a term of 5 years. The DPP and his/her department are independent in their prosecution decision-making in most cases without any reference to or involvement of the AG. None-the-less the Attorney General has the right to be informed of sensitive decisions being considered by the DPP or policy developments for which he may be accountable to Parliament. No English law fully regulates or articulates what superintendence means or how the delicate relationship between the two officials should be managed. These issues are worked out by conventions and Codes of Practice, which have been built up since the position of an independent DPP was created in 1880, and they are still developing.

In practice superintendence by one public body or official of another autonomous public body or official is a feature of almost all systems. For the relationship to work and the relationship to enjoy public confidence, both sides need to understand where the boundaries lie.

The second general point is that the true nature of the delicate relationship between governmental bodies and public legal bodies subordinated to them cannot always be ascertained by simply reading legal texts and public documents.

6.9.2. The legal framework

The ARMA Law created the National Agency as a “central executive authority with a special status which ensures the formation and implementation of the state policy in the field of tracing and finding of assets, which can be seized in criminal proceedings, and/or management of the assets, which have been seized or confiscated in criminal proceedings.”

Art. 2(4) ARMA Law provides that the legal framework for the National Agency’s activities comprises the Constitution of Ukraine, international agreements consented to be binding by the Verkhovna Rada of Ukraine (the Parliament), this Law and other Laws, as well as other regulatory legal acts adopted thereunder.

The “other Laws” which may impact on the activities of central executive authorities are the Constitution, the Law on Central Executive Bodies/Authorities, the Law on Cabinet of Ministers and the Law on Public Service.

Importantly in this context, art. 2(5) ARMA Law states “The Law of Ukraine on Central Executive Authorities, other laws that regulate the activities of the executive authorities as well as the Law of Ukraine On Public Service shall apply to the National Agency and its personnel *to the extent that does not contradict this Law*.”

We have assumed therefore that art. 2(5) ARMA Law is interpreted to mean that, in Law, obligations and duties of ARMA set out in its own Law are paramount.

According to art. 2(2) ARMA Law, “the National Agency, within the framework set forth by this Law and other laws, shall be accountable to the Parliament and is “**controlled by** and **responsible to** the Cabinet of Ministers”. Art. 2(3) ARMA Law states “the National Agency

shall be **organized by** the Cabinet of Ministers in compliance with the Constitution, this Law and other laws of Ukraine”. This provision also specially authorises the Head of the National Agency to represent the National Agency at the Cabinet of Ministers. This enables him to speak on ARMA issues at Cabinet himself.

The language in the ARMA Law on the role of the Cabinet of Ministers in ARMA’s work seems compatible with the general statement in art. 21(2) Law on the Cabinet of Ministers of Ukraine, which provides that Ministries and other central executive bodies are **accountable to the Cabinet of Ministers of Ukraine and report to and are controlled by the Cabinet of Ministers of Ukraine.**

So far, there have been no legislative changes to the ARMA Law proposed by Ministers or Parliamentarians to strengthen or weaken the independence of ARMA. As noted, ARMA itself is in the process of proposing a package of legislative amendments mainly to improve its operational effectiveness. There appears to be government support for such a package, as preparation of legislative amendments for ARMA appears in the Prime Minister’s Action Plan.

The team has seen one iteration of the draft legislative package. It is notable in the context of this chapter that only one of ARMA’s numerous proposals addresses ARMA’s independence and autonomy. This relates to the Head of ARMA’s current inability to select his own deputies. This issue is discussed beneath.

More general details relating to issues of “control” by the Cabinet of Ministers of central executive bodies are broadly provided in the Law on Central Executive Bodies. There appear to be distinctions drawn in this regard under this Law between different types of central executive bodies. Some central executive bodies – those (unlike ARMA) without Special Status work through a coordinating Minister. The activities of these bodies are more overtly **steered and coordinated** by the Cabinet of Ministers through their respective coordinating Ministers, who speaks for them in Cabinet.

Chapter III of the Law on Central Executive Authorities is said to apply generally to all Central Executive bodies, including ARMA, in so far as Chapter III does not contradict the ARMA Law.

Chapter III of the Law on Central Executive Authorities is not easy to construe. It is unclear to us whether all those provisions which **do not relate specifically to Central Executive Authorities that are steered and coordinated by the Cabinet of Ministers through respective Ministers** apply directly to the control of ARMA, which has special status.

While art. 18 of this Law does not apply directly to ARMA, it is instructive to see the detailed involvement of **coordinating** ministers set out in it in respect of the central executive bodies they control, including:

- Defining priority areas of work and ways for delivery

- Issuing orders and assignments binding for central executive bodies on issues within the area of activity of the central executive body
- Taking decisions about auditing the activity of the central executive body
- Determining the procedures for information sharing between the ministry and central executive body, and frequency of submission.

The role of the Minister (in the case of ARMA, the Prime Minister) is not set out in the ARMA Law.

It was unclear if art. 19 of the Law on Central Executive Bodies relating to the position of Heads of Central Executive Agencies is of general application or limited to Heads of Agencies that have a coordinating Minister. There is in Article 19 an exhaustive list of issues on which the Heads of Central Executive Bodies report to Ministers. The assessors were advised that some of the obligations relating to central control in Chapter III Law on Central Executive Bodies are followed by ARMA (where they do not contradict the ARMA Law). It was advised that the only practical problem that had arisen from these provisions was the Head of ARMA's inability to select his own Deputies. This is addressed separately.

Though this has never happened, it appears from A.23 in Chapter III Law on Central Executive Bodies and under A.21(6) Law on Cabinet of Ministers that, in the absence of specific provisions to the contrary in the ARMA Law, in theory an ARMA Order or by-law could be repealed in full or in part by the Cabinet of Ministers.

Recommendation: To further strengthen ARMA's operational autonomy it should be clarified in the ARMA Law that ARMA orders and by-laws cannot be repealed unilaterally by the Cabinet of Ministers.

The assessors were also advised that the dismissal provisions of the ARMA Head in the ARMA Law are exhaustive and no dismissal procedures applicable to Heads of Central Executive Bodies under other legislation can be applied to the ARMA Head.

Thus, as noted, it is difficult to determine by simply reading the legislation what degree of oversight or steering role (or indeed other proactive involvement) the Cabinet of ministers has in the ongoing work of ARMA. It was, for instance, unclear what degree of reporting/consultation there had been with the Cabinet of Ministers, if any yet, on the content of the proposed package of ARMA Law amendments. Therefore, in law, the precise parameters of the "control" of ARMA (and ARMA's Head) by the Cabinet of Ministers are hard to pin down.

Whatever is the formal legal position in respect of ARMA about reporting to Ministers and the format of such reports, the team was told by ARMA staff that there is in practice regular and quite extensive reporting to the Cabinet of Ministers secretariat on ARMA activities, which is driven by the Minister rather than ARMA.

6.9.3. The Ukrainian legal framework of control of central executive bodies in the context of an Asset Recovery and Management Office

Most offices with similar functions to ARMA in other countries are embedded in law enforcement or prosecutorial bodies, and not within governmental executive structures, where the Head can attend meetings of the Cabinet of Ministers and works under the Prime Minister. In the Ukrainian situation it is therefore inevitable that ARMA will face questions (both domestically and from potential international counterparts) about its real operational independence of government.

A number of domestic interlocutors commented that ARMA is perceived by some parts of the general public as too close to government.

The team simply note here that if foreign authorities with which ARMA wish to cooperate read the detailed provisions of the Law on Central Executive Bodies (without appreciating such distinctions as there may be between central executive bodies generally and those with special status), they may conclude, perhaps wrongly, that Ministerial control over the work of ARMA is not insignificant.

The team consider that ARMA should propose a document or Code of Practice, which should be endorsed by the Prime Minister on behalf of the Government for publication, including on its website. It should briefly explain ARMA's relationship to government and the Cabinet of Ministers, emphasising that in policy-making, as well as operational work in asset recovery and management, ARMA works independently of government.

Recommendation: ARMA should prepare a brief Code of Practice which should be endorsed by the Prime Minister for publication, explaining the legal structure within which ARMA works and which emphasises, that in asset recovery and management policy-making and operational matters, it is independent of government. For more transparency in respect of of this relationship this Code could usefully explain the areas in which ARMA is expected to make periodic reports to government as a publicly funded central executive agency with special status.

Consideration should be given to an addition to the ARMA Law requiring such a Code of Practice, so that the Code in time will become a statutory Code.

Notwithstanding the above recommendation, the team has examined whether the legislative framework which introduced this institutional placement has created or potentially creates practical obstacles to ARMA's independence. Particular consideration was given to the legal formulation "controlled by and responsible to the Cabinet of Ministers" which is contained within the ARMA law, what this is thought to mean and how it is interpreted in practice in Ukraine.

6.9.4. What degree of control does the ARMA Law give to the Cabinet of Ministers on the appointment of the Head of ARMA?

Firstly, art. 4 ARMA Law specifies: “the Head of the National Agency shall be appointed by the Cabinet of Ministers as proposed by the Prime Minister of Ukraine, who comes up with a candidate for the position selected on the basis of results of competitive selection in compliance with this law.”

The Prime Minister’s nomination appears to be a formal requirement only, as it follows on from a heavy competitive selection process. The ARMA Law provides detailed requirements for the steps in the selection of the Head, which includes preliminary tests on competences for the position, the appointment of a competition commission comprising persons of high public esteem, who are not State or local officials, but have experience in criminal justice or anti-corruption activities. These include persons determined by the Parliament, Minister of Justice, and key ARMA stakeholders (including the Prosecutor General, NABU, the FIU and the Ministry of Finance).

The interview of the selected candidates is open to the media. There is no criticism of the fairness of this selection process, which appears capable of ensuring that an experienced professional is chosen by voting in the competition commission. The Prime Minister only proposes for appointment the candidate that received the most votes in the competition commission.

The language of art. 4 ARMA Law (appointment of the Head of the National Agency), properly interpreted, appears to leave no room for discretion of the Prime Minister to propose someone else once the open competition has produced a winner. Thus, there appear to be legal safeguards to prevent the PM proposing someone other than the winner of the competition in the ARMA law, thus ensuring that ARMA is led by a professionally qualified person.

The Head serves one term of 5 years. The assessment team heard no criticism of the professional competence of the Head of ARMA.

The ARMA Law does not foresee the possibility of a sitting Head applying for a second mandate, which seems sensible in the domestic context. The current Head supports the one term approach.

6.9.5. Does the ARMA Law give the Head sufficient independence in choosing all his staff?

The answer is generally yes. However, as noted above, it appears that art. 7 ARMA Law does not ensure that in practice the Head selects his two deputies in the same way that the Director of NABU independently selects and appoints his own deputies. The Head of ARMA only performs the technical function of appointment in their cases. The selection of Deputies is by the Commission of the Senior Civil Service. Given that the ARMA Head

(uniquely in the Ukrainian system, it is understood) bears personal responsibility for the work of ARMA, consideration should be given to empowering him to both select and appoint his own deputies, as is the case for the Director of NABU.

Recommendation: The ARMA Law should be strengthened to ensure that the Head of ARMA can independently select and appoint his own deputies.

6.9.6. Addressing the Public Perception of ARMA as Being too Close to Government.

The reported perception that ARMA is too close to government is a difficult perception to shift. The team notes that such a perception can undermine public confidence in an agency which should enjoy great public support, given that its mission is to deprive criminals of their proceeds.

The current Head is a former Deputy Minister of Justice. He clearly has all the professional competencies that are required to undertake this role. Any perceptions that exist of closeness to government may be harder to shift where a former Minister is its head. Thus, it seems to us that this issue may deserve further reflection before the end of the current incumbent's term, without in any way implying any criticism of the first Head or his staff in this regard.

One way of addressing this perception could be to consider the merits of a rule which would disallow persons who have been Ministers or Deputy Ministers, or possibly MPs, from being candidates for the post of Head. This may limit the pool of applicants but would leave it open to a potentially wider field of lawyers in private practice, academics and possibly former SAPO prosecutors.

There should be public consultation on the merits of this modification, at the appropriate time.

Recommendation: To reinforce the independence of ARMA from politics and government, it is advised that there should be public consultation on the merits of disallowing Ministers, former Ministers and MPs from being eligible to be candidates in future competitions for the position of Head of ARMA. If there is support for such a change, it should be made before the competition for the next Head.

6.9.7. The degree of control the Cabinet of Ministers has over the Work of ARMA

As noted, ARMA advised us in their replies that neither the Government nor the President had issued any legal acts or decisions that would undermine ARMA's effectiveness or independence. Moreover, interlocutors repeatedly asserted that the Cabinet of Ministers cannot interfere operationally with the work of ARMA and that the Cabinet of Ministers understands that this is the position. There is no information or evidence that ARMA had

ever acted in any way that was outside their professional legal remit at the behest of others in government, or otherwise.

6.9.8. Safeguarding Against Governmental Operational Interference of ARMA Activities

The provisions of art. 9 ARMA Law (functions of the National Agency) formally insulate ARMA from being requested to act operationally at the direction of the Cabinet of Ministers. ARMA can only take measures on finding, tracing and evaluation of assets upon requests from an investigator, prosecutor or court (investigating judge). This should be seen as an important legal safeguard. Should ARMA be granted at any time in future the additional capacity to act on asset-tracing and finding on its own initiative, then further safeguards would need to be built into the Law to prevent any attempt at governmental operational interference in respect of such new powers. It is understood that such powers to act on its own initiative are not being sought at this time.

While the team accepts the assurances of the authorities that there has been no attempt to interfere operationally so far by either the Cabinet of Ministers or the President, this is no guarantee that it may not happen in the future. It is notable that there is no statement in the ARMA Law which formally articulates, that in its operational work, the Head of ARMA or his staff cannot take orders from any other person, including Ministers. This is unfortunate as there is such an articulation in art. 12 (Control over Activities of the National Agency) in respect of the Commissioners appointed to conduct annual external assessments of ARMA. The art. 12 independent assessments are discussed separately beneath. It suffices here simply to note that the nominated Commissioners are required under art. 12 ARMA Law to “act independently” and the provision elaborates on this through an explicit requirement that they “shall not fulfil any orders or instructions given by any person” – presumably to guard against any attempt to dictate a particular outcome.

Whether or not ARMA is granted powers at some point in the future to act on its own initiative, it is advised that the operational independence of ARMA needs now to be articulated clearly in the ARMA Law, particularly as under art. 2(5) ARMA Law all other Laws should apply to the extent that they do not contradict the ARMA Law. A new provision in the ARMA Law on operational independence, and the issuing of the public Code of Practice recommended above (referring to art. 2(5) and the proposed new provision on independence in the ARMA Law), endorsed by the Prime Minister, may together go some way to allaying domestic or international concerns about ARMA’s operational independence, however closely it has to work with government under the arrangements Ukraine has made for the Agency.

Recommendation: The ARMA Law should be amended to underline ARMA’s operational independence by inserting into art. 9 language which mirrors the provisions of art. 12(1) (in respect of the commissioners of external control): In the exercise of all ARMA’s operational functions the Head of ARMA and ARMA staff act independently and should not receive or fulfil any orders, or

instructions from Ministers or persons acting on their behalf, in respect of ARMA’s operational activities”.

6.9.9. Control Through Annual Independent External Assessment

It should be noted that the Head of ARMA bears personal responsibility for all the work of ARMA under art. 7 ARMA Law. While in most countries this is not made explicit in Laws, most Heads of Agencies usually do bear personal responsibility when major mistakes are made and resign, or are asked to resign. Therefore, there is not much to be gained in practice by removing this language from art. 7.

The only direct area of control specifically granted by the ARMA Law to the Cabinet of Ministers is in respect of the appointment of one commissioner for the annual independent external assessments of ARMA which are provided for in art. 12 ARMA Law and which could lead to the early termination of the Head of ARMA’s contract under art. 3(4).

Art. 3(4) ARMA Law provides that mandatory termination shall occur for a range of conventional reasons, including health grounds, legal incapacity and criminal conviction, which are unobjectionable. More significant is art. 3(4), paragraph 9, which appears to require automatic termination on the ground of the “availability of conclusions of an external assessment of the activities of ARMA in accordance with art. 12 of the ARMA Law disclosing inefficiency of the activities of the National Agency and inappropriate discharge of duties by the Head”. It is unclear whether there is any discretion allowed in relation to termination of the Head in the event of a negative report. In English “shall” is mandatory. It concerns us if there is no discretion on the issue of premature termination of the powers of the Head in the event of any report with adverse findings.

The independent assessment scheme under art. 12 ARMA law comprises 2 components – a professional external audit and an inspection by a nominated “Commission of External Control”. It is this latter inspection report that could lead to early termination of the Head’s contract. In the following section, the professional element of the annual assessment will be examined.

6.9.10. Professional External Audit

It is assumed that the external auditors would first conduct their professional external audit before the work undertaken by the Commission for External Control envisaged by art. 12(1) ARMA Law.

The form and content of the professional audit are required under the Law to be approved by the Cabinet of Ministers. This does not mean that the Cabinet of Ministers decides on the issues to be covered. The expectation is that the proposals will come from the professional auditors to the Cabinet for approval. The interlocutors with whom this was discussed saw this as a formal requirement rather than anything else. That said, the issue has not been tested as there has been no terms set yet for a first professional audit. The

question can be asked, if approval by the Cabinet of the form and content of the audit is formal only, why is it required to be in the Law?

The team would advise that consideration should be given to removing this requirement from the Law as it raises the possibility at least of the Cabinet of Ministers considering themselves what elements should be included in the audit. The form and content of the external audit should be decided by the professional external auditors in consultation with the Head of the ARMA. The final decisions on content should remain with the external auditors. If necessary the finalised terms of the audit could be passed to the Cabinet of Ministers for information only – so as to further distance the Ministers from the operational issues which the audit will involve.

Recommendation: The terms of the professional external audit as part of ARMA’s annual assessment should be decided by the appointed auditors in consultation with the Head of ARMA. The form and content of the audit should not need Cabinet approval. If necessary, the final content of the audit plan can be sent to the Cabinet of Ministers for information only.

6.9.11. Commission for External Control

The second component of the independent external assessment is the work done by a commission of external control. It is assumed that this commission will have access to the professional auditor’s report, but this is not clear from the Law.

The ARMA Law requires that the Commissioners should be 3 professional persons with 10 years relevant experience in aspects of the work which ARMA involves and who have perfect business reputations. One member of the Commission should be nominated by the President, one by the Parliament and **one by the Cabinet of Ministers** (which as noted above is the only direct power in the ARMA Law given to the Cabinet of Ministers)

It is required that the Commission should act independently and, as noted above, not to fulfil any orders or instructions from any person. That said, the simple requirement for political nomination of the commissioners raises immediate questions as to how independent such a report might actually be, regardless of the legal requirement upon the commissioners not to take instructions.

There are provisions in the ARMA Law allowing the Commissioners access to ARMA documents (subject to restrictions on documents covered by the secrecy Law) and permitting confidential interviews with ARMA staff and other ARMA stakeholders. Their conclusions are to be attached to the ARMA Annual Report.

There appears to be no defined methodology for this assessment. In theory, the assessors are free to make up their own methodology without reference to the Head of the Office or anyone else.

The authorities have advertised these positions. Presumably each of the 3 bodies will nominate its representative from a list of applicants drawn up by their secretariats.

The team considers that this component of the external assessment needs further thought in the context of the specialised work ARMA performs. Even if 3 people can be found with the necessary specialist competencies, the lack of any agreed methodology for the conduct of the assessment seems to allow for worrying subjectivity of assessment. It is all the more concerning that in theory a poorly argued and negative assessment could lead to the termination of the Head's term. The way this assessment is currently constructed could be interpreted as a potential instrument of control.

In any event, no candidates have applied so far to undertake the advertised functions, which are understood to be unpaid. The Cabinet of Ministers Secretariat had no alternative solutions if no one came forward to carry out the assessment.

An external assessment by professional auditors is very sensible and should go ahead, regardless of whether there are suitable commissioners available to perform their statutory external control function.

The procedure for the external assessment by the commission for external control should be reconsidered. If it is still thought to be an essential component of the annual external assessment, then workable amendments to the procedure should be proposed. These should include an agreed and transparent methodology for the assessment with clear, objective benchmarks set, against which assessments can be made. Adequate funding needs to be provided to attract professionals of the appropriate calibre.

If this is still not sufficient to attract the right people, then this aspect of the control procedure should be removed from the legislation, and that reliance should be placed exclusively on an annual professional external audit, but without the possibility of automatic termination of the Head where there are negative conclusions.

The Head should always have the opportunity of rectifying issues identified in an audit report, and, where this is possible without compromising security, responding publicly - perhaps in an open Parliamentary hearing - to issues raised in the professional audit. There may be a case for **consideration** of early termination of the Head's powers in the event of 2 or more negative annual assessments by the external auditors.

If the Commissioners remain also as part of the external assessment process, the same approach should be considered in respect of negative reports by them, i.e. consideration of termination only after 2 or more negative reports based on objective criteria.

Recommendations: The external audit by professional auditors should go ahead as soon as practicable. The assessment by the Commission for external control should be reconsidered.

A clear and transparent Methodology should be prepared for the Commissioners with agreed benchmarks against which performance can objectively be assessed. Ideally this should be underpinned by amendments to the ARMA Law.

Adequate funding should be provided to attract persons of the appropriate calibre to act as commissioners.

A negative assessment should not automatically lead to the early termination of the Head, who should be given the opportunity to rectify problems identified.

If, after these steps are taken, still no suitable candidates apply to be commissioners, this component of the external assessment should be abandoned and the professional audit should be the sole basis of external assessment. If it is necessary to consider termination of the Head's powers this should only be on the basis of 2 or more external assessments with negative findings.

6.9.12. Art. 12(2) Public Control through the Public Council at the National Agency

As noted, art. 12 para 2 ARMA Law creates a public oversight Council, comprising 9 persons elected by online voting and approved by the Head of ARMA. The Council's role includes assisting it to become more effective and ensuring its autonomy.

The Public Council is an important independent observer of how the relationship between government and ARMA is being handled, and whether the boundaries between government and an independent ARMA are understood and respected. Whether the Council would always be in a position to identify attempts to interfere with ARMA's operational prerogatives may be debatable. However, it could be a useful ally and public advocate for ARMA against unwarranted interference by the political authorities - if actions were proposed by Ministers or Parliament to weaken ARMA.

At least one member of the Public Council considered that support for ARMA by the government was low, by which it can be understood - low in terms of resourcing, which impacts on ARMA's autonomy and independence.

6.9.13. Other Legal Safeguards

Other legal safeguards to the work of ARMA may be found in the Constitution, notably in art. 129(1), which ensures that court orders should be obeyed. This protection is particularly relevant for arguments in respect of court decisions on transfer of property to ARMA. In this context, the team is aware of an order of an Administrative Court Judge purportedly prohibiting an order of an investigating judge transferring property to ARMA in

a criminal investigation. This and other legal challenges are discussed beneath in the section dealing with how the legal framework is working in practice.

The extent to which ARMA's Institutional and Operational Independence is ensured by the Legal Framework

The legal framework in which the Agency sits is complex and there are many ambiguities. It is encouraging that at least the ARMA Law appears to prevail over other legislation that might more overtly interfere with its operational independence. Art. 9 of the ARMA Law should be amended in the way that is set out above, and a published Code of Practice (ideally a statutory Code of Practice), endorsed by the Prime Minister, as recommended, would further articulate the necessary boundaries between ARMA, in the conduct of its operations, and Government. Together these changes could go some way to reassure the public and foreign counterparts that these boundaries are understood and respected. The other recommendations made in this section would also add further stability to the legal position of ARMA and strengthen its independence.

6.9.14. Ensuring ARMA's institutional and operational autonomy in practice

ARMA is a new authority empowered to perform some activities that the police, prosecutors and possibly the Court Executive Service might otherwise perform. Thus, some actors in the system may well consider ARMA and its autonomy to be a threat to their institutions.

The very existence of ARMA should be seen as a threat to corrupt officials and other criminals who benefit from economic and organised crime.

There is therefore an incentive for ARMA's targets and other opponents to challenge its powers and legal decisions taken under the ARMA Law where possible.

Opponents of ARMA can also "interfere" with ARMA overtly or passively - through non-cooperation with ARMA (particularly by not referring cases to ARMA which are within its remit). These practical issues are considered beneath.

6.9.14.1. Physical Intimidation

ARMA staff have suffered physical intimidation whilst seeking to enforce a court order in its favour in one case and through the lack of police or other law enforcement support for ARMA in these circumstances. There is clearly a need (if ARMA's independence and autonomy is to be upheld and preserved, and its staff are to be retained) for ARMA to be able to call on law enforcement to support and protect its staff in the execution of court orders in its favour.

Recommendation: Working arrangements should be developed quickly, and if necessary supported by appropriate legislative amendments, to ensure that

ARMA staff are speedily and properly protected by law enforcement in the execution of orders in its favour where this is necessary.

6.9.14.2. Judicial challenges

Firstly, legal challenges are inevitable in any system based on the rule of law. They should not necessarily be seen as perverse or interpreted as interference. From the written material provided to the team before its fact-finding visit in August, and during that visit, it learned of the judicial challenges to ARMA's work up to that time.

The first real legal challenge was earlier this year when, as noted above, a Kiev District Administrative Court Judge "prohibited" (and effectively tried to overturn) a 2017 ruling by an investigative judge in a criminal investigation by which property owned by the suspect and the accused (a former minister) had been seized and transferred to ARMA. The ARMA naturally appealed this purported ruling by the Administrative Court Judge. The "interference" with this case by the Administrative Court judge was also referred to NABU. The team was unclear whether there was an allegation of corruption connected to the decision of the Administrative Court judge. It is understood that a criminal proceeding is being brought against the judge solely for an offence of entering an unlawful judgment under, a provision of the Criminal Code which GRECO criticised in its recent report (and which it recommended should be repealed). In any event, the issue in relation to the challenge to the order of the investigating judge in ARMA's case is said to be resolved now. The purported decision of the Administrative court Judge has no "precedent" value so far as the Ukrainian legal system is concerned.

That said, some 20 other legal challenges were advised as still being outstanding. ARMA seemed relaxed about most of these legal challenges. They considered many of them to be of a technical nature and likely to be settled in due course or ultimately not pursued.

There has recently been a potentially more serious development: a petition to the Constitutional Court by 56 Parliamentary Deputies challenging the fundamental asset management powers of ARMA under the ARMA Law. It is currently not clear as to the motivations of these Deputies. ARMA has, quite rightly, publicly announced that if this petition is taken up by the Constitutional Court it will be argued vigorously by ARMA. Whatever the legal merits of this petition, it is worrying that the challenge comes from Parliamentarians in respect of legislation the Parliament has so recently passed.

Based on a summary of the grounds in the petition it is evident that any of the issues raised in it could just as easily be raised in other criminal or civil proceedings when property is seized, and the legality of these provisions could reach the appellate courts by that route. It seems that ARMA should generally be able to contest the issues raised in the petition by reference to international practice and the existence of ECHR jurisprudence, which is well documented in this field. If the Constitutional Court is able to selectively pick issues from the petition, the one that they might decide to take is the constitutionality of the provisions allowing ARMA discretion to **sell or manage** seized assets.

On the positive side, it could be advantageous to ARMA in the long run to face such a constitutional challenge now and win it – to ensure that there is greater legal stability for their work going forward. But this petition only serves to underline that ARMA may still have opponents in positions of prominence and that the legal basis for some parts of ARMA’s powers in relation to asset management will remain uncertain if the Constitutional Court accepts this petition.

6.9.14.3. Non-Cooperation/delay in responding to ARMA issues

Art. 10(1)(2) ARMA Law provides for ARMA access to an important information source in ARMA’s work – the Unified Register of Pre-Trial Investigations. It would appear that access to this register was a contentious issue when this carefully worded provision was passed. It allows ARMA access “to the extent provided by a common order of the PGO and ARMA.” The ARMA has been operational now for approximately a year and it is understood that there is still no progress with a common order. Whether this is because of bureaucracy rather than obstruction is unclear. The ARMA naturally want to conclude this issue, but consider the PGO is not cooperating. This is not an issue that the Head of ARMA can raise formally in the Cabinet of Ministers for resolution as the PGO is entirely independent of the Cabinet of Ministers.

It is unclear though why the Cabinet of Ministers cannot enquire about progress on art. 10(1)(2) ARMA Law requiring a response from the ARMA Head, which will set out the progress achieved so far - with a view to a deadline possibly being set by the Cabinet of Ministers for conclusion of the statutorily required common order. While not making any formal recommendation on this, it is advised that this approach should be considered.

The team was also advised of an issue with the State Treasury Service (STS), that has been live since March this year. The STS is part of the Ministry of Finance. The assessment team were told that the STS flatly refuses to execute a court ruling requiring the transfer of physical evidence (UAH 505.7 million in cash) from its custody to ARMA for management. On this issue the team was originally told that ARMA considered it lacked leverage, which appeared strange as the secretariat to the Cabinet of Ministers can coordinate issues between Ministries and State Executive Bodies with special status like ARMA. The Head of ARMA is now engaging bilaterally with the Minister of Finance on this. If the Head of ARMA does not make progress with the Ministry of Finance on this issue bilaterally, he should consider other options. If there is a legal procedure which can be invoked to compel the Ministry of Finance to follow the Court order then consideration could be given to invoking it. Before doing so it would appear sensible to elevate this issue to the Cabinet of Ministers for discussion and resolution to avoid an embarrassing court procedure brought by ARMA against a Ministry.

6.9.14.4. Judges and Courts

It was disappointing to note from the statistics provided that so far Courts (investigative judges) made no references under art. 9(3) ARMA Law to ARMA in 2017 and only 1 reference in 2018. Whether this is because of lack of effective outreach so far by ARMA to courts regarding their mandate or institutional resistance to ARMA by the courts/investigative judges was unclear. It was also unclear whether this strategic issue had been collectively discussed by the top management team.

It would appear that a fresh initiative to raise awareness of ARMA in the courts needs launching. It is advised that the issue is first discussed together by all the senior management team and a strategy is collectively decided upon. Perhaps, as noted earlier, one of the senior management team could be given thematic responsibility for developing a new strategy, or senior managers be given geographical responsibilities for court outreach. As part of this further initiative, ARMA should involve its best communicators and possibly members of the Public Council.

In the longer term the role of ARMA should be a standard item in all training for investigative judges and courts. If there is no one already tasked with this, someone in ARMA should be given responsibility for (or have as an objective/task on which they are appraised) liaison with those responsible for judicial training to facilitate this outcome.

Recommendation: The ARMA management team should consider collectively how best the lack of references to ARMA by the courts/investigative judges should be addressed.

A fresh strategy for dealing with this situation should be prepared. This should involve further outreach by ARMA staff with acknowledged good communication skills. It should also include liaison with those responsible for judicial training to ensure that ARMA's role is a standard item in judicial training for courts/investigative judges in criminal investigations and in criminal cases.

6.9.14.5. Reporting to the Cabinet of Ministers

While the team accepted that there had been no attempts at direct operational interference to date in cases or in the setting of policy in the area of asset recovery, this does not mean that in practice the ARMA operates in isolation from the Cabinet of Ministers.

There is a regular flow of information from ARMA to the Secretariat of the Cabinet of Ministers on the work of the National Agency in a monthly report. All ARMA Departmental Heads had been called upon to contribute to these monthly reports, which go to the Prime Minister. The Prime Minister does not set objectives for the Head of the Agency but it was considered by ARMA senior staff that he was well informed about ARMA's work. It is believed these monthly reports include progress on actions set out in ARMA Action Plans

(which are published in the ARMA Annual Report). These Action Plans themselves are first sent to the Cabinet of Ministers for approval.

It should be said that reporting to responsible Ministers on staffing levels, use of resources and progress against agreed action plans is normal for publicly funded State agencies worldwide. The degree of information that passes to Ministers on sensitive casework was unclear. Statistics on numbers of tracing and finding requests dealt with by ARMA should appear in such reports, but the identities of any persons with which ARMA is dealing, whether prominent or not, should not become known to Ministers before they become public knowledge, through court proceedings. No clarifications on this have been provided. In the recommended Code of Practice this should be made explicit.

Recommendation: The Code of Practice recommended above should, as well as explaining the areas on which ARMA reports to government as a central executive authority with special status, clarify the position that information on identities of persons with which ARMA is dealing form no part of ARMA reporting to Ministers (whether formally or informally).

As noted earlier when considering monitoring and evaluation, issues relating to ARMA also appear in the Prime Minister's Action Plan. The issues they involve are generally uncontroversial and their inclusion is arguably quite helpful to the overall achievement of ARMA's goals. For instance, a clear reference in the Prime Minister's Action plan to the important ARMA objective to create and implement a Unified Register of seized assets shows political commitment to a fundamental ARMA goal, which, as already noted, will require the active support of other Agencies if it is to be achieved effectively. The drafting of proposals to amend the ARMA Law also appears in the Prime Minister's Action Plan this year and would appear to signal the Government's political commitment to ARMA's effectiveness.

It is reassuring that the initiatives relating to ARMA which appear in the PM's political action plan were proposed by ARMA. They were ARMA's response to a general call to Ministries and Agencies from the Cabinet Secretariat for suitable issues to which the Prime Minister could attach his name. The team does not consider that inclusion of ARMA initiatives in such a political action plan compromises ARMA's independence. The team would however have been concerned if issues in such a plan had been initiated by and imposed upon ARMA by the political leadership.

There is no reason to question the assurances the assessment team received that there has been no interference operationally or in ARMA policy making. It was unclear how frequently, if at all, ARMA was discussed at Cabinet outside of the budgetary process.

That said, the relationship between ARMA and the Cabinet of Ministers is quite close. The Head will sometimes advise the secretariat of the Cabinet of Ministers of major developments, such as the receipt into management of large business undertakings. This again does not necessarily impact on ARMA's independence, as senior Ministers have, in

our view, the right to be advised of developments that they themselves may be asked about. But a large quantity of information passes from ARMA to the Cabinet of Ministers. In this exercise it is difficult to gauge to what depth information is provided.

The Prime Minister or the Secretariat to the Cabinet of Ministers can obviously read the monthly reports and compare them with the Annual Report of ARMA, if they are monitoring performance closely. They are entitled to do so with a publicly funded body for which they can be held accountable to Parliament. The Cabinet of Ministers appears to have a clear ongoing picture of the performance of ARMA.

So long as, on casework/operational issues, the relationship between the Cabinet of Ministers and ARMA is in practice at arm's length, then closeness to government, given the present organisational structure of ARMA, is explicable in terms of public accountability.

Nonetheless it is recommended that the extent of reporting to government is reviewed, bearing in mind the boundaries that exist between accountability for overall performance of ARMA and ARMA's independence of decision-making in its operational work.

Recommendation: Bearing in mind the boundaries that exist between accountability for overall performance of ARMA and ARMA's independence of decision-making in its operational work, the extent of reporting to government by ARMA should be reviewed and, wherever possible, reduced or streamlined.

6.9.14.6. Budgetary Control by Government

An independent agency needs a comprehensive annual budget agreed with the government before the commencement of the budgetary year. Without this, it cannot plan its activities with certainty as to what it is able to deliver.

It appears that for 2016 no independent ARMA budgetary request was submitted for approval, which is understandable, as such expenditure as was incurred in these very early planning stages (long before it went live) could simply be picked up by the government. No formal budget was agreed between the National Agency and the government in 2016. There was budgetary allocation in 2017, which the team has been advised fully met the need for remuneration, utilities, energy procurement of equipment, material support and payment for other services. The Agency only became operational in the third quarter of that year. This Ukrainian government funding was supplemented by the provision of international technical assistance, under which the Danish Foreign Ministry supplied the National Agency with computers, other equipment and software.

ARMA did provide a formal independent budgetary request for funding from the State budget in 2018. The request submitted, if the figures provided in the replies to the questionnaire are wholly accurate, was for UAH 470,006,300. This figure, calculated on the basis of proposals from ARMA structural units included labour, utility and energy costs and material support for the procurement and software development for the creation of the

Unified State Register of Assets and representation of ARMA in foreign jurisdictions and courts in Ukraine. It did not foresee the costs of external suppliers, such as managers and other asset disposers are covered by the suppliers themselves deducting their costs from the value/sale of the assets they are managing.

In the event, this budgetary request was settled at UAH 253,213,400 (approximately EUR 8 million) – which was said to amount to 53.9% of the original request. Of course, all budgetary provision is negotiated downwards because governments have to save money. But as the submitted request appears not to have covered the entire costs of the Agency, such a cut raises questions. The Head of ARMA has told us that he does get everything that he needs to operate. If so, then it appears that this must come from ongoing negotiations. If this is the case, it is not a sustainable position and not transparent.

The budgetary uncertainty which appears to exist may feed perceptions that the government can exercise real control over ARMA's capacity to operate effectively. It could, theoretically at least under the present arrangements, deny ARMA the resources needed in a budgetary year to perform its independent role.

We consider that ARMA needs more State funding in the immediate future.

The current level of State funding of ARMA through the annual budgetary cycle may simply reflect the government's wish that ARMA should be entirely self-funding and should make money for the State budget. This is an understandable position, given that the actual costs of running this Agency are likely to be very high indeed. If the ARMA law is amended to allow for ARMA to receive some funding in future out of realised final confiscation orders, the level of State funding for ARMA may in time become of less significance. However, that is not the situation in the immediate future. It seems that ARMA has to persuade government that it needs to fund the Agency properly and transparently - and probably to continue doing so for at least the next 5 years - until the benefits of any such legislative amendments generate more funding for ARMA out of confiscation orders. Difficult as this might be, government funding should include the costs of managing assets before final confiscation orders, for the reasons set out earlier. The commitment now of adequate funding from State resources for a fully operational ARMA should be seen by government as an investment.

Recommendations: To strengthen ARMA's position as an independent agency, and until such time as it can be funded in part from the realisation of confiscation orders, the National Agency needs to have comprehensive, adequate and transparent budget settlements agreed and included in the State budget before the start of each financial year.

For the next 5 years at least ARMA's budget line in the State budget should reflect the estimated full costs of the Agency for the year in question, including the costs of managing seized assets before judicial decisions on confiscation are made in respect of those assets which are managed by ARMA.

Conclusions on the extent to which ARMA's institutional and operational autonomy has been ensured in practice.

No publicly funded agency is ever both completely autonomous and independent in practice, and ARMA is no exception. In our view ARMA is operating autonomously but there are significant areas where its autonomy and its independence could be circumscribed by: ambiguous legislative provisions which may allow some scope for governmental interference; some lack of transparency about its budgetary provision; and, possibly, by the extent of reporting to government.

The numerous recommendations made in this assessment are designed to strengthen ARMA's independence and autonomy, while ensuring that it is publicly accountable for its independent operational work.



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Annex I. Methodology

1. Purpose and objectives

The purpose of this technical assessment is to further strengthen ARMA's capacity and performance by assessing its effectiveness and efficiency and determining its needs.

The objectives of the assessment are to obtain descriptive and analytical information about actual results of ARMA's activity, find out whether the internal systems of ARMA have been suitably designed and operated effectively during the evaluation period, what the internal and external risks for ARMA's effective operation are and how they could be addressed. While it is not the primary focus of the assessment, it will also look into operational and institutional autonomy of ARMA, which is important for its effective functioning.

The assessment is both backward-looking as it assesses prior performance and forward-looking as it provides recommendations for the improvement.

The technical assessment of ARMA aims to provide an independent, objective, non-partisan, professional assessment within its scope. The assessment was commissioned by the EU Anti-Corruption Initiative (EUACI) at the request of ARMA. The EUACI assessors were Ms. Jill Thomas, Mr. John Ringguth and Mr. Pedro Gomes Pereira, who had, respectively, primary responsibility over the areas identification and tracing of assets, policy development and management of assets. Conclusions deriving from the technical assessment have been collectively drafted by the three experts.

Assessment findings and recommendations will be presented in writing to ARMA.

2. Scope

This technical assessment of ARMA aims to evaluate the effectiveness, efficiency and autonomy of ARMA.

The effectiveness means the extent to which ARMA's activity met the Agency's objectives during the period under evaluation. According to the ARMA Law, the National Agency's main objectives can be described as follows:

- a. Identification and tracing of assets that can be seized in the criminal proceedings;
- b. Management of assets that were seized or confiscated based on the court decision or owner's consent;
- c. Policy development.

The assessment also looks into whether ARMA has attained its objectives efficiently, i.e. how economically resources/inputs (funds, expertise, time, etc.) have been converted to results.

3. Process

The following processes were used for the assessment:

1. Baseline questionnaire. ARMA was asked to complete a baseline assessment questionnaire to provide information on its mandate, operations, outputs, outcomes

and impact of activities, as well as to provide self-assessment of its capacity and challenges.

2. Structured interviews with key stakeholders inside and outside of ARMA took place during two separate fact-finding missions on 18-20 June and 6-10 August 2018:
 - a. ARMA leadership (Head, Deputy Heads)
 - b. ARMA management (heads of departments)
 - c. National Anti-Corruption Bureau (NABU), National Police, other investigative agencies
 - d. The State Executive Service (SES)
 - e. Prosecutor's General Office (PGO)
 - f. Special Anti-Corruption Prosecution Office (SAPO)
 - g. Representatives of the Cabinet of Ministers
 - h. State Financial Monitoring Service (SFMS), National Agency for Corruption Prevention (NACP), other authorities
 - i. Civil society organizations (anti-corruption, human rights protection)
 - j. Donor organizations and technical assistance projects, diplomatic missions.

To ensure frank and open discussion individual interviews were confidential, the identity of interviewees will not be disclosed. The exact list of interviews was determined by experts.

4. Assessment Period.

The assessment period starts from the time ARMA's Director was appointed (December 2016) and runs until the first fact-finding mission of the Assessment team.

Annex II. Indicators to measure the effectiveness of EU AROs

The EU Commission Communication on an Internal Security Strategy³⁶ indicates the establishment of effective AROs in the Union among its priority objectives. It notably invites Member States to establish by 2014 Asset Recovery Offices equipped with the necessary resources, powers and training, and the ability to exchange information. The EU Commission was expected to develop common indicators by 2013, against which Member States could evaluate the performance of these offices.

At the 2nd High Level pan-European Conference on AROs, held in Brussels on 6-7 December 2010, the Commission and Europol proposed to start work on possible ways to assess the effectiveness of AROs. They proposed 11 indicators for initial comments, which, through discussion with participants, were identified as follows:

1. Direct or indirect powers to freeze assets.
2. Level of access to existing databases and registers.
3. Ease of access to financial information formally or informally, without a court order.
4. Access to a secure system of information exchange.
5. Level of involvement in asset management (ensuring the cohesion of the confiscation chain).
6. Level of involvement of CARIN contact points in their activities (thus preventing the duplication of efforts).
7. Success in regularly meeting time limits stipulated in the Swedish initiative.
8. Ability of keeping statistics on their activities and access to judicial statistics.
9. Resources & capacity (with respect to needs e.g. capacity to act as a central contact point, minimum number of financial investigators).
10. Availability and participation in appropriate training.
11. Level of multidisciplinary in ARO composition.

³⁶ Commission, European. 2010. "Communication From the Commission to the European Parliament and the Council the Eu Internal Security Strategy in Action: Five Steps Towards a More Secure Europe," COM(2010) 673 final, 2010.

Annex III. List of Recommendations

The table below reflects all the recommendations contained in section **Error! Reference source not found.**. They do not contain the list of key recommendations in section 3 above.

1. Asset Recovery Office
After a period of bedding in and proof of success ARMA should consider its status or its structure allowing it to function as a fully-fledged multi-disciplinary Asset Recovery Office.
In the absence of their own powers to freeze or seize assets, ARMA should ensure that, when assets that may quickly dissipate are identified, rapid action can be taken for them to be frozen or seized. This will require good inter-agency cooperation with requesting state bodies, in particular state prosecutors who are able to make the relevant application to the court for assets to be frozen.
The Asset Finding and Tracing Department should continue to monitor the number of operational incoming and outgoing requests, and the time it takes to answer these, producing a year on year baseline figure over 3 complete years. This should be compared against Department staff levels prior to increasing the number of staff above 40.
Increasing access to registers and databases should remain a strategic objective for the Asset Tracing and Finding Department, as this is a core function of ARMA.
ARMA should continue to negotiate with agencies for direct on-line access to information required for asset tracing. At least for State agencies, ARMA should consider introducing a single point of contact system and electronic platform for the exchange of information between ARMA and the relevant agency. This should remain a strategic goal for the Asset Finding and Identification Department.
ARMA has made excellent progress in securing access to banking information directly by way of an email to the National Bank of Ukraine. However, the assessment team would suggest caution in allowing ARMA to access details of accounts other than those contained within requests made to ARMA without first obtaining a court order. The access they currently have is already in line with the proposed EU standard for access to banking information by law enforcement and prosecutorial AROs.
ARMA has made excellent progress in securing access to banking information directly by way of an email to the National Bank of Ukraine. However, the assessment team would suggest caution in allowing ARMA to access details of accounts other than those contained within requests made to ARMA without first obtaining a court order. The access they currently have is already in line with the proposed EU standard for access to banking information by law enforcement and prosecutorial AROs.

ARMA should promote the possibilities it has to provide analysis on the financial profiles of individuals and groups among the agencies it supports, particularly the ones which do not have such analytical capacity.

ARMA should secure the relevant licence to enable it to use analysis software for mapping the ownership of illegal assets.

ARMA should educate its asset tracing staff in the use of available technical analysis possibilities within the agency, with a view to developing a documented track record of their usefulness and ARMAs success.

ARMA should be in a position to spontaneously disseminate information it discovers relating to possible criminal activity, assets suspected to be the proceeds from crime and unexplained wealth on both domestic and international level. This will allow law enforcement agencies, prosecutorial authorities and foreign jurisdictions to take the necessary action to investigate crime and freeze, seize and confiscate assets.

ARMA should seek advice from external law enforcement specialists on methods of dealing with multiple requests on the same legal or natural persons or assets, in order to find a suitable practical and legal Ukraine solution to this common situation.

The ARMA Asset Finding and Identification Department should continue to promote the possibilities for asset tracing, in particular in relation to international cooperation to encourage greater use of ARMA by domestic authorities.

To encourage greater use of ARMA's asset tracing capabilities, ARMA asset tracing case officers should be assigned to particular prosecutors and law enforcement officers, in order to build trust between the agencies.

Ukraine should find a solution to allow for the exchange of information between the SFMS and ARMA. Concluding agreements between ARMA and other FIUs would go against the principles of cooperation between FIUs and is not recommended as a good solution.

ARMA should consider reducing timescales for exchanges of information between agencies from days to seconds through the introduction of a secure electronic platform for the sending and receiving of asset tracing requests, at least between those agencies that are most frequently making requests.

ARMA should consider establishing two separate operational international cooperation units, one within the Asset Finding and Identification Department and one within the Asset Management Department. The current International Cooperation Department could then be re-named as the International Relations Department as it is not handling any operational requests. This may eliminate any confusion for foreign jurisdictions over areas of responsibility.

For the purpose of operational information exchange with EU AROs, ARMA should continue to negotiate with Europol, through the Ministry of Foreign Affairs, to add

ARMA as a competent authority within the cooperation agreement. This would allow it a legal, secure method of cooperation with EU AROs via the SIENA information exchange platform. ARMA should obtain direct access to the EU ARO platform secure exchange system SIENA.

The reference to CARIN should be removed from the ARMA law as CARIN is not a legal entity and therefore should not be mentioned within any domestic, regional or international legislation.

ARMA should develop a close cooperation with the main Interpol information exchange mechanisms as an option for the exchange of international asset tracing requests that do not relate to corruption and where the other jurisdiction is not a member of StAR.

The Head of the Asset Finding and Tracing Department should nominate one or two members of his team to be the international asset tracers to enable the Department to build up knowledge on the possibilities to trace assets in other jurisdictions. This will happen through more regular handling of international asset tracing requests.

No legal barriers exist to prevent ARMA responding to international requests to trace assets. ARMA should continue to build relationships with foreign asset recovery practitioners with a view to increasing incoming asset tracing requests.

2. Asset Management Office

ARMA should raise awareness with courts, prosecutors and law enforcement officials that, where the relevant law enforcement authority or prosecutor has the intention of requesting an asset to be managed by ARMA, it should consider its participation as early as possible, in order to support in the establishment of a pre-seizure plan.

ARMA should take steps to ensure that it establishes pre-seizure guidelines which are to be observed by the Ukrainian law enforcement agencies and the Prosecutor General's Office (PGO).

The prosecutor is responsible for ensuring the pre-seizure planning. To that end, the PGO and SAPO should take steps to ensure that courts are aware of the asset management functions of the ARMA and request that the management of seized and confiscated assets be handed to ARMA. Moreover, ARMA should be called in as early as possible to support the drafting of the pre-seizure planning where assets subject to seizure will be entered into ARMA for management.

ARMA should establish guidelines to assist law enforcement and prosecutors in determining under which circumstances assets should be seized in the course of a criminal proceeding, and pre-seizure planning should comment. Such guidelines should include considerations on the prospect of success; the evaluation and valuation of the property; any value-related requirements to the property; and any overriding law enforcement objectives.

All on-line platforms used by ARMA should take steps to ensure that the system of purchasing property through their online platforms has a means of verifying the true identity of the person purchasing seized and confiscated assets with a view to ensuring that they are not re-purchased by the perpetrator.

ARMA should consider entering into working arrangements with the relevant central authorities (NABU, PGO and Ministry of Justice) to streamline its international cooperation needs in relation to the seizure, management and confiscation of assets.

In the event that the ARMA Law is amended to enable ARMA to represent the interests of Ukraine in foreign jurisdictions, ARMA should ensure that proper cooperation and coordination mechanisms are put in place with the relevant central authorities of Ukraine, to ensure that there is no duplication of efforts and that the international strategy is well coordinated from the Ukrainian side.

3. Policy development

An "Asset Recovery Implementation Committee" (ARIC) should be established with the aim of increasing the levels of criminal proceeds recovered. This forum should meet regularly and formally, and ideally it should have a budget. It should agree a collective approach and monitor the implementation of its own recommendations.

The ARIC should develop a national asset recovery strategy and monitor national asset recovery performance (and possibly set realistic targets) and coordinate asset recovery training for all relevant criminal justice partners, including the Judiciary.

ARMA should also, within this framework, develop its own short and clear Mission Statement, which emphasises its role in increasing public confidence in the criminal justice system through its contribution to confiscation, as well as its capacity to increase revenue for the State which can be applied for public benefit.

Where resources permit, ARMA is encouraged to pursue a policy of proactive provision of financial investigative training to law enforcement by some ARMA staff with the appropriate trainer skills.

Those responsible in ARMA for the policy development of ARMA's performance indicators should develop qualitative performance indicators in addition to quantitative indicators. They should consult more widely to consider what measurable qualitative indicators can be introduced, which will more fully demonstrate the real benefits to the criminal justice system and public perceptions of it, which are attributable to ARMA's work.

The merits of increasing the vetting levels of ARMA staff dealing with SAPO or other sensitive law enforcement investigations and pre-seizure planning should be re-considered if closer working relationships are to be developed with law enforcement and prosecutors on sensitive cases.

4. Record keeping, case management and IT capacity

As a priority, ARMA should source a more appropriate operational case management system for its Asset Finding and Identification Department.

ARMA should progress the purchase of a licence for analysis software for mapping the financial profiles of legal and natural persons and the true beneficial owners of assets.

5. Organisational capacity of ARMA

The procedure for domestic agencies to make requests to ARMA for asset tracing should be distributed to its stakeholders, to encourage greater use of ARMA's services. A condensed version, in leaflet form for example, could be produced for distribution at meetings, trainings and conferences. The CARIN leaflet (operating procedure) should be translated into the Ukrainian language and expanded to include the role ARMA plays in CARIN requests for international asset recovery.

The Asset Management Department of ARMA should take steps to ensure that there is an effective pre-seizure planning put in place in relation to assets which may be subject to seizure. Such pre-seizure planning would ensure, or at the very least, mitigate several risks associated with the management of seized and confiscated assets.

All long-term strategic issues should be brought to the senior management team for full collective discussion. Such strategic policy discussions are advised to be held at least on a three-monthly basis.

There should be a strategic discussion by the leadership team of the costs and benefits of a move to regional offices at this time before this project is taken further.

To ensure commitment from all participating agencies to the delivery of the Unified State Register of Seized Assets, the requirements for inputting data by the relevant agencies should be the subject of Orders or Decrees signed by the Heads of all the involved agencies. Common language for these orders or decrees should be agreed jointly after discussion by all involved agencies at the ARIC. All relevant Heads should monitor the performance of their staff in inputting the required data.

The salary structure for ARMA needs to remain competitive.

It is recommended that the staff manual should be expedited, published and kept up-to-date.

Steps should be taken to introduce a rolling programme of in-house induction courses for all new staff members led by experienced ARMA staff in the operational departments. It is advised that these courses should include presentations of the work of each department and the major issues they have to tackle. Operational practices and procedures set out in the staff manual may also require coverage in these courses. A rolling programme of in-house developmental training should also be considered to encourage mobility between departments.

Detailed personal training plans for new staff in the operational departments should be agreed with their line managers, who should have responsibility for ensuring that they are followed up by appropriate in-house training (or supplemented by external training).

All new staff should also have a mentor formally assigned to them (below the level of the Departmental Head) to support them for the first year at least.

Ways should be developed to share more information transversally within ARMA about the work in each department to encourage internal mobility and career development.

Consideration of an adjustment to the recruitment policy should be given, when in house training and mentoring is embedded, in order to recruit more people with the potential to be competent ARMA officials with necessary training and development.

If guidance on levels of authority in decision-making has not already been considered, a levels of authority document on decision-making and consultation with senior staff should be developed, as described in the report.

[If this has not already been done] When the budget situation is more stable, consideration should be given to delegating levels of financial authority to departmental heads, subject to them actively monitoring the budgetary position in their departments and being aware of the impact that each budgetary commitment is making to the overall outturn in their areas of responsibility.

Consideration should be given at the appropriate time to Heads of Departments receiving monthly budgetary management reports so that they can monitor their committed expenditure as a proportion of their overall annual budget to be alert to potential overspends. It may assist if the budget is a standing item on senior management team agendas.

There should be regular senior management meetings where all senior managers participate, the agendas for which could include a mix of standing items and other thematic issues. A distribution of cross-cutting themes between the departmental heads is proposed, for which they may take the lead responsibilities in discussions in senior management team meetings. While major decisions taken by senior management will require communication by the Head of ARMA directly to all staff, general responsibility for keeping staff informed about non-confidential issues discussed at senior management level should be with the departmental heads. The Heads of Departments are encouraged to hold regular departmental meetings to discuss the implementation of decisions taken by senior management and to discuss departmental performance.

It is advised that all line managers should receive formal training on the appraisal process, and on handling appraisal interviews and task/objective-setting.

The role of Internal Audit should be clearly defined. Ideally it should cover systems and performance controls, as well as financial controls. If internal audit is to be limited to financial controls then other arrangements need to be put in place for systems and operational performance controls. The full range of systems, performance and financial controls that need to be in place in ARMA should be resolved quickly by the senior management team.

In any event, the staffing for financial auditing needs reinforcing to ensure that broader and more regular financial control checks are being made, given the sensitivity of issues with which ARMA deals related to procurement, selection of managers and use of public funds. The Senior Expert on Internal Audit should make proposals to the leadership team as to the priorities for financial audit for the next year and, when agreed, implement these audits as resources permit.

The language of the Corruption Prevention Senior Expert's job description should be revisited to remove equivocal language as to how the job is to be performed.

Personal liability in this role is unhelpful to the mission and should also be reconsidered.

The Corruption Prevention Expert, together with senior staff, should develop specific measures to mitigate identified corruption risks, to include clear guidance on ethical issues in the context of ARMA's work and a clear articulation of ARMA's integrity policy, together with an ARMA code of conduct. These documents should be agreed with the ARMA leadership. It is advised that they should be introduced to the staff in a general office meeting, led by the Head of ARMA and the Senior Expert on Corruption - so it is clear to all staff what is expected of them.

The Senior Expert on Corruption should make ARMA staff aware of all reports and recommendations by the various international monitoring bodies and international technical assistance providers to Ukraine, in particular the Council of Europe's anti-corruption monitoring body (GRECO) in respect of Ukraine.

Further training events or international asset tracing seminars should be organised to specifically inform Ukrainian pre-trial investigators, prosecutors, in particular the PGO staff and the central authority of the opportunities for asset tracing using ARMA and possibilities to progress freezing, seizure, confiscation and asset sharing through engagement with the international asset recovery community.

Specific and targeted training on the management of assets should be provided to ARMA and a selected group of law enforcement officials and prosecutors. These in turn could be trained to replicate the knowledge on the subject matter, thereby ensuring retention of knowledge and that skills are institutionalized.

ARMA should take steps to train its relevant staff on how to conduct valuation of assets for the purpose of pre-seizure planning, as well as to ensure the accuracy and reliability of actions undertaken by the service providers managing seized assets.

In conjunction with other work recommended by the team to develop qualitative performance indicators, a simple system should be introduced of monthly reporting to the Head on workloads and key quantitative and qualitative performance indicators.

These reports should be analysed and considered on a monthly basis by the management team collectively to identify resource implications, trends and areas where performance needs further attention.

A system to monitor the work of appointed managers should be devised and implemented.

6. Communication strategy

Consideration should be given to the Finding and Tracing Department proactively engaging with the Communications sector at the appropriate time (when investigative secrecy is no longer relevant and there is no risk of prejudicing criminal proceedings) to identify their successes for selective media coverage, either jointly with investigators/prosecutors or separately. In either case the Legal Department should always be consulted and approve what ARMA can say publicly about completed cases.

The ARMA website should be developed further to better inform ARMA's internal and external partners of the added value ARMA brings. It should include information highlighting the role ARMA has played in successful cases.

The communication strategy needs to include awareness-raising in the law enforcement and prosecutorial community by ARMA of the possibilities to obtain quick information and intelligence from abroad to assist asset tracing via ARMA's position as national focal point on asset recovery for the CARIN network and INTERPOL on asset recovery, as well as other asset recovery regional networks worldwide.

A written communications strategy should be finalised and implemented quickly, in conjunction with the development of ARMA’s mission statement and qualitative performance indicators which demonstrate the value of ARMA in the criminal justice system. Efforts should be made to coordinate this strategy with partner agencies. It should be reviewed annually and updated as necessary. The messaging should focus on ARMA successes and contribution to the criminal justice process.

Consideration should also be given to the appointment of a more highly graded professional Communications Manager to advise ARMA leadership on its public profile. As part of this new role, the Communications Manager could be tasked with examining how other Asset Recovery Offices abroad successfully handle their media relations and make recommendations to the senior management team. He or she should also identify opportunities for involving the Public Council more frequently in promoting ARMA and propose strategies for communicating more effectively with the regions/oblasts.

The Communications Manager should be invited to attend Senior Management Team meetings when strategic issues are being discussed which may have an impact on ARMA’s public profile and communications strategy.

The ARMA head and other staff with good communication skills should undertake media training so a wider range of ARMA staff can be deployed in media events, interviews and presentations to promoter ARMA initiatives and success stories.

7. External perception of ARMA

To increase levels of public support for the work of ARMA the team encourages greater engagement by ARMA management and the ARMA Communications sector with the Public Council, particularly on opinion-forming in respect of the vital role ARMA is playing in rebuilding public confidence in the criminal justice system.

To assist and inform the further development of ARMA’s public profile it is recommended that a public survey on the impact of ARMA is commissioned in the coming months and is repeated after two years to identify changes. ARMA is advised to solicit feedback from its international counterparts on the performance of its officials in international forums. There should be further outreach to the investigating judges and courts which have yet to make references to ARMA, as detailed in the recommendations beneath on independence and autonomy.

8. The autonomy of ARMA

To further strengthen ARMA’s operational autonomy it should be clarified in the ARMA Law that ARMA orders and by-laws cannot be repealed unilaterally by the Cabinet of Ministers.

ARMA should prepare a brief Code of Practice which should be endorsed by the Prime Minister for publication, explaining the legal structure within which ARMA works and which emphasises, that in asset recovery and management policy-making and operational matters, it is independent of government. For more transparency in respect of this relationship this Code could usefully explain the areas in which ARMA is expected to make periodic reports to government as a publicly funded central executive agency with special status.

Consideration should be given to an addition to the ARMA Law requiring such a Code of Practice, so that the Code in time will become a statutory Code.

The ARMA Law should be strengthened to ensure that the Head of ARMA can independently select and appoint his own deputies.

To reinforce the independence of ARMA from politics and government, it is advised that there should be public consultation on the merits of disallowing Ministers, former Ministers and MPs from being eligible to be candidates in future competitions for the position of Head of ARMA. If there is support for such a change, it should be made before the competition for the next Head.

The ARMA Law should be amended to underline ARMA's operational independence by inserting into art. 9 language which mirrors the provisions of art. 12(1) (in respect of the commissioners of external control): In the exercise of all ARMA's operational functions the Head of ARMA and ARMA staff act independently and should not receive or fulfil any orders, or instructions from Ministers or persons acting on their behalf, in respect of ARMA's operational activities".

The terms of the professional external audit as part of ARMA's annual assessment should be decided by the appointed auditors in consultation with the Head of ARMA. The form and content of the audit should not need Cabinet approval. If necessary, the final content of the audit plan can be sent to the Cabinet of Ministers for information only.

The external audit by professional auditors should go ahead as soon as practicable. The assessment by the Commission for external control should be reconsidered.

A clear and transparent Methodology should be prepared for the Commissioners with agreed benchmarks against which performance can objectively be assessed. Ideally this should be underpinned by amendments to the ARMA Law.

Adequate funding should be provided to attract persons of the appropriate calibre to act as commissioners.

A negative assessment should not automatically lead to the early termination of the Head, who should be given the opportunity to rectify problems identified.

If, after these steps are taken, still no suitable candidates apply to be commissioners, this component of the external assessment should be abandoned and the professional

audit should be the sole basis of external assessment. If it is necessary to consider termination of the Head's powers this should only be on the basis of 2 or more external assessments with negative findings.

Working arrangements should be developed quickly, and if necessary supported by appropriate legislative amendments, to ensure that ARMA staff are speedily and properly protected by law enforcement in the execution of orders in its favour where this is necessary.

The ARMA management team should consider collectively how best the lack of references to ARMA by the courts/investigative judges should be addressed.

A fresh strategy for dealing with this situation should be prepared. This should involve further outreach by ARMA staff with acknowledged good communication skills. It should also include liaison with those responsible for judicial training to ensure that ARMA's role is a standard item in judicial training for courts/investigative judges in criminal investigations and in criminal cases.

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Bearing in mind the boundaries that exist between accountability for overall performance of ARMA and ARMA's independence of decision-making in its operational work, the extent of reporting to government by ARMA should be reviewed and, wherever possible, reduced or streamlined.

To strengthen ARMA's position as an independent agency, and until such time as it can be funded in part from the realisation of confiscation orders, the National Agency needs to have comprehensive, adequate and transparent budget settlements agreed and included in the State budget before the start of each financial year.

For the next 5 years at least ARMA's budget line in the State budget should reflect the estimated full costs of the Agency for the year in question, including the costs of managing seized assets before judicial decisions on confiscation are made in respect of those assets which are managed by ARMA.

Conclusions on the extent to which ARMA's institutional and operational autonomy has been ensured in practice.