Revision of the EU rules on asset recovery and confiscation

OVERVIEW

The confiscation of criminals' illicit profits is considered an effective tool in the fight against organised crime, identified as a major threat to EU security. However, despite the comprehensive set of EU rules on asset freezing and confiscation, there are still obstacles on the path to recovering criminal assets, as shown by the European Commission's June 2020 evaluation of the 2014 directive on freezing and confiscation of instrumentalities and proceeds of crime and the 2007 Council decision on asset recovery offices (AROs). To address this situation, in May 2022 the Commission adopted a proposal to amend the 2014 directive with a view to strengthening the EU's asset recovery and confiscation rules and reinforcing the powers of AROs.

In the European Parliament, the Committee on Civil Liberties, Justice and Home Affairs adopted its report on 23 May 2023. On 12 December 2023, the co-legislators reached a provisional agreement on the text in interinstitutional negotiations. On 13 March 2024, the European Parliament adopted its position at first reading by 598 votes to 19, with 7 abstentions. The Council adopted the directive on 12 April 2024, and on 2 May 2024 the final act was published in the Official Journal. Member States must transpose the directive by 23 November 2026.


Committee responsible: Committee on Civil Liberties, Justice and Home Affairs (LIBE)

Rapporteur: Loránt Vincze (EPP, Romania)

Shadow rapporteurs: Thijs Reuten (S&D, Netherlands)
Malik Azmani (Renew, Netherlands)
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Ordinary legislative procedure (COD)
(Parliament and Council on equal footing – formerly ‘co-decision’)

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Procedure completed: Directive (EU) 2024/1260
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Introduction

Serious and organised crime remains a major threat to EU security. While precise statistics are lacking – both globally and at EU level – revenues generated by organised crime are substantial. A 2021 European Commission study estimated the annual revenues from the nine main criminal markets in the EU at between €92 billion and €188 billion in 2019 (a midpoint of €139 billion). Revenues from organised crime are reinvested in other illicit activities or enter the legitimate economy (more than 80% of organised crime networks active in the EU use legal business structures for their criminal activities). Therefore, organised crime not only affects its victims but also undermines the EU internal market, leading to corruption and lack of trust in institutions and affecting economic growth.

As financial gain is the main motivation for engaging in organised crime, an effective mechanism to deter criminal activity would be to confiscate criminals’ profits. However, reports point to low freezing and confiscation rates in the EU. In 2016, Europol estimated that only 2.2% of proceeds of crime had been frozen in the EU over the 2010-2014 period and only 1.1% of these proceeds had been confiscated. While confiscation levels have increased since 2014 in some EU countries, possibly thanks to improved institutional frameworks in the area of asset recovery, the lack of reliable and comparable statistics on frozen and confiscated assets makes it difficult to measure the rate of confiscation at EU level. Furthermore, the confiscation rate depends on the effectiveness of the previous stages in the asset recovery process (identification and tracing of assets; asset freezing and seizure; management of frozen and seized assets). According to Commission estimates from 2022, only one third of frozen assets were confiscated in the EU in 2019 (€1 billion of criminal assets confiscated out of €3 billion frozen). Against this background, on 25 May 2022 the Commission proposed a new directive on asset recovery and confiscation, with the aim of strengthening the EU rules by amending Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the EU and by reinforcing the powers of the asset recovery offices (AROs), established pursuant to Council Decision 2007/845/JHA.

Glossary

Freezing: a measure to prevent the dissipation, transformation, movement or destruction of criminal assets to avoid confiscation during the investigation process.

Ordinary confiscation: a confiscation measure directed against an asset that is the direct proceed or the instrumentality of a crime, following a criminal conviction for that crime.

Value-based confiscation: a confiscation measure by which a court imposes an order corresponding to the value of proceeds or instrumentalities of a crime, enforceable against any property of the individual.

Extended confiscation: a confiscation measure following a criminal conviction that goes beyond the direct proceeds of the crime for which a person was convicted, where the property seized is derived from criminal conduct. A direct link between the property and the offence is not necessary if the court concludes that part of the person’s property was obtained through other unlawful conduct.

Third-party confiscation: a confiscation measure depriving someone other than the offender (a third party) of criminal property, where that third party possesses property received from the offender.

Non-conviction based confiscation (NCBC): a confiscation measure taken in the absence of a conviction and directed against an asset of illicit origin. It covers cases where criminal conviction is not possible because the suspect has become ill or has fled the jurisdiction, has died, lacks legal capacity, has immunity from prosecution, etc., but also cases where action is taken against the asset itself (in rem proceedings, generally civil proceedings), regardless of the person in possession of the property.

Existing situation

Adopted in 2014, Directive 2014/42/EU is a harmonisation instrument covering both freezing and confiscation of instrumentalities and proceeds of crime in the EU. It replaced the 1998 Joint Action 98/699/JHA (the first measure adopted at EU level on the freezing and confiscation of criminal instrumentalities and proceeds), and, in part, two Council framework decisions (FD) from 2001 and 2005. Council FD 2001/500/JHA of 26 June 2001 required that confiscation requests from other Member States be given the same priority as domestic requests and introduced rules on value-based confiscation. Council FD 2005/212/JHA of 24 February 2005 required Member States to confiscate criminal assets or their value from offences punishable by deprivation of liberty for more than one year. It also provided for extended confiscation in relation to six offences defined by EU law, when these offences had been committed in the framework of a criminal organisation, but also in relation to terrorism, for offences punishable with a minimum of between five and 10 years of imprisonment. Money-laundering offences punishable by a custodial sentence of at least four years were also covered by extended confiscation.

Directive 2014/42/EU has aimed to fill the significant gaps hindering freezing and confiscation in cross-border cases linked to criminal proceedings. The directive covers the ‘eurocrimes’ defined in Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) (except illegal arms trafficking), but also crimes defined in other legal instruments, if those instruments provide specifically that the directive applies to the offences harmonised therein. The directive provides for extended confiscation, which is limited to corruption offences, participation in a criminal organisation, sexual abuse and exploitation of children and IT crimes. Extended confiscation also covers the other eurocrimes listed in Article 3 of the directive, if the offence is punishable by a custodial sentence of at least four years. It also introduces third-party confiscation and a limited form of non-conviction based confiscation (NCBC) in relation to criminal proceedings involving a suspect who is permanently ill or has fled. However, the provisions on standard and value confiscation have a broader scope covering all offences punishable with imprisonment for at least one year. The directive establishes safeguards for those targeted by freezing and confiscation measures and for victims of criminal offences. Other provisions concern the management and disposal of frozen and confiscated assets and the collection and transmission of statistical data by Member States. The directive does not apply to Denmark, which remains bound by the 2005 framework decision.

Council Decision 2007/845/JHA of 6 December 2007 (the ARO Council Decision) requires Member States to establish up to two national AROs to improve cross-border cooperation on identifying and locating criminal assets. AROs must exchange information and best practices, on request or spontaneously. The rules and time limits applicable for the exchange of information are those set by Council FD 2006/960/JHA (the Swedish Initiative): eight hours for urgent cases and one week for non-urgent ones. Directive 2019/1153 on the use of financial information by law enforcement authorities grants AROs direct access to bank account information in the Member States.

In 2018, Regulation (EU) 2018/1805 on the mutual recognition of freezing and confiscation orders replaced two instruments: Council FD 2003/577/JHA on freezing orders from 2003 and Council FD 2006/783/JHA on confiscation orders from 2006. Since December 2020, it has applied to all Member States except Denmark and Ireland, which remain bound by the two FDs. The regulation covers all forms of confiscation harmonised by Directive 2014/42/EU, but goes even further to cover all criminal offences and other types of NCBC, as long as the orders are issued in the framework of proceedings in criminal matters. It introduces tight deadlines for the recognition and execution of freezing and confiscation orders, as well as standard certificates to ensure speedy procedures. Moreover, it prioritises victims’ rights to compensation/restitution in cross-border cases.

Main challenges

Since the adoption of Directive 2014/42/EU, the EU framework on asset recovery has evolved significantly, and most Member States have adopted new legislation leading to improved national
frameworks. Yet, confiscation rates remain low. In its recent evaluation of Directive 2014/42/EU and the ARO Council Decision, the Commission gives three main reasons for this: i) national authorities have limited capabilities to swiftly identify, trace and freeze assets; ii) inefficiencies in asset management deter the opening of asset recovery procedures; and iii) existing confiscation instruments fail to address all high-revenue criminal markets and criminals’ modi operandi.

As the first step in the asset recovery process, criminal assets must be swiftly identified and traced, and then frozen to prevent their dissipation. Yet, only 11 EU countries launch financial investigations automatically in parallel with the investigations for all forms of crime, while another eight only do this for specific crimes. In the rest of the Member States, financial investigations are optional. Moreover, the heterogeneity of AROs across the EU affects cross-border cooperation. In line with the 2007 Council Decision, all Member States set up at least one ARO, but the status and competences assigned to these offices vary. A majority of AROs are law enforcement authorities, others have an administrative (BG, MT, RO) or mixed status (CY, DK, IE) and nine are judicial authorities. Moreover, while almost all AROs are involved in asset tracing and identification, less than half have a role in asset freezing and less than a quarter can issue urgent freezing orders. In addition, the lack or limited access to national databases or registers to support investigations, coupled with the insufficient resources allocated to them, hamper their work and cross-border cooperation.

A second challenge relates to the management of frozen and confiscated assets. The purpose is to preserve the value of the assets pending the decision to confiscate or return to the owner in the case of frozen property or to return to the state budget or as compensation for victims in the case of confiscated assets. Some assets, such as e.g. livestock, cryptocurrencies, confiscated companies etc., require specific measures to prevent their deterioration and to maintain their value. Inadequate management measures have been found to thwart the entire asset recovery process: anticipated high management costs may act as a disincentive for decisions to freeze or confiscate, including in cross-border cases; moreover, inefficient management may result in few or no criminal assets being returned to victims or state budgets. Part of the problem is the variety of national asset management frameworks. Current EU legislation only encourages Member States to ensure adequate management of assets, including by setting up specialised asset management offices (AMOs), without specifying what adequate management should entail. Only 13 Member States have established an AMO of their own, while the rest of the Member States entrust the management of frozen and confiscated property to various bodies, thus hampering cross-border cooperation (e.g. difficulty to identify the counterparts in other Member States). Moreover, some management techniques, considered more efficient, such as pre-seizure planning (assessing what property is most suitable for confiscation, when and how to freeze or confiscate it) or interlocutory sales (selling or transferring frozen property prior to confiscation), are insufficiently used.

The limited use of confiscation mechanisms that are presently considered to be more effective in disrupting criminal activities is yet another challenge. Some Member States have introduced more far-reaching national measures, in particular on extended confiscation and NCBC, yet most others predominantly use standard confiscation. Stakeholders argue that NCBC systems are more effective in recovering criminal assets, including in depriving the high echelons of organised crime of their profits; they thus expect that expanding the rules on NCBC at EU level would increase the recovery rate. In addition, due to its narrow scope in terms of the offences covered for value-based, third-party, extended confiscation and NCBC, the 2014 Directive fails to address a wide area of criminal profits (the Commission estimates that €50 billion per year fall outside the directive’s scope).

A final element relates to the absence of a strategic approach to asset recovery, which is reflected, among other things, in the lack of shared objectives by all players involved and of comprehensive and comparable statistics on assets frozen and confiscated at national level.

**Comparative elements**

The first measures at EU level in the area of asset recovery were based on Council of Europe (CoE) conventions, in particular the Convention on laundering, search, seizure and confiscation of the
proceeds from crime (1990), ratified by all CoE Member States. In 2005, the CoE adopted the Convention on laundering, search, seizure and confiscation of the proceeds of crime and on the financing of terrorism, in force since 2008; however, not all EU Member States have signed and/or ratified it. Several other international treaties aim to encourage cooperation in the area of asset freezing and confiscation. These include three United Nations (UN) conventions: against illicit traffic in narcotic drugs and psychotropic substances (1988); against transnational organized crime (2000) and against corruption (2003). Whereas the CoE conventions have facilitated the exchange of information and cooperation in cross-border cases, both include many grounds for refusing to execute freezing and confiscation orders. Furthermore, the mutual legal assistance procedures under the CoE and UN conventions are cumbersome, leading to long delays in the asset recovery process. The informal Camden Asset Recovery Inter-Agency Network (CARIN), through its law enforcement and judicial contact points in the member countries, provides support through all the stages of the asset recovery process.

Parliament's starting position

Following the adoption of Directive 2014/42/EU, the Parliament and the Council called on the Commission in a joint statement to ‘analyse ... the feasibility and possible benefits of introducing further common rules on the confiscation of property deriving from activities of a criminal nature, also in the absence of a conviction of a specific person or persons for these activities’.

In its resolution of October 2016 on the fight against corruption, Parliament called for the swift transposition of Directive 2014/42/EU and asked the Commission and Member States to: strengthen EU measures on asset recovery, also by providing for confiscation in the absence of a final conviction or by criminalising the transfer of ownership of capital or property to avoid freezing or confiscation; promote the management of frozen and confiscated property and its re-use for social purposes, and as compensation for families of victims and businesses affected by loan-sharking and racketeering; and develop cooperation between AROs and give them adequate resources.

In its resolution of 10 July 2020 on a comprehensive Union policy on preventing money laundering and terrorist financing, Parliament expressed its concern at the low rates of confiscation in the EU and called on the Commission to include in its future legislative proposals ‘rules on the use of confiscated assets for public interest or social purposes and to work towards ensuring the return of confiscated assets to victims in countries outside the EU’. Parliament also requested that the Commission update the data on seized and confiscated assets.

In its January 2021 resolution on monitoring the application of EU law 2017, 2018 and 2019, Parliament welcomed the Commission’s pledge to review the EU asset recovery framework and to analyse the need for ‘further common rules, with particular attention to the seizure or confiscation of criminal proceeds in the absence of a conviction, and the management of such assets’.

In two resolutions of 15 December 2021 (on avoiding corruption and on the impact of organised crime on own resources of the EU), Parliament underlined that ‘the fight against organised criminal groups also requires enhanced rules and measures regarding the freezing and confiscation of assets, including, where appropriate, the temporary seizure of property of equivalent value to the criminal proceeds in order to prevent the transfer or disposal of those proceeds of crime before criminal proceedings have been concluded’. Parliament also invited the Commission to assess the possibility of ‘an EU-wide body in charge of ensuring the timely and effective recovery of EU funds’.

Council starting position

In its conclusions of June 2020 on enhancing financial investigations to fight serious and organised crime, the Council called on the Commission to consider ‘strengthening the legal framework on the management of property frozen with a view of possible subsequent confiscation, include the principle of pre-seizure planning, grant AROs additional powers, for example precautionary urgent
temporary freezing powers, in order to prevent the dissipation of assets'. The Council also concluded that AROs could be granted access to various public registers, such as land or company registers.

In its 2021 conclusions on the EU priorities for the fight on serious and organised crime for EMPACT 2022-2025, the Council stated its aim to ‘facilitate asset recovery in view of effectively confiscating criminal profits, especially by supporting the automatic launch of financial investigations and developing a culture of asset recovery through training and financial intelligence sharing’.

Preparation of the proposal

Following the request of the Parliament and the Council, the Commission published in April 2019 a report that gave an overview of the existing NCBC measures in the Member States. It showed that Member States' legal frameworks on NCBC had changed significantly in the past years, with important differences between the models implemented. Underlining the general support among stakeholders for harmonising national legislations in the area of NCBC, the report concluded that 'hybrid models that include successful aspects of different approaches are of particular interest'. Nevertheless, the report acknowledged that compliance with fundamental rights was the main challenge to any NCBC regime; therefore, 'any reinforced non-[conviction] based confiscation model at EU level would have to be accompanied by strong procedural safeguards'.

In June 2020, the Commission published a report assessing the national transposing measures related to Directive 2014/42/EU, with an added focus on AROs and international cooperation. The report concluded that the implementation of the directive had been satisfactory and that the Member States' legal frameworks on asset recovery had improved in general, yet further progress could be achieved through greater harmonisation.


The Commission included the evaluation of the existing legal framework in Annex 7 of the impact assessment accompanying its proposal for a directive on asset recovery and confiscation, published on 25 May 2022. The evaluation concluded that the ARO Council Decision had achieved its objectives by increasing the rate of cross-border information exchange and the tracing of criminal assets. However, there had not been an equivalent increase in the asset recovery rate. Directive 2014/42/EU was assessed as moderately successful in that it had led to some approximation of the concepts of freezing and confiscation and to an increase in the freezing and confiscation rates; however, the overall results were still too modest to have a significant impact on the profits of organised crime. The reasons evoked were the limited scope of confiscation under the directive, the significant differences between Member States' legislations, and asset management inefficiencies. Moreover, data collection shortcomings hampered the emergence of a reliable picture of the asset recovery efforts in the Member States.

Building on the evaluation, on data from two studies, on the results of the public consultations and on targeted stakeholder consultations, the impact assessment accompanying the proposed directive analysed four main policy options: 1) non-legislative, consisting of an increased exchange of best practices and EU guidance; 2) minimum legislative measures through targeted amendments to the two acts; 3) more extensive changes to the legal framework; and 4) a maximum-level legislative intervention. The Commission found that policy option 3 would strike the best balance between effectiveness, cost efficiency and impact on fundamental rights, also bringing the most benefits, with approximately €1 billion per year in terms of additional amounts of recovered assets across the EU. This represents a significant difference compared to policy options 2 (€100-
200 million) and 4 (€50-100 million). It would also entail lower costs than the maximum legislative intervention. Policy option 3 would expand the scope of the directive to include a wider range of crimes, as well as the provisions on NCBC. Moreover, it would set minimum rules for the tracing and management steps of the asset recovery process, and strengthen the powers of AROs. On the other hand, the Commission concluded that changing the voluntary nature of the provision on social re-use of confiscated assets would be disproportionate, as it would interfere with national competences on budgetary autonomy. As regards victim compensation, the Commission argued that any related measures should be dealt with through changes to the specific framework consisting of the Victims’ Rights Directive (2012/29/EU) and the Compensation Directive (Council Directive 2004/80/EC).


The changes the proposal would bring

The proposed directive, based on Articles 82(2), 83(1) and (2) and 87(2) TFEU, aims to streamline the obligations on asset recovery and to introduce a more strategic approach to improving the overall efficiency of the asset recovery system. It consolidates the provisions of the ARO Decision and Directive 2014/42/EU, sets minimum rules on all phases of the asset recovery process, and applies only to proceedings in criminal matters. Denmark will not be bound by the directive and Ireland has not yet notified its decision to opt into the adoption of the directive. The directive will have to be transposed within one year of its entry into force.

Scope

The proposal extends the scope of Directive 2014/42/EU to cover a broader range of crimes, namely the eurocrimes in Article 83(1) TFEU, other crimes harmonised at EU level and other serious crimes committed within the framework of a criminal organisation, as well as the violation of Union restrictive measures. Therefore, in addition to the crimes already covered by Directive 2014/42/EU, the scope of the proposal (Article 2) includes:

- trafficking in firearms (eurocrime);
- all crimes harmonised at EU level, including migrant smuggling, fraud against the EU’s financial interests and environmental crimes;
- the following offences committed within the framework of a criminal organisation: counterfeiting and piracy of products; trafficking in cultural goods; document fraud; murder and grievous bodily harm; organ trafficking; kidnapping; organised or armed robbery, racketeering; trafficking in stolen vehicles; and tax crimes punishable by a custodial sentence of at least one year;
- the violation of Union restrictive measures.

The directive will also apply to other criminal offences set out in EU legal acts, if they specify that the directive is applicable to them.

Tracing and identification

The proposal introduces requirements to enable the swift tracing and identification of criminal instrumentalities, proceeds and property, as well as to ensure that asset-tracing investigations start immediately, to address criminal offences that are likely to give rise to high benefits, or to prevent, detect or investigate the violation of EU restrictive measures (Article 4). The provisions on tracing and identification apply to all criminal offences, as defined in national law, that are punishable by a custodial sentence of at least one year, as well as to the violation of EU sanctions to the extent that such violation is a criminal offence under national law.

Asset recovery offices

Member States are required to set up at least one ARO. The tasks of AROs (Article 5) include tracing and identification of assets in support of national authorities and in relation to a freezing or
confiscation order from another Member State; and cooperation and exchange of information with other Member States’ AROs, including in relation to the implementation of EU sanctions. AROs are empowered to trace and identify assets of persons and entities subject to EU targeted financial sanctions, as well as to take temporary urgent freezing measures in relation to the violation of EU restrictive measures. Member States must give AROs immediate and direct access to information necessary for tracing and identifying assets, namely fiscal data, real estate and population registers, vehicles and vessels registers, commercial databases, national social security registers, and relevant law enforcement information. They also need to ensure AROs have access to relevant information not stored in databases. In line with Directive 2019/1153, such information is to be accessed only where necessary and on a case-by-case basis, in compliance with national rules on confidentiality and professional secrecy and by taking measures to ensure the security of data.

AROs may exchange any information on request or spontaneously. The categories of personal data that can be provided are those listed in Section B, point 2 of Annex II of the Europol Regulation. Member States must ensure that information provided by AROs can be presented as evidence in court. AROs should get direct access to and use SIENA (Europol’s secure information exchange system) for their exchange of information. AROs may refuse to provide information on grounds of national security or if doing so would jeopardise an ongoing investigation or criminal intelligence operation or pose a risk to the life or physical integrity of a person. AROs must give reasons for the refusal. In line with the Swedish initiative, AROs must provide requested information stored in databases or registers within seven calendar days for non-urgent requests and eight hours for urgent ones. The deadline may be postponed by three days, if meeting it would involve a disproportionate burden (in non-urgent cases), or if the information is not directly available (in urgent cases).

Freezing and confiscation

The provisions on freezing and confiscation apply to all criminal offences within the scope of the proposed directive, in the framework of proceedings in criminal matters.

Freezing

Member States must ensure that illicit assets can be frozen immediately to prevent their dissipation. In addition, AROs may take temporary urgent freezing measures until a formal freezing order is issued. If it is not confiscated, frozen property must be immediately returned.

Confiscation

Member States must enable standard and value confiscation following a final conviction, as well as third-party confiscation (current rules). Extended confiscation, allowing for the confiscation of property of a convicted person if the court is convinced that the property derives from criminal conduct, must be enabled for all crimes in the scope of the proposed directive (Article 14).

Article 15 of the proposal extends the coverage of NCBC, in addition to illness or absconding of the defendant already included in Directive 2014/42/EU, to death, immunity or amnesty of the suspected or accused person, or expiration of the time limits prescribed by national law for the offence. NCBC must be limited to criminal offences likely to lead to substantial economic benefit and only if the national court is satisfied that all the elements of the offence are present. NCBC applies to the criminal offences in Article 2 when punishable by deprivation of liberty of at least four years. Article 16 introduces another form of NCBC based on unexplained wealth, when confiscation cannot be ordered under other provisions of the directive and if certain conditions are present: the property has been frozen; the criminal offence can give rise to substantial economic benefit; and the national court has concluded that the frozen property is derived from criminal offences committed in the framework of a criminal organisation (such conclusion may include that the value of the property is disproportionate to the lawful income of the owner). It applies to all criminal offences in Article 2 punishable by deprivation of liberty of at least four years. For all forms of NCBC, the proposal mandates respect for the affected persons’ right of defence and right to be heard before the
conviction order is issued. Member States must also enable asset tracing and identification after a conviction has been secured or after NCBC related proceedings have been finalised.

**Social reuse of confiscated property and victims' compensation**

Member States must consider taking measures to allow the use of confiscated property for public interest or social purposes and must ensure that confiscation measures under the directive do not affect victims' rights to obtain compensation (no change compared to Directive 2014/42/EU).

**Management of frozen and confiscated assets**

Member States must ensure the efficient management of frozen or confiscated assets, including by carrying out pre-seizure planning or interlocutory sales of frozen property (if it is rapidly depreciating or perishable, maintenance costs are disproportionately high, or there are difficulties in administering the property). The owner of the assets must be notified and heard before the sale. The costs for managing the frozen property may be charged to the beneficial owner. Member States must set up or designate at least one AMO, tasked with: managing frozen or confiscated property either directly or through providing support to the competent authorities; providing support with pre-seizure planning to the competent authorities responsible for the management of frozen and confiscated assets; and cooperating with national and other Member States' competent authorities.

**Safeguards**

The procedural safeguards are based on Directive 2014/42/EU. The proposal introduces the requirement to inform the affected person of the freezing or confiscation order or interlocutory sales order, and to ensure their access to legal remedies, including the right to defence, access to a lawyer, to an effective remedy and a fair trial. Confiscation should not be ordered if it is disproportionate to the offence/accusation or, exceptionally, if it poses undue hardship for the affected person.

**Strategic approach and cooperation**

The proposal requires Member States to adopt a national strategy on asset recovery and to update it every five years; to provide AROs and AMOs with the necessary resources; to set up a centralised registry with information on frozen, managed and confiscated assets, to which AROs, AMOs and other competent authorities would have direct access; and to collect comprehensive statistics at central level and send them annually to the Commission. Moreover, national AROs must cooperate with the European Public Prosecutor’s Office, Europol and Eurojust, as well as with their counterparts in third countries, in order to facilitate the identification of criminal assets or to prevent, detect or investigate criminal offences related to the violation of EU sanctions. AMOs must be able to cooperate with their third-country counterparts.

**Advisory committees**

On 14 December 2022, the European Economic and Social Committee (EESC) adopted an opinion expressing support for the proposal.

**National parliaments**

The deadline for submitting reasoned opinions on grounds of subsidiarity and proportionality expired on 19 September 2022. A number of Chambers submitted their positions.

**Legislative process**

The proposal was referred to Parliament on 22 June 2022, and the file was assigned to the Committee on Civil Liberties, Justice and Home Affairs (LIBE), which appointed Loránt Vincze (EPP, Romania) as rapporteur. Both the Committee on Legal Affairs (JURI) – designated as associated committee – and the Committee on Budgets (BUDG) provided opinions.
The LIBE draft report was published on 14 February 2023 and was adopted on 23 May 2023, with 50 votes in favour, one against and four abstentions. The report proposes to include in the scope of the directive illicit trafficking in nuclear or radioactive materials; crimes under the jurisdiction of the International Criminal Court; unlawful seizure of aircraft or ships; sabotage; illicit trafficking in hormonal substances and other growth promoters; arson; rape; swindling; racism and xenophobia. AROs should have direct or indirect access to any necessary information for asset tracing and identification, including an expanded list of registries and databases. The report introduces the possibility of using confiscated property for public interest or social purposes, and proposes prioritising victims’ claims for restitution. A cooperation network, composed of AROs and AMOs, should support the Commission and facilitate the exchange of best practices and operational cooperation in relation to the implementation of the directive. On 12 June, Parliament approved in plenary the Committee’s decision to enter into interinstitutional negotiations.

In the Council, discussions focused on the procedural rights of non-suspects, on the proposed rules on the violation of EU sanctions, and on unexplained wealth. On 9 June 2023, the Council adopted its general approach. Among other things, the Council removed the violation of EU sanctions from the scope of asset tracing investigations and from the tasks assigned to AROs; extended the time limits for the exchange of information between AROs; clarified that extended confiscation applies to the covered offences, if punishable with a prison term of at least four years; removed the condition of deprivation of liberty of at least four years in case of NCBC, but not for confiscation of unexplained wealth. The Council also introduced more flexibility concerning the proposed national strategies on asset recovery, the national registries and the statistics to be sent to the Commission, while the transposition period was prolonged to 36 months. After three rounds of negotiations, on 12 December 2023 Parliament and the Council reached a provisional agreement on the draft directive.

The directive as agreed will apply to criminal offences including participation in a criminal organisation, terrorism, trafficking in human beings, sexual exploitation of children and child pornography, illicit trafficking in narcotic drugs and psychotropic substances, corruption, money laundering, forgery of means of payment, counterfeiting currency, computer-related crime, illicit manufacturing of and trafficking in firearms, fraud, environmental crime, including illicit trafficking in endangered animal species and in endangered plant species, facilitation of unauthorised entry and residence, market abuse, and the violation of Union restrictive measures (sanctions). Moreover, Member States are particularly encouraged to ensure that the crimes of counterfeiting and piracy of products, illicit trafficking in cultural goods, forgery and trafficking of administrative documents, murder or grievous bodily injury, illicit trade in human organs and tissue, kidnapping, illegal restraint or hostage-taking, organised or armed robbery, racketeering and extortion, trafficking in stolen vehicles, tax crimes relating to direct taxes and indirect taxes, arson, fraud and swindling, illicit trafficking in nuclear or radioactive materials, and crimes which fall within the jurisdiction of the International Criminal Court are included in the scope of the Directive, if these crimes are committed within the framework of a criminal organisation.

Asset-tracing investigations

To facilitate cross-border cooperation, Member States have to take measures to enable the swift tracing and identification of instrumentalities and proceeds, or of property which is, or might become, the object of a freezing or confiscation order in the course of proceedings in criminal matters.

Asset recovery offices

Each Member State has to set up at least one ARO to facilitate cross-border cooperation in relation to asset-tracing investigations. AROs should also be able to trace and identify instrumentalities, proceeds or property where necessary to support other national competent authorities responsible for asset-tracing investigations or the European Public Prosecutor’s Office. In order to perform their tasks, AROs should be given the right to ask the relevant competent authorities, in accordance with
national law, to cooperate with them where necessary for the tracing and identification of instrumentalities, proceeds or property. AROs are to be empowered to trace and identify property of persons and entities subject to Union restrictive measures where necessary to facilitate the detection of criminal offences.

Member States should ensure that AROs have immediate and direct access to the following information, provided that such information is stored in centralised or interconnected databases or registers held by public authorities: (i) national real estate registers or electronic data retrieval systems and land and cadastral registers; (ii) national citizenship and population registers; (iii) national motor vehicle, aircraft and watercraft registers; (iv) commercial registers, including business and company registers; (v) national beneficial-ownership registers in accordance with Directive (EU) 2015/849; (vi) centralised bank account registers.

AROs should be able to swiftly obtain, either immediately and directly or upon request, the following information: (i) fiscal data; (ii) national social security data; (iii) information on mortgages and loans; (iv) information contained in national currency databases and currency exchange databases; (v) information on securities; (vi) customs data; (vii) information on annual financial statements by companies, on wire transfers and account balances and on crypto-asset accounts.

Freezing and confiscation

Member States need to take measures to enable the freezing of property in order to ensure eventual confiscation and to ensure, in the event of a final conviction, the confiscation of instrumentalities and proceeds stemming from a criminal offence. Where criminal assets or property of equal value are transferred to a third party, it must also be possible to confiscate them, but only if the third party knew or should have known that the purpose of the transfer or acquisition was to avoid confiscation.

Confiscation of unexplained wealth linked to criminal conduct

A new rule on the confiscation of unexplained wealth will, under certain conditions, allow the confiscation of property identified in the context of an investigation in relation to criminal offences, provided that a national court is satisfied that the identified property is derived from criminal activities committed within the framework of a criminal organisation and that those activities give rise to substantial economic benefit.

Asset management

Member States have to set up or designate one or more competent authorities to function as AMOs with the purpose of establishing specialised authorities tasked with the management of frozen and confiscated property, in order to effectively manage the property frozen before confiscation and preserve its value, pending a final decision on the confiscation and the disposal of the property based on such a decision.

Compensation of victims

Member States have to take appropriate measures to ensure that where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under the directive, such claims are taken into account within the relevant asset-tracing, freezing and confiscation proceedings. Member States are encouraged to take the necessary measures to allow the possibility of using confiscated property, where appropriate, for public interest or social purposes.

Legal remedies

Member States should ensure that persons affected by freezing orders and confiscation have the right to an effective remedy and to a fair trial in order to uphold their rights.

On 13 March 2024, the European Parliament adopted its position at first reading by 598 votes to 19, with seven abstentions. The Council adopted the directive on 12 April 2024. On 2 May 2024, the final

EUROPEAN PARLIAMENT SUPPORTING ANALYSIS


OTHER SOURCES

Asset recovery and confiscation, 2022/0167(COD), Legislative Observatory (OIEL), European Parliament.

ENDNOTES

1 Counterfeiting currency, money laundering, human trafficking, facilitation of irregular entry or residence, sexual exploitation of children and child pornography, and drug trafficking.

2 Nineteen Member States have designated one ARO each and seven Member States (BG, DE, ES, FR, LT, NL, SE) two ARos each; Slovenia has only designated a contact point.


4 Annex 2 of the Commission’s IA report accompanying the proposal includes a summary of the replies.


6 The Commission consulted the relevant stakeholders, in particular experts and national practitioners, through questionnaires, expert interviews and workshops.

7 See Annex 4, Commission IA report accompanying the proposal for the directive on asset recovery and confiscation.

8 Following the Council’s decision of 28 November 2022 to add the violation of EU sanctions to the list of serious crimes in Article 83(1) TFEU, the European Parliament and the Council adopted Directive (EU) 2024/1226 on the definition of criminal offences and penalties for the violation of Union restrictive measures.

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