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## The state's actions to appropriate profits from criminal activities

*– better cooperation yields higher returns*

### Summary

The Swedish National Audit Office (SNAO) has audited the state's actions against criminal gains. The possibility of financial gain is one of the principal incentives behind much of criminality in society. By increasing the justice system's possibilities of appropriating offenders' criminal gains in connection with prosecution, the incentive to commit crimes can be reduced.

A recent development in law enforcement both in Sweden and abroad is the focus on combating the profits from crimes in connection with their resolution. Actions against criminal gains are also carried out within the framework of taxation and customs procedures.

The state's actions against criminal gains in connection with prosecution (investigating or indicting), taxation and customs procedures, and distraint are based on the following elements: either the state sees to it that individuals with links to crime lose the right to own or possess certain defined things. The state can also issue claims against such individuals, whereupon the Enforcement Authority seizes assets in order for such claims to be collected. If there is a risk that assets to be used for collection will be hidden away before seizure occurs, such assets may be sequestered (for claims issued in connection with prosecution) or secured (for claims issued in connection with taxation and customs procedures). We have chosen to describe such efforts as the state "taking" assets from individuals with links to crime.

The audited ministries and authorities are the Ministry of Justice, the Ministry of Finance, the National Police Board and the 21 police authorities, the Economic Crime Authority, the Prosecution Authority, the Tax Agency, Swedish Customs and the Enforcement Authority.

## **Results of the audit**

The actions to “take” assets from individuals with links to crime are carried out in connection with prosecution (investigating or indicting), taxation and customs procedures and distraint. The system includes central parts of the justice system as well as the authorities in the tax, customs and distraint area. Since several different instruments are involved, as well as a large number of state authorities, an overall view is required in order for the system to work.

*SNAO’s overall conclusion is that there are deficiencies in some of the state’s actions against criminal gains. This means that the actions become less effective as a whole, and the outcome relatively modest. This in turn may mean that the Riksdag’s (the Swedish parliament’s) expectations for an increased crime prevention effect will not be met. Even if the government and the authorities have continuously carried out improvements to the system that the state’s actions against criminal gains constitutes, it is SNAO’s assessment that they need to implement further improvements in order to achieve an overall view. The authorities should also make full use of the possibilities offered by legislation, which they are not currently doing.*

In the course of the audit we have identified a number of success factors which can lead to increased efficiency in the system. Some of these success factors are already being heeded to a certain extent. First and foremost, competence is needed for economic surveys and for how to best use the central instruments<sup>1</sup> against criminal gains. Surveys of individuals’ finances should be initiated early in criminal investigations and should also be carried out in parallel with them. Early on in the prosecution, taxation or customs procedure, attention should be paid to whether a claim<sup>2</sup> may arise against the individual or whether he or she is

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<sup>1</sup> The central instruments against criminal gains include sequestration, securing of assets and custody/seizure. It is also important to make use of observations regarding what is known as hidden ownership, i.e. observations about who uses specific assets and how.

<sup>2</sup> A value confiscation, company fine, damages, tax or customs.

already in arrears for previous claims with the Enforcement Authority. In this way, an early assessment can be made of whether it is worth initiating a process of sequestration or asset securing for new claims, or whether it is better to pass information about assets – following clearance under secrecy legislation – straight to the Enforcement Authority. To achieve increased efficiency, the authorities involved need to make full use of the possibilities of current legislation. This involves, among other things, actively exploring the possibilities of sharing – within the bounds of secrecy legislation – information about individuals' finances with other authorities. Information exchange also has the effect of minimising the duplication of work, which increases the efficiency of the process as a whole. It also involves making greater use of the central instruments against criminal gains than what is the case today. It is important that the authorities have well-functioning methods and routines for this.

Additionally, guidelines are needed for how information about individuals' finances is to be transferred between the various stages of the process. Officers in charge of preliminary investigations should issue clear and timely instructions for when surveys of individuals' finances are to be done. A further success factor is for applications for sequestration or asset securing orders to be prepared in advance, so that execution of the orders is facilitated and the conditions for payment of future claims thereby improved.

### *Conditions exist for bringing efforts forward*

During the audit it has emerged that all efforts against criminal gains should be brought forward in time, by all the audited authorities. This involves making surveys of individuals' finances where deemed necessary, both within criminal intelligence and in criminal investigations. Prosecutors should issue clear and timely instructions about when such surveys are to be done, which assumes that they have sufficient documentation for issuing such instructions. Within criminal intelligence, criminal investigations and the prosecution service there is on the whole insufficient competence for carrying out surveys of individuals' finances. By raising the level of competence and thereby increasing the number of surveys within criminal intelligence and criminal investigations, the possibilities for carrying out early actions also increase. The audit has further shown deficiencies in communication between criminal investigators and prosecutors on the presentation of financial surveys.

*There are significant differences in outcome between sequestration and securing of assets*

The proportion of claims collected by means of the securing of assets is twice as big as the proportion of claims collected through sequestration. The comparison here is between the outcome of applications for the execution of court decisions on sequestration and the securing of assets, respectively. In 2008 and 2009, the Enforcement Authority secured 44 per cent of claims in the securing of assets, which corresponded to approx. SEK 0.6 billion. During the same period, the authority secured 19 per cent of sequestration claims, which corresponded to approx. SEK 0.1 billion. Since the share of secured claims in sequestration cases is very small, that also makes the possibilities for achieving a crime prevention effect equally small. There is also a risk that crime victims do not get damages paid directly by the offender.

Some aspects of the difference in outcomes may have natural explanations, e.g. that there is a difference between people whose property becomes subject to the securing of assets and people whose property becomes subject to sequestration. Taking this into account, it is unlikely that it is possible to achieve the same share of secured claims in sequestration cases as in asset securing cases. It is nevertheless SNAO's assessment that it would be possible to raise the share of secured claims in sequestration cases considerably. The principal explanation for the difference in outcomes between asset securing and sequestration is the amount of information presented in connection with the application for execution. Prosecutors present fewer and less detailed items of information to the Enforcement Authority than the Tax Agency does. This may partly be because prosecutors do not have any further information to present to the Enforcement Authority. It may also be because the authorities have different opinions about the prosecutor's responsibility for providing information in this connection. The Tax Agency's control of asset securing is significantly clearer than the Economic Crime Authority's and the Prosecution Authority's control of sequestration cases.

If more surveys of individuals' finances were done within criminal intelligence and in criminal investigations, and if prosecutors' responsibility as applicants were clarified, prosecutors could present more detailed and abundant information to the Enforcement Authority in connection with applications for the execution of sequestration decisions. That could contribute to increasing the share of secured claims in sequestration cases.

Indications of the big differences in outcome between asset securing and sequestration have been noted earlier at the Enforcement Authority,

but it has not informed either the other authorities or the Ministry of Finance of these indications. Neither has it informed the Economic Crimes Authority, the Prosecution Authority nor Swedish Customs about what type of information it needs for the execution of asset securing and sequestration, respectively.

### *Information provided spontaneously can have a positive effect*

Information provided spontaneously to the Enforcement Authority requires a relatively small effort but can often have a positive effect in terms of increased collection of old claims from individuals who are in arrears but who have lacked assets when distraint has previously been attempted. However, the Enforcement Authority only rarely receives such information from the other authorities. In order to make them more inclined to provide spontaneous information on individuals' finances to the Enforcement Authority, more feedback is needed from the Enforcement Authority on what kinds of results the provided information leads to. The authorities also need clear guidelines for how such provision of information is to be done.

### *Authorities' control of "profit issues" is mainly focused on serious organised crime*

Even if the fight against organised crime is an important area for the state's actions, there is a considerable amount of crime which cannot be regarded as organised. There is thus a risk that actions against criminal gains that have no connection with organised crime are not sufficiently prioritised by the authorities.

Only a few of the audited authorities have drawn up a strategy or guidelines for when and for what purpose individuals' finances are to be surveyed, and for when information about their assets shall or can be provided to other authorities. Regarding the control of police activities, the National Police Board has not – aside from the efforts against serious organised crime – drawn up an overall strategy against criminal gains to be applied within the police organisation.

### *Serious deficiencies in authorities' follow-ups*

The audited authorities do not follow up the outcome of either their own or joint actions against criminal gains. In order to be able to do follow-

ups, a manual run-through of each case is needed at the respective authority. This means that the authorities, and therefore the government and Riksdag (Sweden's parliament) too, do not have a comprehensive picture of the outcome of the state's efforts in the area.

*There is not enough competence and knowledge*

Some of the audited authorities possess – and continuously recruit – specialists in making surveys of the finances of individuals with links to crime. A recurring theme in the responses to SNAO's questionnaires, however, is that in criminal intelligence, criminal investigations and the prosecution service in general there is not enough such competence. Additionally, knowledge is lacking at the authorities about important instruments that can be used in the fight against criminal gains.

*Government control is not consistent*

The government has instructed the audited authorities (with the exception of the police authorities) to cooperate on the newly-formed national specialist facility for issues on tracing, securing and recovering assets from crime. The government has emphasised the importance of the authorities' actions being directed towards a common goal. However, in its appropriation directions for the authorities, the government has not specified a common and more detailed feedback requirement regarding the authorities' actions against criminal gains. This makes it more difficult for the authorities to formulate and implement joint priorities.

The audit has also shown that the government's goals for the Prosecution Authority and the Economic Crimes Authority regarding increased prosecution are prioritised over efforts against criminal gains in prosecutors' daily work. A consequence of this is that prosecutors provide less information about assets when applying for sequestration than the Tax Agency does when applying for asset securing. This can lead to the Riksdag's expectations for an increase in crime-prevention effects not being met. At the same time it is part of the authorities' responsibility to make adequate priorities within the framework of their activities.

When it comes to following up the state's actions against criminal gains, the government may have given the audited authorities (with the exception of the police authorities) a certain specified responsibility continuously to monitor the activity of the national specialist facility for issues on tracing, securing and recovering assets from crime. However, in

its decision to set up the facility, the government has not stated whether, and if so how, the facility is to follow up activities other than its own. Since the government has not given any stakeholder the overall responsibility of being capable of monitoring the development of the state actions against criminal gains, there is a risk that systemic problems, e.g. deficiencies in the provision of information about financial conditions, go unaddressed. Clear control and coordination is required in order to set such deficiencies right and improve the outcome of sequestration cases in particular.

*The government has delayed in analysing changes to secrecy legislation*

The audited authorities apply the possibilities offered by secrecy legislation to be able to provide information, in different ways, on the financial conditions of individuals with links to crime. The government has appointed an inquiry to review the rules on secrecy and information exchange between authorities when they cooperate in the fight against serious organised crime. The inquiry's instruction to focus on serious organised crime may, with respect to actions against other types of crime, imply that uncertainties about the application of secrecy legislation will remain.

## **SNAO's recommendations**

Recommendations to the government:

- Broaden the goal of increased prosecution.
- Develop control and follow-up of actions against criminal gains.
- Review the rules on secrecy and information exchange in other areas than cooperation against serious organised crime.
- Consider the need for legislation changes to clarify the prosecutor's responsibility to provide information in connection with applications for the execution of a decision on sequestration.

Recommendations to all the audited authorities:

- Develop strategies and guidelines for the authority's own work against criminal gains as well as for joint authority efforts. The Prosecution

Authority and the Economic Crimes Authority should clarify the guidelines for prosecutors' provision of information when applying for the execution of a sequestration, and in the process make the prosecutors' responsibilities very clear.

- Improve follow-ups of actions against criminal gains.
- Raise the knowledge level of employees with respect to the possibilities offered by legislation, and consider recruiting financial specialists.

Recommendation to the Enforcement Authority:

- Improve feedback to the other authorities about what results the provided information leads to.