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*Plenary sitting*

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**A9-0199/2023**

26.5.2023

**\*\*\*I**

## **REPORT**

on the proposal for a directive of the European Parliament and of the Council  
on asset recovery and confiscation  
(COM(2022)0245 – C9-0186/2022 – 2022/0167(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Loránt Vincze

Rapporteur for the opinion of the associated committee pursuant to Rule 57 of  
the Rules of Procedure  
Sergey Lagodinsky, Committee on Legal Affairs

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

***Amendments to a draft act*****Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

**Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ***■*** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the proposal for a directive of the European Parliament and of the Council on asset recovery and confiscation  
(COM(2022)0245 – C9-0186/2022 – 2022/0167(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0245),
  - having regard to Article 294(2) and Article 82(2), Article 83(1) and (2) and Article 87(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0186/2022),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the opinion of the European Economic and Social Committee of 14 December 2022<sup>1</sup>,
  - having regard to the opinions of the Committee on Legal Affairs and the Committee on Budgets,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0199/2023),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

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<sup>1</sup> OJ C 100, 16.3.2023, p. 105.

**Proposal for a directive**  
**Recital 1**

*Text proposed by the Commission*

(1) Europol's 2021 Serious and Organised Crime Threat Assessment (SOCTA) highlighted the rising threat from organised crime and criminal infiltration. Driven by the large revenues generated by organised crime, which amount to at least EUR 139 billion every year, and which are increasingly laundered through a parallel underground financial system, the availability of such proceeds from criminal activities poses a significant threat to the integrity of the economy and society, eroding the rule of law and fundamental rights. The EU Strategy to tackle Organised Crime 2021-2025 aims at addressing these challenges by promoting cross-border cooperation, supporting effective investigations against criminal networks, eliminating proceeds from criminal activities, and making law enforcement and the judiciary fit for the digital age.

**Amendment 2**

**Proposal for a directive**  
**Recital 2**

*Text proposed by the Commission*

(2) The main motive for cross-border organised crime, including high-risk criminal networks, is financial gain. Therefore, to tackle the serious threat posed by organised crime, competent authorities should be given *the* means to effectively trace and identify, freeze, confiscate and manage the instrumentalities and proceeds of crime and property that stems from criminal activities.

*Amendment*

(1) Europol's 2021 Serious and Organised Crime Threat Assessment (SOCTA) highlighted the rising threat from organised crime and criminal infiltration. Driven by the large revenues generated by organised crime, which amount to at least EUR 139 billion every year, and which are increasingly laundered through a parallel underground financial system, the availability of such proceeds from criminal activities poses a significant threat to the integrity of the economy and society, eroding the rule of law and fundamental rights. The EU Strategy to tackle Organised Crime 2021-2025 aims at addressing these challenges by promoting cross-border cooperation, **and the exchange of information between Member States**, supporting effective investigations against criminal networks, eliminating proceeds from criminal activities, and making law enforcement and the judiciary fit for the digital age.

*Amendment*

(2) The main motive for cross-border organised crime, including high-risk criminal networks, is financial gain. Therefore, to tackle the serious threat posed by organised crime, competent authorities should be given **more operational capacity and necessary** means to effectively trace and identify, freeze, confiscate and manage the instrumentalities and proceeds of crime and property that stems from criminal

activities.

### **Amendment 3**

#### **Proposal for a directive Recital 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2a) Criminal organisations usually reinvest part of their profits from criminal activities to create a financial base enabling them to continue those activities. In addition, criminal organisations often resort to violence, threats or intimidation in order to acquire the control or management of economic activities, concessions, authorisations, procurement and public services, or to achieve illicit profits or advantages, thereby adversely affecting the freedom of competition, or to prevent or to hinder the free exercise of the right to vote or to otherwise alter voting results in elections, thus affecting democratic life. Organised crime has therefore become an economic worldwide operator with an entrepreneurial vocation and specialised in both the legal and illegal supply of goods and services. Depriving criminals of illicit profits is essential in order to disrupt their activities and to prevent them from infiltrating the legitimate economies.***

### **Amendment 4**

#### **Proposal for a directive Recital 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***(2b) Economic and financial crime, in particular organised crime, often operate through legal persons, and the criminal offences included in the scope of this Directive can be committed in the interest***

*or for the benefit of such legal persons.  
Therefore, freezing and confiscation  
orders should be issued also against legal  
persons.*

## Amendment 5

### Proposal for a directive Recital 3

#### *Text proposed by the Commission*

(3) An effective asset recovery system requires the swift tracing and identification of instrumentalities and proceeds of crime, and property suspected to be of criminal origin. Such proceeds, instrumentalities, and property should be frozen in order to prevent its disappearance, following which it should be confiscated upon conclusion of **criminal** proceedings. An effective asset recovery system further requires the effective management of frozen and confiscated property to maintain its value for the State or for the restitution for victims.

#### *Amendment*

(3) An effective asset recovery system requires the swift tracing and identification of instrumentalities and proceeds of crime, and property suspected to be of criminal origin. Such proceeds, instrumentalities, and property should be frozen in order to prevent its disappearance, following which it should be confiscated upon conclusion of proceedings **in criminal matters**. An effective asset recovery system further requires the effective management of frozen and confiscated property to maintain its value for the State or for the restitution for victims.

## Amendment 6

### Proposal for a directive Recital 5

#### *Text proposed by the Commission*

(5) Therefore, the existing legal framework should be updated, so as to facilitate and ensure effective asset recovery and confiscation efforts across the Union. To that end, the Directive should lay down minimum rules on tracing and identification, freezing, confiscation and management of property within the framework of proceedings in criminal matters. In this context, proceedings in criminal matters is an autonomous concept of Union law interpreted by the Court of

#### *Amendment*

(5) Therefore, the existing legal framework should be updated, so as to facilitate and ensure effective asset recovery and confiscation efforts across the Union. To that end, the Directive should lay down minimum rules on tracing and identification, freezing, confiscation and management of property within the framework of proceedings in criminal matters. In this context, proceedings in criminal matters is an autonomous concept of Union law interpreted by the Court of

Justice of the European Union, notwithstanding the case law of the European Court of Human Rights. The term covers all types of freezing and confiscation orders issued following proceedings in relation to a criminal offence. It also covers other types of orders issued without a final conviction. Proceedings in criminal matters could also encompass criminal investigations by the police and other law enforcement authorities. It is necessary to reinforce the capacity of competent authorities to deprive criminals of the proceeds from criminal activities. For this purpose, rules should be laid down to strengthen asset tracing and identification, as well as freezing capabilities, to improve management of frozen and confiscated property, to strengthen the instruments to confiscate instrumentalities and proceeds of crime and property derived from criminal activities of criminal organisations, and to improve the overall efficiency of the asset recovery system.

Justice of the European Union, notwithstanding the case law of the European Court of Human Rights. The term covers all types of freezing and confiscation orders issued following proceedings in relation to a criminal offence. It also covers other types of orders issued without a final conviction. Proceedings in criminal matters could also encompass criminal investigations by the police and other law enforcement authorities. ***Where the national legal system of the Member States allows, Member States should be able to apply this Directive to different types of national proceedings provided that it is ensured that any procedure satisfies essential characteristics of a criminal procedure, in particular its safeguards.*** It is necessary to reinforce the capacity of competent authorities to deprive criminals of the proceeds from criminal activities. For this purpose, rules should be laid down to strengthen asset tracing and identification, as well as freezing capabilities, to improve management of frozen and confiscated property, to strengthen the instruments to confiscate instrumentalities and proceeds of crime and property derived from criminal activities of criminal organisations, and to improve the overall efficiency of the asset recovery system.

## Amendment 7

### Proposal for a directive Recital 8

#### *Text proposed by the Commission*

(8) The rules should facilitate cross-border cooperation by providing the competent authorities with the necessary powers and resources to respond in a swift and effective way to requests from authorities in other Member States. Provisions laying down rules on early tracing and identification, urgent action to

#### *Amendment*

(8) The rules should facilitate cross-border cooperation by providing the competent authorities with the necessary powers and resources to respond in a swift and effective way to requests from authorities in other Member States. Provisions laying down rules on early tracing and identification, urgent action to

freeze, or efficient management contribute to improving the possibilities for asset recovery across borders. Given the global nature of in particular organised crime, cooperation with third countries should also be strengthened.

freeze, or efficient management contribute to improving the possibilities for asset recovery across borders. Given the global nature of in particular organised crime, ***and the fleeting nature of criminal assets that can easily be moved or concealed*** cooperation with third countries should also be strengthened, ***in full respect of fundamental rights.***

## Amendment 8

### Proposal for a directive Recital 8 a (new)

*Text proposed by the Commission*

*Amendment*

***(8a) There is a clear need for closer and more effective cooperation between all asset recovery authorities, including between asset recovery offices and asset management offices and their counterparts in other Member States.***

## Amendment 9

### Proposal for a directive Recital 9

*Text proposed by the Commission*

*Amendment*

(9) Due to the poly-criminal nature of and the systemic and profit-oriented cooperation of criminal organisations involved in a wide range of illicit activities in different markets, an effective fight against organised crime requires that freezing and confiscation measures are available to cover the profits from all offences where organised crime groups are active in. These crimes include the areas of crime listed in Article 83(1), ***including the illicit trafficking in weapons, munitions and explosives as defined in the Protocol against the illicit manufacturing of and trafficking in firearms, their parts and***

(9) Due to the poly-criminal nature of and the systemic and profit-oriented cooperation of criminal organisations involved in a wide range of illicit activities in different markets, an effective fight against organised crime requires that freezing and confiscation measures are available to cover the profits from all offences where organised crime groups are active in. These crimes include the areas of crime listed in Article 83(1), In addition to the crimes listed in Article 83(1), the scope of the Directive should also cover all crimes that are harmonised at EU level, including frauds against the financial

*components and ammunition, supplementing the United Nations Convention against transnational organized crime, to which the Union is party.* In addition to the crimes listed in Article 83(1), the scope of the Directive should also cover all crimes that are harmonised at EU level, including frauds against the financial interests of the European Union in light of the increasing involvement of organised criminal groups in such crime area. The scope of the Directive should further include environmental crimes, which are a core business for organised criminal groups and are often connected to money laundering or concern waste **and** residues produced in the context of drug production and trafficking. The facilitation of unauthorized entry and residence constitute a core business for organised criminal groups and is typically connected to the trafficking in human beings.

interests of the European Union in light of the increasing involvement of organised criminal groups in such crime area. The scope of the Directive should further include environmental crimes, which are a core business for organised criminal groups and are often connected to money laundering, **document fraud, economic fraud, tax evasion and corruption** or concern waste **trafficking in breach of national and international law and standards regulating the collection, treatment and disposal of waste, including** residues produced in the context of drug production and trafficking. The facilitation of unauthorized entry and residence constitute a core business for organised criminal groups and is typically connected to the trafficking in human beings. **The criminal offence of facilitating unauthorised entry and residence should be understood within the meaning of Council Directive 2002/90/EC of 28 November 2002<sup>18a</sup> and Council Framework Decision 2002/946/JHA of 28 November 2002<sup>19a</sup>. Council Framework Decision 2002/946/JHA provides for the possibility to accompany criminal penalties with the confiscation of the means of transport used to commit the offence, while clearly setting out at the same time that its provisions apply without prejudice to the protection afforded to refugees and asylum seekers in order to provide humanitarian assistance in accordance with international law.**

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<sup>18a</sup> **Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17).**

<sup>19a</sup> **Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1).**

## Amendment 10

### Proposal for a directive

#### Recital 10

##### *Text proposed by the Commission*

(10) Other crimes committed within the framework of a criminal organisation play a pivotal role in generating revenues and in enabling further crimes, including serious crimes with a cross-border nature. Such crimes should be included in the scope of the Directive to the extent to which they are committed within the framework of a criminal organisation. The counterfeiting and piracy of products is linked to money laundering and the forgery of documents, and threatens the functioning of the single market and fair competition. The illicit trafficking in cultural goods, including antiques and works of art, is often intertwined with money laundering and constitutes an important source of financing for organised criminal groups. Forgery of administrative documents and trafficking therein, including bank documents or identification documents, is a key enabling tool for money laundering, trafficking in human beings, or migrant smuggling, and should as such be covered in the scope of this Directive. Other crimes which are often carried out within the framework of an organised crime group include murder or grievous bodily harm, as well as the illicit trade in human organs and tissue, which are a source of revenue for organised crime groups in the context of contract killings, intimidation and trafficking in human beings. Similarly kidnapping, illegal restraint or hostage taking, as well as racketeering and extortion, are utilized either as source of revenue through the collection of ransom money or as intimidation tactics against adversaries. The crime of organised or armed robbery is one of the most common

##### *Amendment*

(10) Other crimes committed within the framework of a criminal organisation play a pivotal role in generating revenues and in enabling further crimes, including serious crimes with a cross-border nature. Such crimes ***as defined in the national law of the Member States*** should be included in the scope of the Directive to the extent to which they are committed within the framework of a criminal organisation. The counterfeiting and piracy of products is linked to money laundering and the forgery of documents, and threatens the functioning of the single market and fair competition. The illicit trafficking in cultural goods, including antiques and works of art, is often intertwined with money laundering and constitutes an important source of financing for organised criminal groups. ***The same applies to the illegal trade and trafficking of endangered animal and plant species, including their body parts or products derived from them.*** Forgery of administrative documents and trafficking therein, including bank documents or identification documents, is a key enabling tool for money laundering, trafficking in human beings, or migrant smuggling, and should as such be covered in the scope of this Directive. Other crimes which are often carried out within the framework of an organised crime group include murder or grievous bodily harm, as well as the illicit trade in human organs and tissue, which are a source of revenue for organised crime groups in the context of contract killings, intimidation and trafficking in human beings. Similarly kidnapping, illegal restraint or hostage

forms to generate profits for organised criminal groups, and it is often committed in conjunction with other crimes, in particular the trafficking in firearms. Similarly, the trafficking in stolen vehicles cannot only generate profits but also represents an enabling crime to provide for the necessary instrumentalities to carry out further offences. In addition, it is key to include tax crimes to the extent it is committed as part of a criminal organisation in the scope of the Directive, as this specific crime is an enabling source of profits, especially when operating in a cross-border context. Typical techniques employed to commit tax fraud or evasion consist of making use of cross-border corporate structures or similar arrangements to fraudulently obtain tax benefits and refunds, hide assets or profits, merge legal with illicit profits and assets or to transfer them to other entities abroad to disguise their origins or (beneficial) ownership.

taking, as well as racketeering and extortion, are utilized either as source of revenue through the collection of ransom money or as intimidation tactics against adversaries. The crime of organised or armed robbery is one of the most common forms to generate profits for organised criminal groups, and it is often committed in conjunction with other crimes, in particular the trafficking in firearms. Similarly, the trafficking in stolen vehicles cannot only generate profits but also represents an enabling crime to provide for the necessary instrumentalities to carry out further offences. In addition, it is key to include tax crimes to the extent it is committed as part of a criminal organisation in the scope of the Directive, as this specific crime is an enabling source of profits, especially when operating in a cross-border context. Typical techniques employed to commit tax fraud or evasion consist of making use of cross-border corporate structures or similar arrangements to fraudulently obtain tax benefits and refunds, hide assets or profits, merge legal with illicit profits and assets or to transfer them to other entities abroad to disguise their origins or (beneficial) ownership. ***It is also important to include within the scope of this Directive the offences listed in article 3 paragraph 1 of the Regulation (EU) 2018/1805 of the European Parliament and of the Council<sup>20a</sup>. In particular, this Directive should also apply to crimes within the jurisdiction of the International Criminal Court.***

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<sup>20a</sup> ***Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ L 303, 28.11.2018, p. 1)***

## **Amendment 11**

## Proposal for a directive

### Recital 12

#### *Text proposed by the Commission*

(12) In order to capture property which might be transformed and transferred in order to conceal its origin, and in order to ensure harmonisation and clarity of definitions across the Union, property that can be subject to freezing and confiscation should be defined broadly. It should cover legal documents or instruments evidencing title or interest in property subject to freezing and confiscation including, for example, financial instruments, or documents that may give rise to creditor claims and are normally found in the possession of the person affected by the relevant procedures, as well as trusts. This Directive is without prejudice to the existing national procedures for keeping legal documents or instruments evidencing title or interest in property, as they are applied by the competent national authorities or public bodies in accordance with national law. The definition should cover all forms of property, including crypto assets.

#### *Amendment*

(12) In order to capture property which might be transformed and transferred in order to conceal its origin, and in order to ensure harmonisation and clarity of definitions across the Union, property that can be subject to freezing and confiscation should be defined broadly. It should cover legal documents or instruments, ***in any form, including in electronic or digital form*** evidencing title or interest in property subject to freezing and confiscation including, for example, financial instruments, or documents that may give rise to creditor claims and are normally found in the possession of the person affected by the relevant procedures, as well as trusts. This Directive is without prejudice to the existing national procedures for keeping legal documents or instruments evidencing title or interest in property, as they are applied by the competent national authorities or public bodies in accordance with national law. The definition should cover all forms of property, including crypto assets.

### Amendment 12

## Proposal for a directive

### Recital 14

#### *Text proposed by the Commission*

(14) In order to facilitate cross-border cooperation, the tracing and identification of property at an early stage of a criminal investigation is of essence to ensure the prompt identification of instrumentalities, proceeds, or property, which might be subsequently confiscated, including property related to criminal activities located in other jurisdictions. To ensure

#### *Amendment*

(14) In order to facilitate cross-border cooperation, the tracing and identification of property at an early stage of a criminal investigation is of essence to ensure the prompt identification of instrumentalities, proceeds, or property, which might be subsequently confiscated, including property related to criminal activities located in other jurisdictions. To ensure

that financial investigations are sufficiently prioritised in all Member States, *so* to address a crime of cross-border nature, it is necessary to require competent authorities to launch asset tracing from the moment there is a suspicion of criminal activities that are likely to generate substantial economic benefits.

that financial investigations are sufficiently prioritised in all Member States, to address a crime of cross-border nature, it is necessary to require competent authorities to launch asset tracing from the moment there is a suspicion of criminal activities that are likely to generate substantial economic benefits. ***It is possible that financial investigations also include minimum thresholds for the value of instrumentalities, proceeds or property related to the criminal offence triggering the initiation of asset tracing investigations. All Member States should therefore have an effective set of procedures for the freezing, management and confiscation of criminal assets that is underpinned by the necessary institutional, financial and human resources.***

## Amendment 13

### Proposal for a directive Recital 17

#### *Text proposed by the Commission*

(17) In order to perform effective asset tracing investigations, and to swiftly respond to cross-border requests, asset recovery offices should have access to the information that allows them to establish the existence, ownership or control of property that may become object of a freezing or a confiscation order. Therefore, asset recovery offices should have access to the relevant data such as fiscal data, national citizenship and population registries, commercial databases and social security information. This should include law enforcement information in so far as data such as criminal records, vehicles stops, property searches and previous legal actions such as freezing and confiscation orders or seizures of cash can be of value to identify relevant property. Access to information should be subject to specific

#### *Amendment*

(17) In order to perform effective asset tracing investigations, and to swiftly respond to cross-border requests, asset recovery offices should have access ***direct*** to the information that allows them to establish the existence, ownership or control of property that may become object of a freezing or a confiscation order. Therefore, asset recovery offices should have access to the relevant data such as fiscal data, national citizenship and population registries, commercial databases and social security information. This should include law enforcement information in so far as data such as criminal records, vehicles stops, property searches and previous legal actions such as freezing and confiscation orders or seizures of cash can be of value to identify relevant property. ***To the extent possible and where***

safeguards that prevent the misuse of the access rights. These safeguards should be without prejudice to Article 25 of Directive (EU) 2016/680 of the European Parliament and of the Council<sup>23</sup>. The direct and immediate access to this information does not prevent Member States from making access subject to procedural safeguards as established under national law while taking due account of the need for asset recovery offices to be able to swiftly reply to cross-border requests. The implementation of the procedural safeguards for access to databases should not affect the ability of asset recovery offices to respond to requests from other Member States, especially in case of urgent requests. Access to relevant databases and registries under this Directive should complement access to bank account information pursuant to Directive (EU) 2019/1153 of the European Parliament and of the Council<sup>24</sup> and to beneficial ownership information pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council<sup>25</sup>.

***such information is contained in databases and automated systems, such access should be direct and immediate. Where an additional intervention to make such information available is required in order to provide access, the competent authorities should provide such information swiftly in order to allow the asset recovery offices to perform their tasks under this Directive effectively.***

Access to information should be subject to specific safeguards that prevent the misuse of the access rights. These safeguards should be without prejudice to Article 25 of Directive (EU) 2016/680 of the European Parliament and of the Council<sup>23</sup>. The direct and immediate ***and indirect*** access to this information does not prevent Member States from making access subject to procedural safeguards as established under national law ***including a requirement making such access subject to a court authorisation*** while taking due account of the need for asset recovery offices to be able to swiftly reply to cross-border requests. ***Requests for information can be refused by asset recovery offices when satisfying those requests would entail a manifest breach of a relevant fundamental rights as set out in the Charter of Fundamental Rights of the European Union, in particular the right to a fair trial or the right to defence.*** The implementation of the procedural safeguards for access to databases should not affect the ability of asset recovery offices to respond to requests from other Member States, especially in case of urgent requests. Access to relevant databases and registries under this Directive should complement access to bank account information pursuant to Directive (EU) 2019/1153 of the European Parliament and of the Council<sup>24</sup> and to beneficial ownership information pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council<sup>25</sup>.

<sup>23</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

<sup>24</sup> Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122).

<sup>25</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 (OJ L 141 5.6.2015, p. 73).

<sup>23</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

<sup>24</sup> Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122).

<sup>25</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 (OJ L 141 5.6.2015, p. 73).

## **Amendment 14**

### **Proposal for a directive Recital 18**

#### *Text proposed by the Commission*

(18) To ensure the security of the information shared between asset recovery offices, the use of the Secure Information Exchange Network Application (SIENA), managed by Europol in accordance with Regulation (EU) 2016/794 of the European Parliament and of the Council<sup>26</sup>, should be mandatory for all communications among asset recovery offices under this Directive. Therefore, in order to be able to fulfil all the tasks assigned by this Directive, all

#### *Amendment*

(18) To ensure the security of the information shared between asset recovery offices, the use of the Secure Information Exchange Network Application (SIENA), managed by Europol in accordance with Regulation (EU) 2016/794 of the European Parliament and of the Council<sup>26</sup>, should be mandatory for all communications among asset recovery offices under this Directive. Therefore, in order to be able to fulfil all the tasks assigned by this Directive, all

asset recovery offices should ***be able to directly*** access SIENA.

asset recovery offices should ***have direct*** access ***to*** SIENA.

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<sup>26</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

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<sup>26</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

## Amendment 15

### Proposal for a directive Recital 21

#### *Text proposed by the Commission*

(21) Given the limitation on the right to property imposed by freezing orders, such provisional measures should not be maintained longer than necessary to preserve the availability of the property with a view to possible subsequent confiscation. This may require a review by the national court in order to ensure that the purpose of preventing the dissipation of property remains valid.

#### *Amendment*

(21) Given the limitation on the right to property imposed by freezing orders, such provisional measures should not be maintained longer than necessary to preserve the availability of the property with a view to possible subsequent confiscation. ***A review by the national court should be ensured in case a freezing order has been taken by a competent authority other than a judicial authority*** in order to ensure that the purpose of preventing the dissipation of property remains valid.

## Amendment 16

### Proposal for a directive Recital 24

#### *Text proposed by the Commission*

(24) The practice by a suspected or accused person of transferring property or proceeds to a knowing third party with a view to avoiding confiscation is common

#### *Amendment*

(24) The practice by a suspected or accused person of transferring property or proceeds to a knowing third party with a view to avoiding confiscation is common

and widespread. Acquisition by a third party refers to situations where, for example, property has been acquired, directly or indirectly, for example through an intermediary, by the third party from a suspected *or* accused person, including when the criminal offence has been committed on their behalf or for their benefit, and when an accused person does not have property that can be confiscated. Such confiscation should be possible in cases where *it* has been established that third parties knew or *ought* to have known that the purpose of the transfer or acquisition was to avoid confiscation, *on the basis of* concrete facts and circumstances, *including* that the transfer was carried out free of charge or in exchange for an amount significantly lower than the market value. The rules on third party confiscation should extend to both natural and legal persons, without prejudice to the right of third parties to be heard, including the right to claim ownership of the property concerned. *In any event*, the rights of bona fide third parties should not be affected.

and widespread. Acquisition by a third party refers to situations where, for example, property has been acquired, directly or indirectly, for example through an intermediary, by the third party from a suspected, accused *or convicted* person, including when the criminal offence has been committed on their behalf or for their benefit, and when an accused person does not have property that can be confiscated. Such confiscation should be possible in cases where, *on the basis of concrete facts and circumstances of the case, a national court* has established that *the instrumentalities, proceeds or property to be confiscated are derived from or directly or indirectly linked to a criminal offence* and third parties knew or *could be expected* to have known that the purpose of the transfer or acquisition was to avoid confiscation *or that the transferred property was directly or indirectly linked to criminal conduct*. Concrete facts and circumstances *could include* that the transfer was carried out free of charge or in exchange for an amount significantly lower than the market value. The rules on third party confiscation should extend to both natural and legal persons, without prejudice to the right of third parties to be heard, including the right to claim ownership of the property concerned. The rights of bona fide third parties *who have provided fair market-value consideration for the acquisition of the asset* should not be affected. *Such third parties should be given the opportunity to present their observations on the envisaged confiscation measure or be able to request the restitution of the property in court. However, taking into account that organised crime has developed considerable entrepreneurial ability over time, to launder the profits of criminal activities in the legal economy, by establishing fictitious companies and corporations, through the use of a figurehead, and considering the prevailing public interest in combating the*

*criminal phenomenon compared to the need to protect the legal situations of persons unrelated to the confiscation and recovery procedure. Therefore, where the affected party is a closely related to the suspected, accused or convicted person, that affected party shall bear the burden of proof that the acquisition of the transferred property has taken place in bona fide and with due diligence.*

## Amendment 17

### Proposal for a directive Recital 26

#### *Text proposed by the Commission*

(26) Confiscation should also be possible where a court is satisfied that the instrumentalities, proceeds, or property in question is derived from criminal conduct but where a final conviction is not possible because of illness, absconding or death of the suspected or accused person, or because the suspected or accused person cannot be held liable because of immunity or amnesty as provided for under national law. The same should be possible where the time limits prescribed under national law have expired, where such time limits are not sufficiently long to allow for the effective investigation and prosecution of the relevant criminal offences. Confiscation in such cases should only be allowed where the national court is satisfied that all the elements of the offence are present. For reasons of proportionality, confiscating property without a prior conviction should be limited to cases of serious crimes. The right of the defendant to be made aware of the proceeding and to be represented by a lawyer should not be affected.

#### *Amendment*

(26) Confiscation should also be possible where a court is satisfied that the instrumentalities, proceeds, or property in question is derived from criminal conduct but where a final conviction is not possible because of illness, absconding or death of the suspected or accused person, or because the suspected or accused person cannot be held liable because of immunity or amnesty as provided for under national ***and international*** law. The same should be possible where the time limits prescribed under national law have expired, where such time limits are not sufficiently long to allow for the effective investigation and prosecution of the relevant criminal offences. ***In such cases, it is appropriate and proportionate to introduce a time limit of fifteen years. A number of Member States already have in place such non-conviction based confiscation tools, which have proven to be highly effective, especially when compared to traditional mechanisms of confiscation. Non-conviction based mechanisms for asset recovery have also long been recognised in key international treaties, including the UN Convention Against Corruption, and by standard-setting bodies such as the Financial Action Task Force (FATF).***

*The 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism calls on Parties to the Convention to assist other Parties in the execution of freezing and confiscation orders that are not based upon a criminal conviction. The Union-funded Camden Asset Recovery Inter-Agency Network has also issued several recommendations on non-conviction based confiscation.* Confiscation in such cases should only be allowed where the national court is satisfied that all the elements of the offence are present. For reasons of proportionality, confiscating property without a prior conviction should be limited to cases of serious crimes. *Confiscations that do not follow a conviction need to be in compliance with fundamental rights. In particular, the right of the defendant to be made aware of the proceeding and to be represented by a lawyer should not be affected.*

## Amendment 18

### Proposal for a directive Recital 27

#### *Text proposed by the Commission*

(27) For the purposes of this Directive, illness should be understood to mean the inability of the suspected or accused person to attend the criminal proceedings for an extended period, as a result of which the proceedings cannot continue.

#### *Amendment*

(27) For the purposes of this Directive, illness should be understood to mean the inability of the suspected or accused person, ***corroborated by an ascertainable medical report***, to attend the criminal proceedings, ***even remotely***, for an extended period, as a result of which the proceedings cannot continue ***after a certain delay***.

## Amendment 19

### Proposal for a directive Recital 28

(28) Due to the intrinsically opaque nature of organised crime, it is not always possible to link property derived from criminal activities to a specific criminal offence and confiscate such property. In such situations, confiscation should be possible under certain conditions including in particular: the property is frozen based on suspicion of crimes committed within the framework of a criminal organisation, these criminal offences are liable to give rise to substantial economic benefits and the court is satisfied that the frozen property is derived from criminal activities carried out within the framework of a criminal organisation. These conditions should ensure that confiscation of property not linked to a specific offence for which the owner has been convicted is limited to criminal activities of criminal organisations that are serious in nature and liable to generate substantial benefits. When determining whether the offences are liable to give rise to significant benefits, Member States should take into account all relevant circumstances of the offence, including whether the criminal activities were committed with the intention to generate regular substantial profits. While it should not be a precondition for the national court to be satisfied that a criminal offence has been committed, the court must be satisfied that the property in question is derived from criminal offences. When determining whether or not the property in question derived from criminal activities, the national courts should take into account all relevant circumstances of the case, including the fact that the property is substantially disproportionate to the lawful income of the owner. Member States should then require and award an effective possibility for the owner of the property to prove that the property in question derives from lawful activities.

(28) Due to the intrinsically opaque nature of organised crime, it is not always possible to link property derived from criminal activities to a specific criminal offence and confiscate such property. ***Nevertheless, it should be possible to confiscate assets in order to disrupt criminal activities and to ensure that profits resulting from criminal activities are not reinvested into the licit economy.*** In such situations, confiscation should be possible under certain conditions including in particular: the property is frozen based on suspicion of crimes committed within the framework of a criminal organisation, these criminal offences are liable to give rise to substantial economic benefits and the court is satisfied that the frozen property is derived from criminal activities carried out within the framework of a criminal organisation. These conditions should ensure that confiscation of property not linked to a specific offence for which the owner has been convicted is limited to criminal activities of criminal organisations that are serious in nature and liable to generate substantial benefits. When determining whether the offences are liable to give rise to significant benefits, Member States should take into account all relevant circumstances of the offence, including whether the criminal activities were committed with the intention to generate regular substantial profits. While it should not be a precondition for the national court to be satisfied that a criminal offence has been committed, the court must be satisfied that the property in question is derived from criminal offences. When determining whether or not the property in question derived from criminal activities, the national courts should take into account all relevant circumstances of the case, including the fact that the property is substantially disproportionate to the lawful income of the owner. Member States

should then require and award an effective possibility for the owner of the property to prove that the property in question derives from lawful activities. *In that context, FATF Recommendation 4 also states that countries should consider adopting measures which require an offender to demonstrate the lawful origin of the property alleged to be liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law.*

## **Amendment 20**

### **Proposal for a directive Recital 28 a (new)**

*Text proposed by the Commission*

*Amendment*

*(28a) It should be possible to trace and identify property to be frozen and confiscated even after a final conviction for a criminal offence or following non-conviction based confiscation proceedings. However, that possibility should not prevent Member States from setting reasonable time limits after final convictions or final decisions in non-conviction based confiscation proceedings, following which it is no longer be possible to trace and identify such property.*

## **Amendment 21**

### **Proposal for a directive Recital 28 b (new)**

*Text proposed by the Commission*

*Amendment*

*(28b) Member States should take the necessary measures to ensure that victims' claims are fully respected prior to the adoption of the final confiscation measure. Member States should pay*

*particular attention to victims' claims in all proceedings and especially in cross-border cases. Furthermore, Member States should, where possible and as a matter of priority, take the necessary measures to restitute the property concerned or, where that is not possible, a value equivalent to that property to the victim.*

## **Amendment 22**

### **Proposal for a directive Recital 28 c (new)**

*Text proposed by the Commission*

*Amendment*

*(28c) Member States should take the necessary measures to allow confiscated property to be used for public interest or social purposes. Considering the significant costs associated with tracing and identification, freezing and confiscation, such property can be kept as State property for justice, law enforcement, public service or economic purposes or be transferred to the local or regional authorities responsible for the area in which the property is located for institutional, social or economic purposes, including for assignment to organisations carrying out work of social interest. Several Member States have already adopted, more than twenty years ago, specific legislation providing for the direct or indirect reuse of confiscated property for purposes of public or social interest, benefiting from multiple positive aspects deriving from the reuse, both for public finances and for its symbolic value, as a visible counter-message for the affirmation of the values of justice and legality and the reconstruction of the territories marked by the presence of organised crime.*

## **Amendment 23**

### **Proposal for a directive Recital 28 d (new)**

*Text proposed by the Commission*

*Amendment*

***(28d) Where the confiscated assets originated in a third country, Member States should return them to the third country based on a return agreement. Such return agreements should be made publicly available. Such return agreements could set out, inter alia, how the funds would be reinvested, for example compensating victims' losses or contributing to projects with a high social impact that have been selected based on the needs of the affected populations and following a transparent procedure.***

## **Amendment 24**

### **Proposal for a directive Recital 28 e (new)**

*Text proposed by the Commission*

*Amendment*

***(28e) The Commission and the Member States should facilitate coordination between competent authorities and with third countries where instrumentalities, proceeds and property have been confiscated following the violation of Union restrictive measures.***

## **Amendment 25**

### **Proposal for a directive Recital 28 f (new)**

*Text proposed by the Commission*

*Amendment*

***(28f) In order to facilitate the compensation, restitution and reparations towards States affected by international***

*crimes, the Commission should issue guidelines on the use of the confiscated instrumentalities, proceeds and property for compensation, restitution and reparations towards States, insofar as the interests at stake are directly or indirectly affected by the criminal activities covered by this Directive. Where the assets are confiscated in connection with the Russian war of aggression on Ukraine or associated crimes, without prejudice to restitution to and compensation of the victims or the public concerned by the criminal offence, the confiscated assets or the net proceeds resulting from the liquidation of such assets should be assigned to contributions towards the reconstruction efforts of Ukraine.*

## Amendment 26

### Proposal for a directive

#### Recital 29

##### *Text proposed by the Commission*

(29) To ensure that property **that** is or may become subject to a freezing or confiscation order maintains its economic value Member States should put in place effective management measures. Such measures should include a systematic assessment of how to best preserve and optimise the value of property before the adoption of freezing measures, also known as pre-seizure planning.

##### *Amendment*

(29) To ensure that property **which** is or may become subject to a freezing or confiscation order maintains its economic value Member States should put in place effective management measures. Such measures should include a systematic assessment of how to best preserve and optimise the value of property before the adoption of freezing measures, also known as pre-seizure planning. ***Pre-seizure planning should be used in all cases unless the urgency of the matter would require limiting or foregoing that planning.***

## Amendment 27

### Proposal for a directive

#### Recital 34

*Text proposed by the Commission*

(34) Freezing, confiscation, and interlocutory sales orders should be communicated to the affected party without delay. The purpose of communicating those orders is, inter alia, to allow the affected person to challenge them before a court. Therefore, such communications should, as a general rule, indicate the reason or reasons for the order concerned. The affected party should have the effective possibility to challenge the freezing, confiscation, and interlocutory sales orders. In the case of confiscation orders where all elements of the criminal offence are present but a criminal conviction is impossible, the defendant should have a possibility to be heard before the adoption of the order. The same possibility should be provided for the owner affected by an order to sell the property before confiscation.

*Amendment*

(34) Freezing, confiscation, and interlocutory sales orders should, ***in principle***, be communicated to the affected ***person*** without delay, ***except in circumstances wherein such communication can put at risk the confidentiality or integrity of a criminal investigation***. The purpose of communicating those orders is, inter alia, to allow the affected person to challenge them before a court. Therefore, such communications should, as a general rule, indicate the reason or reasons for the order concerned. The affected party should have the effective possibility to challenge the freezing, confiscation, and interlocutory sales orders. In the case of confiscation orders where all elements of the criminal offence are present but a criminal conviction is impossible, the defendant should have a possibility to be heard, before the adoption of the order. The same possibility should be provided for the owner affected by an order to sell the property before confiscation.

**Amendment 28**

**Proposal for a directive**  
**Recital 39**

*Text proposed by the Commission*

(39) An effective recovery system requires concerted efforts of a wide range of authorities, from law enforcement, including customs authorities, tax authorities and tax recovery authorities to the extent that they are competent for asset recovery, asset recovery offices, judicial authorities and asset management authorities, including asset management offices. In order to ensure coordinated action by all competent authorities, it is necessary to establish a more strategic

*Amendment*

(39) An effective ***asset tracing and recovery system as well as maintaining the value of frozen assets*** requires concerted efforts of a wide range of authorities, from law enforcement, including customs authorities, tax authorities and tax recovery authorities to the extent that they are competent for asset recovery, asset recovery offices, judicial authorities and asset management authorities, including asset management offices. In order to ensure coordinated

approach to asset recovery and promote a greater cooperation between the relevant authorities, and to obtain a clear overview of the results of asset recovery. For this purpose, Member States should adopt and regularly review a national strategy on asset recovery to guide actions in relation to financial investigations, freezing and confiscation, management as well as final disposal of the relevant instrumentalities, proceeds, or property. Furthermore, Member States should provide competent authorities with the necessary resources to be able to fulfil their tasks effectively. Competent authorities should be understood as the authorities entrusted with the carrying out of the tasks as outlined under this Directive and according to national set-ups.

action by all competent authorities, it is necessary to establish a more strategic approach to asset recovery and promote a greater cooperation between the relevant authorities, and to obtain a clear overview of the results of asset recovery. For this purpose, Member States should adopt and regularly review a national strategy on asset recovery to guide actions in relation to financial investigations, freezing and confiscation, management as well as final disposal of the relevant instrumentalities, proceeds, or property. ***National strategies should include a description of the roles and responsibilities of all the competent authorities involved in asset recovery, confiscation and management and the particular mechanisms of cooperation among them.*** Furthermore, Member States should provide competent authorities with the necessary resources ***and legal powers*** to be able to fulfil their tasks effectively. Competent authorities should be understood as the authorities entrusted with the carrying out of the tasks as outlined under this Directive and according to national set-ups.

## Amendment 29

### Proposal for a directive Recital 39 a (new)

*Text proposed by the Commission*

*Amendment*

***(39a) It is important that minimum standards for the functioning of asset recovery offices and asset management offices are ensured throughout the Union. For this reason, Member States should be required to regularly report to the Commission on the financial, human and technical resources allocated to those offices.***

## Amendment 30

**Proposal for a directive**  
**Recital 41**

*Text proposed by the Commission*

(41) To ensure consistent approaches among Member States in the collection of statistics, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission to supplement this Directive by **adopting** more detailed rules on the information to be collected **and** the methodology for the collection of the **statistics**.

*Amendment*

(41) To ensure consistent approaches among Member States in the collection of statistics. ***Member States should include, for all criminal offences, at least the number of asset tracing investigations launched, the number of assets traced, the number of freezing orders initiated and executed, the number of confiscation orders initiated and executed, the number of confiscation orders executed broken down by type of confiscation, the value of property frozen, for the confiscation orders included in a respective annual report, the value of confiscated property compared to the value at the time of freezing the number of requests for freezing orders to be executed in another Member State, the number of requests for confiscation orders to be executed in another Member State, the value of the property recovered following execution in another Member State, the value of the property destined to be reused for law enforcement, prevention or social purposes, the manner in which the confiscated property has been used and, for the confiscation orders included in a respective annual report, the length of the procedure from freezing to final disposal.*** The power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission to supplement this Directive by **providing** more detailed rules on the information to be collected, the methodology for the collection **and transmission** of the **data to the Commission**.

**Amendment 31**

**Proposal for a directive**  
**Recital 43 a (new)**

***(43a) In order to support the Commission in relation to the implementation of this Directive and facilitate the exchange of best practices and operational cooperation relating to this Directive, a network on asset recovery and confiscation should be established under the political guidance of the Commission. The network should be composed of representatives from asset recovery offices and asset management offices and should be co-chaired by a representative of the Commission and, in matters of operational cooperation, by a representative of Europol. It should invite representatives from Europol, Eurojust, the European Public Prosecutors Office, and where appropriate, the Anti-Money Laundering Authority to participate to the meetings of the network.***

## Amendment 32

### Proposal for a directive Recital 45

(45) Asset recovery offices should also closely cooperate with **EU** bodies and agencies, including Europol, **Eurojust** and the European Public Prosecutor's Office, in accordance with their respective mandates, insofar as it is necessary to trace and identify property within the cross-border investigations supported by Europol **and Eurojust** or within the investigations undertaken by the European Public Prosecutor's Office. Asset recovery offices should also cooperate with Europol **and Eurojust**, in accordance with **their respective mandates**, insofar as it is necessary to trace and identify property to prevent, detect or investigate criminal offences related to the violation of Union

(45) Asset recovery offices should also closely cooperate with **Union** bodies and agencies, including Europol and the European Public Prosecutor's Office, in accordance with their respective mandates, insofar as it is necessary to trace and identify property within the cross-border investigations supported by Europol or within the investigations undertaken by the European Public Prosecutor's Office. **For the purposes of this Directive, when the notion of competent authorities refers to investigating and prosecuting authorities, it should be interpreted as including the central and decentralised levels of the European Public Prosecutor's Office (EPPO) with regard to the Member States**

restrictive measures.

*that participate in the enhanced cooperation on the establishment of the EPPO. Asset recovery offices should therefore fulfil the obligations under Council Regulation (EU) 2017/1939<sup>28a</sup>, including the obligation to report to the EPPO under Article 24 of that Regulation, the undertaking of measures if instructed as a competent authority under Article 28(1) of that Regulation, and access to information under Article 43(1) of that Regulation. In light of their duties established in Article 105 of Regulation (EU) 2017/1939 the Member States who are not participating in the enhanced cooperation on the establishment of the EPPO should ensure that their asset recovery offices are able to cooperate with the EPPO in the same manner as an asset recovery office of any other participating Member State in so far as it is subject to its cooperation it falls within the remit of the EPPO's competences* Asset recovery offices should also cooperate with Europol in accordance with *its mandate*, insofar as it is necessary to trace and identify property to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures.

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<sup>28a</sup> **Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).**

### **Amendment 33**

#### **Proposal for a directive Recital 45 a (new)**

*Text proposed by the Commission*

*Amendment*

**(45a) In accordance with its mandate, Eurojust should support national**

*authorities in all stages of the asset recovery process from the tracing and identification, freezing, confiscation and asset management of assets to the disposal of assets. Asset recovery offices and asset management offices should closely cooperate with Eurojust for the purpose of facilitating the entire asset recovery process. Such cooperation encompasses the tracing and identification of instrumentalities, proceeds, or property that can become or is the object of a freezing or confiscation order made by a competent authority in the course of proceedings in criminal matters and subsequent disposal, including the investigation and prosecution of criminal offences related to the violation of Union restrictive measures.*

#### **Amendment 34**

##### **Proposal for a directive Recital 47**

###### *Text proposed by the Commission*

(47) Since the objective of this Directive, namely facilitating confiscation of property in criminal matters, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

###### *Amendment*

(47) Since the objective of this Directive, namely facilitating confiscation of property ***in proceedings*** in criminal matters, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

#### **Amendment 35**

##### **Proposal for a directive Recital 51**

*Text proposed by the Commission*

(51) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 and delivered an opinion on **XX/XX/20XX**.

*Amendment*

(51) The European Data Protection Supervisor was consulted in accordance with Article 42 of Regulation (EU) 2018/1725 and delivered an opinion on **19 July 2022**.

**Amendment 36**

**Proposal for a directive  
Article 1 – paragraph 2**

*Text proposed by the Commission*

2. This Directive also establishes rules to facilitate the effective implementation of Union restrictive measures and the subsequent recovery of related property where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures.

*Amendment*

2. This Directive also establishes rules to facilitate the effective implementation of Union restrictive measures and the **tracing and** subsequent recovery of related property where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures;

**Amendment 37**

**Proposal for a directive  
Article 2 – paragraph 1 – point m**

*Text proposed by the Commission*

(m) environmental crime, **including illicit trafficking in endangered animal species and in endangered plant species and varieties** as defined in **in** Directive 2008/99/EC of the European Parliament and of the Council<sup>50</sup>, **as well as offences related to ship pollution as defined in Directive 2005/35/EC as amended by Directive 2009/123/EC<sup>51</sup>**;

*Amendment*

(m) environmental crime as defined in Directive **XXX/XXX/EU of the European Parliament and of the Council [Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC]**;

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<sup>50</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L

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<sup>50</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L

328, 6.12.2008, p. 28).

<sup>51</sup> Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ L 280, 27.10.2009, p. 52).

328, 6.12.2008, p. 28).

<sup>51</sup> Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ L 280, 27.10.2009, p. 52).

## **Amendment 38**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point n**

##### *Text proposed by the Commission*

(n) facilitation of unauthorised entry and residence, as defined in Council Framework Decision 2002/946/JHA<sup>52</sup>, and Council Directive 2002/90/EC<sup>53</sup>;

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<sup>52</sup> Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1).

<sup>53</sup> ***Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17).***

## **Amendment 39**

### **Proposal for a directive**

#### **Article 2 – paragraph 2 – point j a (new)**

##### *Text proposed by the Commission*

## **Amendment 40**

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##### *Amendment*

(n) facilitation of unauthorised entry and residence, as defined in Council Framework Decision 2002/946/JHA<sup>52</sup>, and Council Directive 2002/90/EC;

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<sup>52</sup> Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1).

##### *Amendment*

***(ja) illicit trafficking in nuclear or radioactive materials;***

**Proposal for a directive**  
**Article 2 – paragraph 2 – point j b (new)**

*Text proposed by the Commission*

*Amendment*

**(jb) crimes within the jurisdiction of  
the International Criminal Court;**

**Amendment 41**

**Proposal for a directive**  
**Article 2 – paragraph 2 – point j c (new)**

*Text proposed by the Commission*

*Amendment*

**(jc) the unlawful seizure of aircraft or  
ships;**

**Amendment 42**

**Proposal for a directive**  
**Article 2 – paragraph 2 – point j d (new)**

*Text proposed by the Commission*

*Amendment*

**(jd) sabotage;**

**Amendment 43**

**Proposal for a directive**  
**Article 2 – paragraph 2 – point j e (new)**

*Text proposed by the Commission*

*Amendment*

**(je) illicit trafficking in hormonal  
substances and other growth promoters;**

**Amendment 44**

**Proposal for a directive**  
**Article 2 – paragraph 2 – point j f (new)**

*Text proposed by the Commission*

*Amendment*

**(jf) arson;**

#### **Amendment 45**

##### **Proposal for a directive**

##### **Article 2 – paragraph 2 – point j g (new)**

*Text proposed by the Commission*

*Amendment*

**(jg) rape;**

#### **Amendment 46**

##### **Proposal for a directive**

##### **Article 2 – paragraph 2 – point j h (new)**

*Text proposed by the Commission*

*Amendment*

**(jh) swindling;**

#### **Amendment 47**

##### **Proposal for a directive**

##### **Article 2 – paragraph 2 – point j i (new)**

*Text proposed by the Commission*

*Amendment*

**(ji) racism and xenophobia;**

#### **Amendment 48**

##### **Proposal for a directive**

##### **Article 3 – paragraph 1 – point 2**

*Text proposed by the Commission*

*Amendment*

(2) ‘property’ means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property;

(2) ‘property’ means property of any description, whether corporeal or incorporeal, movable or immovable, ***including crypto-assets*** and legal documents or instruments ***in any form,***

evidencing title or interest in such property;

## **Amendment 49**

### **Proposal for a directive**

#### **Article 3 – paragraph 1 – point 9 a (new)**

*Text proposed by the Commission*

*Amendment*

**(9a) ‘public concerned’ means the persons affected or likely to be affected by the criminal offences within the scope of this Directive; for the purposes of this definition, persons having a sufficient interest or maintaining the impairment of a right or meeting any proportionate requirements under national law shall be deemed to have an interest;**

## **Amendment 50**

### **Proposal for a directive**

#### **Article 3 – paragraph 1 – point 10 a (new)**

*Text proposed by the Commission*

*Amendment*

**(10a) ‘affected person’ means:**

**(a) a natural or legal person against whom a freezing or confiscation order is issued;**

**(b) a natural or legal person that owns property that is the object of a freezing or confiscation order; or**

**(c) a third party whose rights in relation to property that is the object of a freezing order or a confiscation order are directly prejudiced by that order;**

## **Amendment 51**

### **Proposal for a directive**

#### **Article 3 – paragraph 1 – point 10 b (new)**

**(10b) ‘party closely related to suspected, accused or convicted person’ means:**

**(a) the spouse or partner of the suspected, accused or convicted person;**

**(b) ascendants, descendants and siblings of the suspected, accused, or convicted person or of the spouse or partner of that person;**

**(c) persons living in the household of the suspected, accused or convicted person;**

**(d) persons who are working for the suspected, accused or convicted person under a contract of employment with access to non-public information on the affairs of the suspected, accused or convicted person or otherwise performing tasks through which they have access to non-public information on the affairs of the suspected, accused or convicted person;**

**(e) legal entities in which the suspected, accused or convicted person or one of the persons referred to in points (a) to (d) of this point is a member of the administrative, management or supervisory bodies or performs duties which provide for access to non-public information on the affairs of the suspected, accused or convicted person.**

## **Amendment 52**

### **Proposal for a directive Article 4 – paragraph 1**

*Text proposed by the Commission*

1. To facilitate cross-border cooperation, Member States shall take measures to enable the swift tracing and identification of instrumentalities and

*Amendment*

1. To facilitate cross-border cooperation, Member States shall take measures to enable the swift tracing and identification of instrumentalities and

proceeds, or property which may become or is the object of a freezing or confiscation order in the course of *criminal* proceedings.

proceeds, or property which may become or is the object of a freezing or confiscation order in the course of proceedings *in criminal matters*.

## Amendment 53

### Proposal for a directive Article 4 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. Asset tracing investigations pursuant to paragraph 1 shall be carried out also for the purposes of restitution and compensation to victims;**

## Amendment 54

### Proposal for a directive Article 5 – paragraph 2 – point a

*Text proposed by the Commission*

*Amendment*

(a) trace and identify instrumentalities, proceeds, or property whenever necessary to support other competent national authorities responsible for asset tracing investigations pursuant to Article 4;

(a) trace and identify instrumentalities, proceeds, or property whenever necessary to support other competent national authorities responsible **and the EPPO**, for asset tracing investigations pursuant to Article 4;

## Amendment 55

### Proposal for a directive Article 5 – paragraph 2 – point b

*Text proposed by the Commission*

*Amendment*

(b) trace and identify instrumentalities, proceeds, or property which may become or is the object of a freezing or confiscation order issued by another Member State;

(b) trace and identify instrumentalities, proceeds, or property which may become or is the object of a freezing or confiscation order issued by **a competent authority in** another Member State;

## Amendment 56

### Proposal for a directive

#### Article 5 – paragraph 2 – point c

*Text proposed by the Commission*

(c) cooperate and exchange information with other Member States' asset recovery offices in the tracing and identification of instrumentalities and proceeds, or property which may become or is the object of a freezing or confiscation order;

*Amendment*

(c) cooperate and exchange information with other Member States asset recovery offices **and the EPPO** in the tracing and identification of instrumentalities and proceeds, or property which may become or is the object of a freezing or confiscation order;

## Amendment 57

### Proposal for a directive

#### Article 5 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. In order to perform the tasks pursuant to paragraph 2, point (b), asset recovery offices shall be entitled to request the relevant competent authorities to take the necessary measures for the tracing and identification of instrumentalities, proceeds, or property;**

## Amendment 58

### Proposal for a directive

#### Article 5 – paragraph 3

*Text proposed by the Commission*

3. Asset recovery offices shall be empowered to trace and identify property of persons and entities subject to **EU targeted financial sanctions** where necessary to prevent, detect or investigate criminal offences. To that effect, they shall cooperate with asset recovery offices and other relevant competent authorities in other Member States and exchange

*Amendment*

3. Asset recovery offices shall be empowered to trace and identify property of persons and entities subject to **Union restrictive measures** where necessary to prevent, detect or investigate criminal offences. To that effect, they shall cooperate with asset recovery offices and other relevant competent authorities in other Member States and exchange

relevant information.

relevant information;

## Amendment 59

### Proposal for a directive Article 6 – paragraph 1

#### *Text proposed by the Commission*

1. For the purposes of performing the tasks referred to in Article 5, Member States shall ensure that asset recovery offices have ***immediate and direct*** access to ***the following*** information to the extent that information is necessary for the tracing and identification of proceeds, instrumentalities, and property:

- (a) fiscal data, including data held by tax and revenue authorities;
- (b) national real estate registers or electronic data retrieval systems and land and cadastral registers;
- (c) national citizenship and population registers of natural persons;
- (d) national motor vehicles, aircraft and watercraft registers;
- (e) commercial databases, including business and company registers;

#### *Amendment*

1. For the purposes of performing the tasks referred to in Article 5, Member States shall ensure that asset recovery offices have ***appropriate*** access to ***any*** information to the extent that information is necessary for the tracing and identification of proceeds, instrumentalities, ***proceeds*** and property.  
***That access shall include :***

#### ***(1a) direct and immediate access to:***

- (i) fiscal data, including data held by tax and revenue authorities;
- (ii) national real estate registers or electronic data retrieval systems and land and cadastral registers;
- (iii) national citizenship and population registers of natural persons;
- (iv) national motor vehicles, aircraft and watercraft registers;
- (v) commercial databases, including business and company registers;
- (vi) ***national beneficial ownership registers including registers of beneficial owners of trusts and similar legal arrangements;***
- (vii) ***data available through the interconnection of beneficial ownership registers in accordance with [Article 12 of Proposal for a Directive of the European Parliament and of the Council on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and repealing Directive (EU)***

**(f)** national social security registers;

**(g)** relevant information which is held by authorities competent for preventing, detecting, investigating or prosecuting criminal offences.

**2015/849 COM/2021/423];**

**(viii)** national social security registers;

**(ix)** *bank account registers, including information on wire-transfers and accounts balances;*

**(1b)** *direct or indirect access to:*

**(i)** *information on mortgages and loans;*

**(ii)** *information contained in national currency databases and currency exchange databases;*

**(iii)** *information on securities;*

**(iv)** *customs data, including cross-border physical transfers of cash;*

**(v)** *information held by commercial courts;*

**(vi)** *information on annual financial statements by companies;*

**(vii)** *information on crypto-assets<sup>1a</sup>;*

**(viii)** *information on relevant high-value goods or assets registers;*

**(ix)** *in accordance with the Union law, data stored in the Visa Information System (VIS), Schengen Information System (SIS II), Entry/Exist System (EES), European Travel Information and Authorisation System (ETIAS), and European Criminal Records Information System for Third-Country Nationals (ECRIS-TCN).*

**(x)** relevant information which is held by authorities competent for preventing, detecting, investigating or prosecuting criminal offences.

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<sup>1a</sup> ***Crypto-assets within the scope of the Regulation of the European Parliament and of the Council on Markets in Crypto-assets, and amending Directive (EU) 2019/1937***

## Amendment 60

### Proposal for a directive Article 6 – paragraph 2

*Text proposed by the Commission*

2. Where the information referred to in paragraph 1 is not stored in databases or registers, Member States shall take the necessary measures to ensure that asset recovery offices can swiftly obtain that information by other means.

*Amendment*

2. Where the information referred to in paragraph 1 is not stored in databases or registers, Member States shall take the necessary measures to ensure that asset recovery offices can swiftly obtain that information by other means ***in a streamlined and harmonized manner. Where an asset recovery office requests access to information which is not directly available to it, the requested authority shall respond to the request in a timely manner;***

## Amendment 61

### Proposal for a directive Article 6 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. The Commission may adopt delegated acts in accordance with Article 30 laying down specifications for a standardized template for requests for information as referred to in paragraph 1, point (b), of this Article.***

## Amendment 62

### Proposal for a directive Article 6 – paragraph 3

*Text proposed by the Commission*

*Amendment*

3. The direct and immediate access to the information referred to in paragraph 1 shall be without prejudice to the procedural safeguards established under national law.

3. The direct and immediate ***and indirect*** access to the information referred to in paragraph 1 shall be without prejudice to the procedural safeguards established under national law ***including where***

*necessary the requirement to obtain a court order, if required by the relevant national law and the guarantees provided under the Union data protection acquis;*

## Amendment 63

### Proposal for a directive Article 7 – paragraph 1

#### *Text proposed by the Commission*

1. Access to information pursuant to Article 6 shall be performed only where necessary on a case-by-case basis by the staff specifically designated and authorised to access the information referred to in Article 6.

#### *Amendment*

1. Access to information pursuant to Article 6 shall be performed only where necessary on a case-by-case basis ***where it is adequate, relevant and proportionate for the purposes of the asset tracing investigation*** by the staff specifically designated and authorised to access the information referred to in Article 6, ***in line with Directive 2016/680 (LED). Member States shall ensure that information obtained by asset recovery offices shall be used only for the purpose for which it was sought.***

## Amendment 64

### Proposal for a directive Article 7 – paragraph 2

#### *Text proposed by the Commission*

2. Member States shall ensure that staff of the asset recovery offices comply with the rules on confidentiality and professional secrecy as provided for under applicable national law. Member States shall also ensure that staff of asset recovery offices have the necessary specialised skills and abilities to perform their roles effectively.

#### *Amendment*

2. Member States shall ensure that staff of the asset recovery offices comply with the rules on confidentiality and professional secrecy as provided for under applicable national law ***as well as with the Union data protection acquis.*** Member States shall also ensure that staff of asset recovery offices have the necessary specialised skills and abilities to perform their roles effectively.

## Amendment 65

## Proposal for a directive

### Article 8 – paragraph 1 – introductory part

#### *Text proposed by the Commission*

1. Without prejudice to Article 25 of Directive 2016/680, Member States shall ensure that the authorities holding the information referred to in Article 6 keep logs of all access and search activities by asset recovery offices in accordance with this Directive. The logs shall contain the following:

#### *Amendment*

1. Without prejudice to ***the requirements laid down in*** Article 25 of Directive 2016/680, Member States shall ensure that the authorities holding the information referred to in Article 6 keep logs of all access and search activities by asset recovery offices in accordance with this Directive. The logs shall contain the following:

## Amendment 66

## Proposal for a directive

### Article 9 – paragraph 1 – subparagraph 1

#### *Text proposed by the Commission*

Member States shall take the necessary measures to ensure that their asset recovery offices provide, upon request from an asset recovery office of another Member State, any information that is necessary for the performance of their tasks pursuant to Article 5. The categories of personal data that can be provided are those listed in Section B, point 2 of Annex II to Regulation (EU) 2016/794.

#### *Amendment*

Member States shall take the necessary measures to ensure that their asset recovery offices provide, upon request from an asset recovery office of another Member State ***or the EPPO***, any information that is necessary for the performance of their tasks pursuant to Article 5. The categories of personal data that can be provided are those listed in Section B, point 2 of Annex II to Regulation (EU) 2016/794, ***with the exclusion of the special data categories of personal data relating to forensic identification information under Section B, point 2(c)(v).***

## Amendment 67

## Proposal for a directive

### Article 9 – paragraph 2 – introductory part

#### *Text proposed by the Commission*

2. When making a request pursuant to

#### *Amendment*

2. When making a request pursuant to

paragraph 1, the requesting asset recovery office shall specify as precisely as possible the following:

paragraph 1, the requesting asset recovery office shall, ***in line with the principle of data minimization***, specify as precisely as possible the following:

## Amendment 68

### Proposal for a directive

#### Article 9 – paragraph 2 – point g

##### *Text proposed by the Commission*

(g) and/or the natural or legal persons presumed to be involved, such as names, addresses, dates and places of birth, date of registration, shareholders, headquarters;

##### *Amendment*

(g) and/or the natural or legal persons presumed to be involved, such as names, addresses, dates and places of birth, ***nationality and place of residence***, date of registration, shareholders, ***country of establishment***, headquarters ***and subsidiaries***;

## Amendment 69

### Proposal for a directive

#### Article 9 – paragraph 3

##### *Text proposed by the Commission*

3. Member States shall take the necessary measures to enable that their asset recovery offices exchange information with asset recovery offices of other Member States, without a request to that effect, whenever they are aware of information on instrumentalities, proceeds, or property that they consider necessary for the performance of the tasks of the asset recovery offices pursuant to Article 5. When providing such information, asset recovery offices shall set out the reasons why the information exchanged is considered necessary.

##### *Amendment*

3. Member States shall take the necessary measures to enable that their asset recovery offices exchange information with asset recovery offices of other Member States, without a request to that effect, whenever they are aware of information on instrumentalities, proceeds, or property that they consider necessary for the performance of the tasks of the asset recovery offices ***of that other Member State*** pursuant to Article 5. When providing such information, asset recovery offices shall set out the reasons why the information exchanged is considered necessary.

## Amendment 70

**Proposal for a directive**  
**Article 9 – paragraph 4**

*Text proposed by the Commission*

4. Member States shall ensure that the information provided by asset recovery offices pursuant to paragraphs 1, 2 and 3 can be presented as evidence before a national court of a Member State, ***in accordance with procedures in national law.***

*Amendment*

4. Member States shall ensure that the information provided by asset recovery offices pursuant to paragraphs 1, 2 and 3 can be presented as evidence before a national court of a Member State, ***where the provision of that information as evidence is compatible with that Member State's procedural rules on admissibility of evidence in criminal matters, and in compliance with the Charter of Fundamental Rights of the European Union and with the Member State's obligations under Article 6 TEU;***

**Amendment 71**

**Proposal for a directive**  
**Article 9 – paragraph 5**

*Text proposed by the Commission*

5. Member States shall ensure that asset recovery offices have direct access to SIENA ***and use the SIENA system for exchanging information pursuant to this Article.***

*Amendment*

5. ***Information under this Article shall be exchanged through SIENA or, where necessary on exceptional basis, through other secure channels.*** Member States shall ensure that ***their*** asset recovery offices have direct access to SIENA

**Amendment 72**

**Proposal for a directive**  
**Article 9 – paragraph 6 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) not be in accordance with the fundamental principles of national law, with the Charter of Fundamental Rights of the European Union, or with Member State's obligations under Article 6 TEU.***

## Amendment 73

### Proposal for a directive Article 9 – paragraph 7

#### *Text proposed by the Commission*

7. Member States shall take the necessary measures to ensure that reasons are given ***for refusals to provide information***. Refusals shall only affect the part of the requested information to which the reasons set out in paragraph 6 relate and shall, where applicable, leave the obligation to provide the other parts of the information in accordance with this Directive unaffected.

#### *Amendment*

7. ***For refusals to give information,*** Member States shall take the necessary measures to ensure that reasons are given ***and that the requesting asset recovery office is consulted in advance***. Refusals shall only affect the part of the requested information to which the reasons set out in paragraph 6 relate and shall, where applicable, leave the obligation to provide the other parts of the information in accordance with this Directive unaffected.

## Amendment 74

### Proposal for a directive Article 10 – paragraph 2

#### *Text proposed by the Commission*

2. Where the information requested pursuant to paragraph 1, point (b) is not directly available or the request pursuant to paragraph 1, point (a) imposes a disproportionate burden, the asset recovery office receiving the request may postpone the provision of the information. In that case, the requested asset recovery office shall immediately inform the requesting asset recovery office of this postponement and shall provide the requested information as soon as possible, and in any event within three days of the initial deadline established pursuant to paragraph 1.

#### *Amendment*

2. ***Member States shall ensure that the receipt of requests for information pursuant to this Directive are immediately and systematically acknowledged.*** Where the information requested pursuant to paragraph 1, point (b) is not directly available or the request pursuant to paragraph 1, point (a) imposes a disproportionate burden, the asset recovery office receiving the request may postpone the provision of the information. In that case, the requested asset recovery office shall immediately inform the requesting asset recovery office of this postponement and shall provide the requested information as soon as possible, and in any event within three days of the initial deadline established pursuant to paragraph 1.

## Amendment 75

**Proposal for a directive**  
**Article 11 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall take the necessary measures to enable the freezing of property necessary to ensure a possible confiscation of that property under Article 12.

*Amendment*

1. Member States shall take the necessary measures to enable the freezing of property necessary to ensure a possible confiscation of that property under Article **12 to 16 and to ensure the right to restitution and compensation to victims according to the provisions of this Directive.**

**Amendment 76**

**Proposal for a directive**  
**Article 11 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1a. Freezing measures shall consist of freezing orders and immediate action in the form of temporary urgent freezing measures.**

**Amendment 77**

**Proposal for a directive**  
**Article 11 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Freezing measures shall **include immediate action to** be taken when necessary in order to preserve the property.

2. **Immediate action in the form of temporary urgent** freezing measures shall be taken when necessary in order to preserve the property **concerned.**

**Amendment 78**

**Proposal for a directive**  
**Article 11 – paragraph 3**

*Text proposed by the Commission*

3. Member States shall enable asset recovery offices to take immediate action pursuant to paragraph 2 until a freezing order pursuant to paragraph 1 is issued. The validity of such temporary urgent freezing measures shall not exceed seven days.

*Amendment*

3. ***Without prejudice to the powers of other competent authorities***, Member States shall enable asset recovery offices to take immediate action pursuant to paragraph 2 until a freezing order pursuant to paragraph 1 is issued. The validity of such temporary urgent freezing measures shall not exceed seven days.

**Amendment 79**

**Proposal for a directive  
Article 11 – paragraph 4**

*Text proposed by the Commission*

4. Property in the possession of a third party can be subject to freezing measures pursuant to paragraphs 1, **2 and 3** where necessary to ensure a possible confiscation under **article 13**.

*Amendment*

4. Property in the possession of a third party can be subject to freezing measures pursuant to paragraphs 1 **to 3** where necessary to ensure a possible confiscation under **Article 13**.

**Amendment 80**

**Proposal for a directive  
Article 11 – paragraph 5**

*Text proposed by the Commission*

5. Member States shall ensure that the freezing **orders** pursuant to paragraphs 1, **2, 3 and 4** are issued by a competent authority and are adequately motivated.

*Amendment*

5. Member States shall ensure that the freezing **measures** pursuant to paragraphs 1 **to 4** are issued by a competent authority and are adequately motivated. ***Where a freezing order under this Directive has been issued by a competent authority other than a judicial authority, Member States shall ensure that such an order is validated or annulled by a judicial authority without undue delay.***

**Amendment 81**

**Proposal for a directive**  
**Article 11 – paragraph 6**

*Text proposed by the Commission*

6. **The** freezing order pursuant to paragraph 1 shall remain in force only for as long as it is necessary to preserve the property with a view to possible subsequent confiscation. Frozen property which is not subsequently confiscated, shall be returned to the owner of the property **without delay**. The conditions or procedural rules under which such property is returned shall be determined by national law.

*Amendment*

6. **A** freezing order pursuant to paragraph 1 shall remain in force only for as long as it is necessary to preserve the property with a view to possible subsequent confiscation. Frozen property which is not subsequently confiscated, shall be returned **without delay** to the owner of the property **or to the person from whom the property was seized**. The conditions or procedural rules under which such property is returned shall be determined by national law.

**Amendment 82**

**Proposal for a directive**  
**Article 12 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall take the necessary measures to enable the confiscation of property the value of which corresponds to instrumentalities or proceeds stemming from a criminal offence following a final conviction, which may also result from proceedings in absentia.

*Amendment*

2. Member States shall take the necessary measures to enable the confiscation of property the value of which corresponds to instrumentalities or proceeds stemming from a criminal offence following a final conviction, which may also result from proceedings in absentia. **Such confiscation may either be subsidiary or alternative to confiscation pursuant to paragraph 1.**

**Amendment 83**

**Proposal for a directive**  
**Article 13 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

Member States shall take the necessary measures to enable the confiscation of proceeds, or other property the value **of**

*Amendment*

Member States shall take the necessary measures to enable the confiscation of **instrumentalities and** proceeds, or other

*which corresponds to* proceeds, which, directly or indirectly, were transferred by a suspected *or* accused person to third parties, or which were acquired by third parties from a suspected *or* accused person.

property *up to* the value *corresponding to those instrumentalities and* proceeds, which, directly or indirectly, were transferred by a suspected, accused *or convicted* person to third parties, or which were acquired by third parties from a suspected, accused *or convicted* person.

## Amendment 84

### Proposal for a directive

#### Article 13 – paragraph 1 – subparagraph 2

##### *Text proposed by the Commission*

The confiscation of *these* proceeds or other property shall be enabled where *it has been* established that those third parties knew or *ought* to have known that the purpose of the transfer or acquisition was to avoid confiscation, *on the basis of concrete* facts and circumstances, *including* that the transfer or acquisition was carried out free of charge or in exchange for an amount *significantly lower than* the market value.

##### *Amendment*

The confiscation of *those instrumentalities*, proceeds or other property shall be enabled where *a national court has* established, *based on the concrete facts and circumstances of the case, that the instrumentalities, proceeds or property to be confiscated are derived from or directly or indirectly linked to a criminal offence and* that those third parties knew or *could be expected* to have known that the purpose of the transfer or acquisition was to avoid confiscation *or that the transferred property was directly or indirectly linked to criminal offence in question. Such* facts and circumstances *may include* that the transfer or acquisition was carried out free of charge or in exchange for an amount *which is disproportionate to* the market value *of the property*.

## Amendment 85

### Proposal for a directive

#### Article 13 – paragraph 2

##### *Text proposed by the Commission*

2. Paragraph 1 shall not affect the rights of bona fide third parties.

##### *Amendment*

2. Paragraph 1 shall not affect the rights of bona fide third parties. *Where the affected party is closely related to the*

*suspected, accused or convicted person, that affected party shall bear the burden of proof that the acquisition of the transferred property has taken place in bona fide and with due diligence.*

*Member States shall ensure that the affected person's rights are respected including by granting access to a lawyer, by awarding access to the file and by ensuring the right to be heard on issues of law and fact.*

## **Amendment 86**

### **Proposal for a directive**

#### **Article 15 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) illness of the suspected or accused person;

*Amendment*

(a) illness of the suspected or accused person, *where the inability to continue proceedings because of that illness results in the expiry of the time limits laid down in national law for criminal liability*;

## **Amendment 87**

### **Proposal for a directive**

#### **Article 15 – paragraph 1 – point d**

*Text proposed by the Commission*

(d) immunity from prosecution of the suspected or accused person, as provided for under national law;

*Amendment*

(d) immunity from prosecution of the suspected or accused person, as provided for under national *or international* law;

## **Amendment 88**

### **Proposal for a directive**

#### **Article 15 – paragraph 1 – point f**

*Text proposed by the Commission*

(f) the time limits prescribed by national law have expired, where such

*Amendment*

(f) the time limits prescribed by national law have expired, where such

limits are not sufficiently long to allow for the effective investigation and prosecution of the relevant criminal offences.

limits are not sufficiently long **and do not exceed fifteen years** to allow for the effective investigation and prosecution of the relevant criminal offences.

## Amendment 89

### Proposal for a directive Article 15 – paragraph 2

#### *Text proposed by the Commission*

2. Confiscation without a prior conviction shall be limited to criminal offences liable to give rise, directly or indirectly, to substantial economic benefit and only insofar as the national court is satisfied that all the elements of the offence are present.

#### *Amendment*

2. Confiscation without a prior conviction shall be limited to criminal offences liable to give rise, directly or indirectly, to substantial economic benefit and only insofar as the national court is satisfied, ***based on available information***, that all the elements of the offence are present ***and has established that the instrumentalities, proceeds or property to be confiscated are derived from or directly or indirectly linked to the criminal offence in question. The burden of proof shall lie with the prosecution.***

## Amendment 90

### Proposal for a directive Article 15 – paragraph 3

#### *Text proposed by the Commission*

3. Before a confiscation order within the meaning of paragraphs 1 and 2 is issued by the court, Member States shall ensure that the affected person's rights of defence are respected including by awarding access to the file and the right to be heard on issues of law and fact.

#### *Amendment*

3. Before a confiscation order within the meaning of paragraphs 1 and 2 is issued by the court, Member States shall ensure that the affected person's rights of defence are respected including by ***granting access to a lawyer and*** awarding access to the file and the right to be heard on issues of law and fact.

## Amendment 91

**Proposal for a directive**  
**Article 16 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall take the necessary measures to enable the confiscation of property, where confiscation is not possible pursuant to Articles 12 to 15 and ***the following conditions are fulfilled:***

***(a) the property is frozen in the context of an investigation into criminal offences committed in the framework of a criminal organisation;***

***(b) the criminal offence pursuant to point (a) is liable to give rise, directly or indirectly, to substantial economic benefit;***

***(c) the national court is satisfied that the frozen property is derived from criminal offences committed in the framework of a criminal organisation.***

*Amendment*

1. Member States shall take the necessary measures to enable the confiscation of property ***frozen in the context of an investigation into criminal offences*** where confiscation is not possible pursuant to Articles 12 to 15 and ***where the national court is satisfied that the frozen property is derived from a criminal offence which is liable to give rise, directly or indirectly, to a substantial economic benefit and which was committed in the framework of a criminal organisation.***

***In order to determine whether the frozen property is derived from a criminal offence, the national court shall take account of all the circumstances of the case, including the specific facts and available evidence, such as the fact that the value of the property is substantially disproportionate to the lawful income of the owner of the property which cannot be justified on the basis of lawful activities. The burden of proof shall lie with the prosecution.***

**Amendment 92**

**Proposal for a directive**  
**Article 16 – paragraph 2**

*Text proposed by the Commission*

2. *When determining whether the frozen property is derived from criminal offences, account shall be taken of all the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is substantially disproportionate to the lawful income of the owner of the property.*

*Amendment*

*deleted*

**Amendment 93**

**Proposal for a directive**  
**Article 16 – paragraph 4**

*Text proposed by the Commission*

4. Before a confiscation order within the meaning of paragraphs 1 and 2 is issued by the court, Member States shall ensure that the affected person's rights of defence are respected including by awarding access to the file and the right to be heard on issues of law and fact.

*Amendment*

4. Before a confiscation order within the meaning of paragraphs 1 and 2 is issued by the court, Member States shall ensure that the affected person's rights of defence are respected including by **granting access to a lawyer** awarding access to the file and the right to be heard on issues of law and fact.

**Amendment 94**

**Proposal for a directive**  
**Article 17 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall take the necessary measures to enable the tracing and identification of property to be frozen and confiscated even after a final conviction for a criminal offence, or following proceedings in application of Articles 15 and 16.

*Amendment*

1. Member States shall take the necessary measures to enable the tracing and identification of property to be frozen and confiscated even after a final conviction for a criminal offence, or following proceedings in application of Articles 15 and 16. **Member States shall ensure that such investigations are also**

*possible with a view to obtaining compensation for the victims.*

## **Amendment 95**

### **Proposal for a directive Article 17 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Member States shall consider taking measures allowing confiscated property to be used for public interest or social purposes.

*deleted*

## **Amendment 96**

### **Proposal for a directive Article 17 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2a. For the purpose of paragraph 1, Member States shall ensure that competent authorities may use the same investigative powers as those available for the tracing and freezing of assets pursuant to Chapter II of this Directive.*

## **Amendment 97**

### **Proposal for a directive Article 17 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

*2b. Member States may conclude cost-sharing agreements with each-other on the execution of freezing and confiscation orders.*

## **Amendment 98**

**Proposal for a directive**  
**Article 18 – paragraph 1**

*Text proposed by the Commission*

Where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Directive, Member States shall take the necessary measures to ensure that ***the*** confiscation measure ***does not affect*** victims' ***rights to obtain compensation for their*** claims.

*Amendment*

1. Where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Directive, Member States shall, ***as a matter of priority***, take the necessary measures to ensure that ***victims' claims for compensation are taken into account prior to the final*** confiscation measure. ***Member States shall pay particular attention to the*** victims' claims ***in cross-border cases***;

**Amendment 99**

**Proposal for a directive**  
**Article 18 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Where, as a result of a criminal offence, a victim is entitled to the restitution of property subject to confiscation, Member States shall, where possible and as a matter of priority, take the necessary measures to restitute the property concerned to the victim. for their claims in cross-border cases.***

**Amendment 100**

**Proposal for a directive**  
**Article 18 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. Where it is not possible to restitute the property to the victim in accordance with the second and financial assets have been obtained as a result of the execution of the confiscation or interlocutory sale in***

*relation to that property, such assets shall be transferred to the victim for the purposes of restitution;*

## **Amendment 101**

### **Proposal for a directive**

#### **Article 18 a – paragraph 1 (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 18a**

##### ***Further use of the confiscated property***

***1. Member States shall take the necessary measures to allow confiscated property to be used for public interest or social purposes. Such property may be kept as public property for justice, law enforcement, public service or economic purposes or be transferred to the local or regional authorities responsible for the area in which the property is located, for institutional, social or economic purposes, including for assignment to organisations carrying out work of social interest.***

## **Amendment 102**

### **Proposal for a directive**

#### **Article 18 a – paragraph 2 (new)**

*Text proposed by the Commission*

*Amendment*

***2. Where the confiscated assets originated in a third country, without prejudice to the provisions of paragraph 3, Member States shall take all appropriate measures to return them to the third country. That obligation is without prejudice to the possibility to retain a portion of the assets to cover the costs associated with tracing and identification or management directly related to such assets.***

## **Amendment 103**

### **Proposal for a directive Article 18 a – paragraph 3 (new)**

*Text proposed by the Commission*

*Amendment*

**3. In cases where instrumentalities, proceeds and property have been confiscated in connection to the violation of Union restrictive measures and in order to facilitate the compensation, restitution and reparations towards States affected by international crimes related to such restrictive measures, the Commission and the Member States shall facilitate coordination between competent authorities and with third countries<**

**The Commission shall issue guidelines on the use of the confiscated instrumentalities, proceeds and property for compensation, restitution and reparations towards States, especially in the circumstances of war of aggression insofar as the interests at stake are directly or indirectly affected by the criminal activities covered by this Directive,**

## **Amendment 104**

### **Proposal for a directive Article 18 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 18b**

**Rights for the public concerned to participate in proceedings**

**Member States shall ensure that, in accordance with their national legal system, members of the public concerned have appropriate rights to participate in the proceedings covered by this Directive;**

## Amendment 105

### Proposal for a directive Article 19 – paragraph 2

#### *Text proposed by the Commission*

2. Member States shall ensure that, before issuing a freezing order within the meaning of Article 11 paragraph 1, competent authorities responsible for the management of frozen and confiscated property carry out an assessment of the costs which may be incurred in the management of the property which may be frozen, for the purposes of preserving and optimizing the value of such property until its disposal.

#### *Amendment*

2. Member States shall ensure that, before issuing a freezing order within the meaning of Article 11 paragraph 1, competent authorities responsible for the management of frozen and confiscated property carry out an assessment of the costs which may be incurred in the management of the property which may be frozen, for the purposes of preserving and optimizing the value of such property until its disposal, ***unless specific circumstances of a case would require such an assessment to be postponed. Any decision by the competent authorities to forego such an assessment shall be duly justified.***

## Amendment 106

### Proposal for a directive Article 19 – paragraph 2 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

***2a. Member States may require the costs for the management of frozen property to be charged, at least partially, to the beneficial owner***

## Amendment 107

### Proposal for a directive Article 20 – paragraph 1 – point a

#### *Text proposed by the Commission*

(a) the property subject to freezing is perishable or ***rapidly*** depreciating;

#### *Amendment*

(a) the property subject to freezing is perishable or depreciating;

## Amendment 108

### Proposal for a directive

#### Article 20 – paragraph 1 – point b

*Text proposed by the Commission*

(b) the storage or maintenance costs of the property are disproportionate to its **value**;

*Amendment*

(b) the storage or maintenance costs of the property are disproportionate to its **market value**;

## Amendment 109

### Proposal for a directive

#### Article 20 – paragraph 1 – point c

*Text proposed by the Commission*

(c) the property **is too difficult to administer, or its management** requires special conditions and non-readily available **expertise**.

*Amendment*

(c) **the management of** the property requires special conditions and **expertise which is** non-readily available.

## Amendment 110

### Proposal for a directive

#### Article 20 – paragraph 2

*Text proposed by the Commission*

2. Member States shall adopt the necessary measures to ensure that the interests of the owner of the property are taken into account when issuing an interlocutory sale order, including whether the property to be sold is easily replaceable. With the exception of cases of absconding, Member States shall ensure that the owner of the property that may be subject to an interlocutory sale is notified **and** heard before the sale. The owner shall be given the possibility to request the sale of the property.

*Amendment*

2. Member States shall adopt the necessary measures to ensure that the interests of the owner of the property are taken into account when issuing an interlocutory sale order, including whether the property to be sold is easily replaceable. With the exception of cases of absconding **and in duly justified circumstances**, Member States shall ensure that the owner of the property that may be subject to an interlocutory sale is notified and is **given the opportunity to be** heard before the sale. The owner shall be given the possibility to request the sale of the

property.

## Amendment 111

### Proposal for a directive Article 20 – paragraph 3

#### *Text proposed by the Commission*

3. Earnings from interlocutory sales ***should*** be secured until a judicial decision on confiscation is reached. Member States shall take appropriate measures to protect third party buyers of property sold from retaliatory measures, to ensure that the property sold is not returned to persons convicted of the criminal offences referred to in Article 2.

#### *Amendment*

3. Earnings from interlocutory sales ***shall*** be secured until a judicial decision on confiscation is reached. Member States shall take appropriate measures to protect third party buyers of property sold from retaliatory measures, to ensure that the property sold is not returned to persons convicted of the criminal offences referred to in Article 2.

## Amendment 112

### Proposal for a directive Article 20 – paragraph 4

#### *Text proposed by the Commission*

4. ***Member States may require the costs for the management of frozen property to be charged to the beneficial owner.***

#### *Amendment*

***deleted***

## Amendment 113

### Proposal for a directive Article 21 – paragraph 2 – point c

#### *Text proposed by the Commission*

(c) to cooperate with other competent authorities responsible for the tracing and identification, freezing and confiscation of property, pursuant to this Directive;

#### *Amendment*

(c) to cooperate with other competent authorities responsible for the tracing and identification, freezing and confiscation of property, pursuant to this Directive, ***including Union agencies and bodies referred to in Article 28, in accordance with their areas of competence***

## Amendment 114

### Proposal for a directive Article 22 – paragraph 1

#### *Text proposed by the Commission*

Member States shall ensure that the freezing orders pursuant to Article 11, confiscation orders pursuant to Articles 12 to 16, and orders to sell the property pursuant to Article 20 are communicated to the affected person setting out the reasons for the measure.

#### *Amendment*

Member States shall ensure that the freezing orders pursuant to Article 11, confiscation orders pursuant to Articles 12 to 16, and orders to sell the property pursuant to Article 20 are communicated to the affected person setting out the reasons for the measure ***as well as the rights and legal remedies available to that affected person pursuant to Article 23. Member States may put in place rules allowing for the temporary postponement of the obligation to inform the affected persons where necessary and proportionate for the protection of ongoing criminal investigations.***

## Amendment 115

### Proposal for a directive Article 23 – paragraph 2

#### *Text proposed by the Commission*

2. Member States shall provide for the effective possibility for the person whose property is affected to challenge the freezing order pursuant to article 11 before a court, in accordance with procedures provided for in national law. Where the freezing order has been taken by a competent authority other than a judicial authority, national law shall provide that such an order is first to be submitted for validation or review to a judicial authority before it can be challenged before a court.

#### *Amendment*

2. Member States shall provide for the effective possibility for the person whose property is affected to challenge the freezing order pursuant to article 11 before a court, in accordance with procedures provided for in national law. Where the freezing order has been taken by a competent authority other than a judicial authority, national law shall provide that such an order is first to be submitted for validation or review, ***within a reasonable delay***, to a judicial authority before it can be challenged before a court.

## Amendment 116

### Proposal for a directive

#### Article 23 – paragraph 4 – subparagraph 2

##### *Text proposed by the Commission*

In the case of confiscation orders pursuant to Article 13, such circumstance shall include facts and circumstances on which the finding was based that the third party knew or ***ought*** to have known that the purpose of the transfer or acquisition was to avoid confiscation.

##### *Amendment*

In the case of confiscation orders pursuant to Article 13, such circumstance shall include facts and circumstances on which the finding was based that the third party knew or ***could be expected*** to have known that the purpose of the transfer or acquisition was to avoid confiscation ***or that the transferred property was directly or indirectly linked to criminal conduct on the basis of concrete facts and circumstances, such as the fact that the transfer or acquisition was carried out free of charge or in exchange for an amount disproportionate to the market value.***

## Amendment 117

### Proposal for a directive

#### Article 23 – paragraph 4 – subparagraph 3

##### *Text proposed by the Commission*

In the case of confiscation orders pursuant to Articles 14 and 16, such circumstances shall include specific facts and available evidence on the basis of which the property concerned is considered to be property that is derived from criminal conduct.

##### *Amendment*

In the case of confiscation orders pursuant to Articles 14 and 16, such circumstances shall include specific facts and available evidence on the basis of which the property concerned is considered to be property that is derived ***directly or indirectly*** from criminal conduct.

## Amendment 118

### Proposal for a directive

#### Article 23 – paragraph 4 – subparagraph 4

##### *Text proposed by the Commission*

In the case of confiscation orders pursuant

##### *Amendment*

In the case of confiscation orders pursuant

to Article 15, such circumstances shall include facts and evidence on the basis of which the national court concluded that all the elements of the offence are present.

to Article 15, such circumstances shall include facts and evidence on the basis of which the national court concluded that all the elements of the offence are present ***and that the property concerned is directly or indirectly derived from criminal conduct.***

## Amendment 119

### Proposal for a directive Article 24 – paragraph 1

#### *Text proposed by the Commission*

1. Member States shall adopt by [one year after the entry into force of this Directive] a national strategy on asset recovery and update it at regular intervals of no longer than ***five*** years.

#### *Amendment*

1. Member States shall adopt by [one year after the entry into force of this Directive] a national strategy on asset recovery and update it at regular intervals of no longer than ***four*** years.

## Amendment 120

### Proposal for a directive Article 24 – paragraph 2 – point a

#### *Text proposed by the Commission*

(a) strategic objectives, priorities and measures for the purposes of enhancing efforts by all competent national authorities involved in the recovery of property as set out in this Directive;

#### *Amendment*

(a) strategic objectives, priorities and measures for the purposes of enhancing efforts by all competent national authorities involved in the recovery ***and management*** of property as set out in this Directive;

## Amendment 121

### Proposal for a directive Article 24 – paragraph 2 – point b

#### *Text proposed by the Commission*

(b) a governance framework to achieve the strategic objectives and priorities, including ***a*** description of the roles and responsibilities of all the competent

#### *Amendment*

(b) a governance framework to achieve the strategic objectives and priorities, including ***an effective cooperation framework between asset recovery offices***

authorities and cooperation *mechanisms*;

*and asset management offices and a further description of the roles and responsibilities of all the competent authorities and **the** cooperation **between asset recovery offices and financial intelligence units**;*

## Amendment 122

### Proposal for a directive

#### Article 24 – paragraph 2 – point c

*Text proposed by the Commission*

(c) appropriate mechanisms for coordination and cooperation at strategic and operational levels among all competent authorities;

*Amendment*

(c) appropriate mechanisms for coordination and cooperation at strategic and operational levels among all competent authorities ***including the relevant Union agencies and bodies***;

## Amendment 123

### Proposal for a directive

#### Article 24 – paragraph 2 – point d

*Text proposed by the Commission*

(d) resources made available to competent authorities, ***including training***;

*Amendment*

(d) ***appropriate financial*** resources ***appropriate training and appropriate legal capabilities*** made available to competent authorities;

## Amendment 124

### Proposal for a directive

#### Article 24 – paragraph 2 – point e a (new)

*Text proposed by the Commission*

*Amendment*

***(ea) recourse to the possibility to use frozen and confiscated assets for public interest or social purposes and for compensation, restitution and reparations towards States in accordance with Article 18a;***

## Amendment 125

### Proposal for a directive

#### Article 24 – paragraph 2 – point e b (new)

*Text proposed by the Commission*

*Amendment*

***(eb) measures to be taken to ensure that the confiscated property is used to compensate the victims;***

## Amendment 126

### Proposal for a directive

#### Article 25 – paragraph 1

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that asset recovery offices and asset management offices performing tasks pursuant to this Directive, have appropriately qualified **staff** and appropriate financial, technical and technological resources necessary for the effective performance of their functions related to the implementation of this Directive.

Member States shall ensure that asset recovery offices and asset management offices performing tasks pursuant to this Directive, have appropriately qualified and appropriate financial, technical and technological resources necessary for the effective performance of their functions related to the implementation of this Directive. ***Member States shall ensure that specialised training and exchanges of best practices is provided to the staff involved in asset identification, tracing and recovery and confiscation at regular intervals. In addition to their obligations under Article 24(2), point (c), Member States shall update the Commission annually on the resources allocated to asset recovery offices and asset management offices.***

## Amendment 127

### Proposal for a directive

#### Article 26 – paragraph 1

*Text proposed by the Commission*

1. For the purpose of managing frozen and confiscated property, Member States shall put in place centralised registries containing information related to the freezing, confiscation and management of instrumentalities and proceeds, or property which may become or is the object of a freezing or confiscation order.

*Amendment*

1. For the purpose of managing frozen and confiscated property, Member States shall put in place centralised registries containing information related to the freezing, confiscation and management of instrumentalities and proceeds, or property which may become or is the object of a freezing or confiscation order. ***Member State shall ensure that the information entered into the registry is accurate, complete and up-to-date.***

**Amendment 128**

**Proposal for a directive  
Article 26 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) the estimated or actual value of the property at the moment of the freezing, ***confiscation and disposal***;

*Amendment*

(b) the estimated or actual value of the property at the moment of the freezing;

**Amendment 129**

**Proposal for a directive  
Article 26 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. Member States shall ensure that any personal data stored in the registry can only be accessed and used for the purposes of freezing, confiscation and management of instrumentalities and proceeds, or property which may become or is the object of a confiscation order.***

**Amendment 130**

**Proposal for a directive  
Article 26 – paragraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

**5a. Member States shall designate the competent authority or authorities responsible for the management of the centralised registries. Those authorities shall be considered to be the controller within the meaning of Article 3, point (8), of Directive (EU) 2016/680.**

## **Amendment 131**

### **Proposal for a directive Article 26 – paragraph 5 b (new)**

*Text proposed by the Commission*

*Amendment*

**5b. Member States shall ensure that the centralised registries referred to in paragraph 1 are compatible with the tools used for the digital communication in judicial cooperation procedures in civil, commercial and criminal matters, such as the decentralised IT system and European electronic access point regulated under Regulation XX/XXX and Directive XX/XXX on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation.**

## **Amendment 132**

### **Proposal for a directive Article 27 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall collect and maintain comprehensive statistics **at central level** on the measures taken under this Directive.

1. Member States shall **regularly** collect **from the relevant authorities** and maintain **at central level** comprehensive statistics on the measures taken under this Directive **in order to review the effectiveness of their confiscation systems**

*and in line with the methodology developed by the Commission pursuant to paragraph 3.*

#### **Amendment 133**

##### **Proposal for a directive Article 27 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall ensure that the statistics referred to in paragraph 1 are collected on a calendar basis and transmitted to the Commission on an annual basis, by [1 September] of the following year.

*Amendment*

2. Member States shall ensure that the statistics referred to in paragraph 1 are collected on a calendar basis and transmitted to the Commission on an annual basis, by [1 September] of the following year. ***The statistics collected shall include at least the following:***

#### **Amendment 134**

##### **Proposal for a directive Article 27 – paragraph 2 – point a (new)**

*Text proposed by the Commission*

*Amendment*

***(a) the number of asset tracing investigations launched, and the number of asset traced;***

#### **Amendment 135**

##### **Proposal for a directive Article 27 – paragraph 2 – point b (new)**

*Text proposed by the Commission*

*Amendment*

***(b) the number of freezing orders initiated and number of freezing orders executed;***

#### **Amendment 136**

**Proposal for a directive**  
**Article 27 – paragraph 2 – point c (new)**

*Text proposed by the Commission*

*Amendment*

**(c) the number of confiscation orders executed broken down by type of confiscation referred to in Articles 12 to 16;**

**Amendment 137**

**Proposal for a directive**  
**Article 27 – paragraph 2 – point d (new)**

*Text proposed by the Commission*

*Amendment*

**(d) the value of property frozen;**

**Amendment 138**

**Proposal for a directive**  
**Article 27 – paragraph 2 – point e (new)**

*Text proposed by the Commission*

*Amendment*

**(e) for the confiscation orders included in a respective annual report, the value of confiscated property compared to the value of that property at the time of freezing;**

**Amendment 139**

**Proposal for a directive**  
**Article 27 – paragraph 2 – point f (new)**

*Text proposed by the Commission*

*Amendment*

**(f) the number of requests for freezing orders to be executed in another Member State;**

**Amendment 140**

**Proposal for a directive**  
**Article 27 – paragraph 2 – point g (new)**

*Text proposed by the Commission*

*Amendment*

**(g) the number of requests for  
confiscation orders to be executed in  
another Member State;**

**Amendment 141**

**Proposal for a directive**  
**Article 27 – paragraph 2 – point h (new)**

*Text proposed by the Commission*

*Amendment*

**(h) the value of the property recovered  
following execution of a confiscation  
order in another Member State;**

**Amendment 142**

**Proposal for a directive**  
**Article 27 – paragraph 2 – point i (new)**

*Text proposed by the Commission*

*Amendment*

**(i) the value of the property destined  
to be reused for law enforcement,  
prevention or social purposes as referred  
to in Article 18a;**

**Amendment 143**

**Proposal for a directive**  
**Article 27 – paragraph 2 – point j (new)**

*Text proposed by the Commission*

*Amendment*

**(j) the manner in which the  
confiscated property has been used ; and**

**Amendment 144**

**Proposal for a directive**  
**Article 27 – paragraph 2 – point k (new)**

*Text proposed by the Commission*

*Amendment*

**(k) for the confiscation orders included in a respective annual report, the length of the procedure from freezing to final disposal.**

**Amendment 145**

**Proposal for a directive**  
**Article 27 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 27a**

**Cooperation network on asset recovery and confiscation**

**1. A cooperation network on asset recovery and confiscation (the ‘network’) shall be established to support the Commission and to facilitate the exchange of best practices, and operational cooperation in relation to the implementation of this Directive. The network shall be composed of representatives from asset recovery offices and asset management offices and shall be co-chaired by the Commission and, where appropriate, by Europol. The network shall be convened at regular intervals.**

**The network shall:**

- (a) advise the Commission in relation to the implementation of the measures provided for in this Directive;**
- (b) analyse the national strategies on asset recovery adopted by Member States pursuant to Article 24 in order to identify best practices;**
- (c) share best practices to improve cooperation with third countries;**

*(d) facilitate operational cooperation among relevant national authorities and Europol.*

*2. Representatives from Europol, Eurojust, from the European Public Prosecutors Office and, where appropriate, from the Anti-Money Laundering Authority (AMLA) may be invited to participate in the meetings of the network.*

#### Amendment 146

##### Proposal for a directive Article 28 – title

*Text proposed by the Commission*

Cooperation with **EU** bodies and agencies

*Amendment*

Cooperation with **Union** bodies and agencies

#### Amendment 147

##### Proposal for a directive Article 28 – paragraph 1

*Text proposed by the Commission*

1. Asset recovery offices of Member States shall closely cooperate with the European Public Prosecutor's Office for the purposes of facilitating the identification of instrumentalities and proceeds, or property that may become or is the object of a freezing or confiscation order in proceedings in criminal matters concerning criminal offences for which the European Public Prosecutor's Office exercises its competence.

*Amendment*

1. Asset recovery offices of Member States shall, ***within their respective competences and in accordance with the applicable legal framework***, closely cooperate with the European Public Prosecutor's Office for the purposes of facilitating the identification of instrumentalities and proceeds, or property that may become or is the object of a freezing or confiscation order in proceedings in criminal matters concerning criminal offences ***falling within the competence of*** the European Public Prosecutor's Office exercises its competence. ***For the purposes of this Directive, when the notion of competent authorities refers to investigating and prosecuting authorities, it shall be***

*interpreted as including the central and decentralised levels of the EPPO with regard to the Member States that participate in the enhanced cooperation on the establishment of the EPPO. Asset recovery offices shall fulfil the obligations under Regulation (EU) 2017/1939, including the obligation to report to the EPPO under Article 24 of that Regulation, the undertaking of measures if instructed as a competent authority under Article 28(1) of that Regulation, and access to information under Article 43(1) of that Regulation.*

#### Amendment 148

##### Proposal for a directive Article 28 – paragraph 2

*Text proposed by the Commission*

2. Asset recovery offices shall cooperate with Europol ***and Eurojust, in accordance with the areas of their competence***, for the purposes of facilitating the identification of instrumentalities and proceeds, or property that may become or is the object of a freezing or confiscation order made by a competent authority in the course of ***criminal*** proceedings, and where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures.

*Amendment*

2. Asset recovery offices shall cooperate with Europol for the purposes of facilitating the identification of instrumentalities and proceeds, or property that may become or is the object of a freezing or confiscation order made by a competent authority in the course of proceedings ***in criminal matters***, and where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures.

#### Amendment 149

##### Proposal for a directive Article 28 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. Asset recovery offices and asset management offices shall closely cooperate with Eurojust for the purpose of facilitating the asset recovery process***

*in accordance with Eurojust's mandate, including, but not limited to the tracing and identification of instrumentalities and proceeds, or property that may become or is the object of a freezing or confiscation order made by a competent authority in the course of proceedings in criminal matters and subsequent disposal, including in the course of the investigation and prosecution of criminal offences related to the violation of Union restrictive measures.*

## Amendment 150

### Proposal for a directive Article 33 – paragraph 1

#### *Text proposed by the Commission*

1. The Commission shall, by [date of entry into force + **3** years], submit a report to the European Parliament and to the Council, assessing the implementation of this Directive.

#### *Amendment*

1. The Commission shall, by [date of entry into force + **three** years], submit a report to the European Parliament and to the Council, assessing the implementation of this Directive. *That report shall include a detailed assessment of the possibility and benefits of interconnecting the centralised registries referred to in Article 26 through a single access point in order to allow asset recovery offices to directly and immediately search the data contained therein, subject to relevant safeguards.*

## Amendment 151

### Proposal for a directive Article 33 – paragraph 2

#### *Text proposed by the Commission*

2. The Commission shall, by [date of entry into force + **5** years], submit a report to the European Parliament and to the Council evaluating this Directive. The Commission shall take into account the

#### *Amendment*

2. The Commission shall, by [date of entry into force + **four** years], submit a report to the European Parliament and to the Council evaluating this Directive. The Commission shall take into account the

information provided by Member States and any other relevant information related to the transposition and implementation of this Directive. On the basis of this evaluation, the Commission shall decide on appropriate follow-up actions, including, if necessary, a legislative proposal.

information provided by Member States and any other relevant information related to the transposition and implementation of this Directive. On the basis of this evaluation, the Commission shall decide on appropriate follow-up actions, including, if necessary, a legislative proposal.

## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council on asset recovery and confiscation  
(COM(2022)0245 – C9-0186/2022 – 2022/0167(COD))

Rapporteur for opinion: Sergey Lagodinsky

### AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take the following into account:

#### Amendment 1

##### Proposal for a directive Recital 3

###### *Text proposed by the Commission*

(3) An effective asset recovery system requires the swift tracing and identification of instrumentalities and proceeds of crime, and property suspected to be of criminal origin. Such proceeds, instrumentalities, and property should be frozen in order to prevent its disappearance, following which it should be confiscated upon conclusion of criminal proceedings. An effective asset recovery system further requires the effective management of frozen and confiscated property to maintain its value for the State or for the restitution for victims.

###### *Amendment*

(3) An effective asset recovery system requires the swift tracing and identification of instrumentalities and proceeds of crime, and property suspected to be of criminal origin. Such proceeds, instrumentalities, and property should be frozen in order to prevent its disappearance, following which it should be confiscated upon conclusion of criminal proceedings. An effective asset recovery system further requires the effective management of frozen and confiscated property to maintain its value for the State or for the restitution for victims. ***Until a judicial decision determines the compensation and/or restitution, the sum obtained either as a result of the execution of the confiscation***

*order or by the disposal of the confiscated property should be transferred to the bank account of the victim where applicable.*

## **Amendment 2**

### **Proposal for a directive Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**(3a)** *According to the circumstances and in full respect of the right to compensation of victims, Member States should adopt measures allowing the use of confiscated property for purposes of public or social interest. Where specific national legislation, which provides for the direct or indirect reuse of confiscated property for purposes of public or social interest, as well as for measures adopted for its management, with the aim of reinforcing the rule of law and the involvement of civil society in the fight against organised crime already exist, the Member States concerned may refer to them in their national strategies on asset recovery.*

## **Amendment 3**

### **Proposal for a directive Recital 10**

*Text proposed by the Commission*

*Amendment*

(10) Other crimes committed within the framework of a criminal organisation play a pivotal role in generating revenues and in enabling further crimes, including serious crimes with a cross-border nature. Such crimes should be included in the scope of the Directive to the extent to which they are committed within the framework of a criminal organisation. The counterfeiting and piracy of products is linked to money

(10) Other crimes committed within the framework of a criminal organisation play a pivotal role in generating revenues and in enabling further crimes, including serious crimes with a cross-border nature. Such crimes should be included in the scope of the Directive to the extent to which they are committed within the framework of a criminal organisation. The counterfeiting and piracy of products is linked to money

laundering and the forgery of documents, and threatens the functioning of the single market and fair competition. The illicit trafficking in cultural goods, including antiques and works of art, is often intertwined with money laundering and constitutes an important source of financing for organised criminal groups. Forgery of administrative documents and trafficking therein, including bank documents or identification documents, is a key enabling tool for money laundering, trafficking in human beings, or migrant smuggling, and should as such be covered in the scope of this Directive. Other crimes which are often carried out within the framework of an organised crime group include murder or grievous bodily harm, as well as the illicit trade in human organs and tissue, which are a source of revenue for organised crime groups in the context of contract killings, intimidation and trafficking in human beings. Similarly kidnapping, illegal restraint or hostage taking, as well as racketeering and extortion, are utilized either as source of revenue through the collection of ransom money or as intimidation tactics against adversaries. The crime of organised or armed robbery is one of the most common forms to generate profits for organised criminal groups, and it is often committed in conjunction with other crimes, in particular the trafficking in firearms. Similarly, the trafficking in stolen vehicles cannot only generate profits but also represents an enabling crime to provide for the necessary instrumentalities to carry out further offences. In addition, it is key to include tax crimes to the extent it is committed as part of a criminal organisation in the scope of the Directive, as this specific crime is an enabling source of profits, especially when operating in a cross-border context. Typical techniques employed to commit tax fraud or evasion consist of making use of cross-border corporate structures or similar arrangements to fraudulently obtain tax

laundering and the forgery of documents, and threatens the functioning of the single market and fair competition. The illicit trafficking in cultural goods, including antiques and works of art, is often intertwined with money laundering and constitutes an important source of financing for organised criminal groups. ***The same applies to the illegal trade and trafficking of endangered animal and plant species, including their body parts or products derived from them.*** Forgery of administrative documents and trafficking therein, including bank documents or identification documents, is a key enabling tool for money laundering, trafficking in human beings, or migrant smuggling, and should as such be covered in the scope of this Directive. Other crimes which are often carried out within the framework of an organised crime group include murder or grievous bodily harm, as well as the illicit trade in human organs and tissue, which are a source of revenue for organised crime groups in the context of contract killings, intimidation and trafficking in human beings. Similarly kidnapping, illegal restraint or hostage taking, as well as racketeering and extortion, are utilized either as source of revenue through the collection of ransom money or as intimidation tactics against adversaries. The crime of organised or armed robbery is one of the most common forms to generate profits for organised criminal groups, and it is often committed in conjunction with other crimes, in particular the trafficking in firearms. Similarly, the trafficking in stolen vehicles cannot only generate profits but also represents an enabling crime to provide for the necessary instrumentalities to carry out further offences. In addition, it is key to include tax crimes to the extent it is committed as part of a criminal organisation in the scope of the Directive, as this specific crime is an enabling source of profits, especially when operating in a cross-border context. Typical techniques

benefits and refunds, hide assets or profits, merge legal with illicit profits and assets or to transfer them to other entities abroad to disguise their origins or (beneficial) ownership.

employed to commit tax fraud or evasion consist of making use of cross-border corporate structures or similar arrangements to fraudulently obtain tax benefits and refunds, hide assets or profits, merge legal with illicit profits and assets or to transfer them to other entities abroad to disguise their origins or (beneficial) ownership.

#### Amendment 4

##### Proposal for a directive Recital 12

###### *Text proposed by the Commission*

(12) In order to capture property which might be transformed and transferred in order to conceal its origin, and in order to ensure harmonisation and clarity of definitions across the Union, property that can be subject to freezing and confiscation should be defined broadly. It should cover legal documents or instruments evidencing title or interest in property subject to freezing and confiscation including, for example, financial instruments, or documents that may give rise to creditor claims and are normally found in the possession of the person affected by the relevant procedures, as well as trusts. This Directive is without prejudice to the existing national procedures for keeping legal documents or instruments evidencing title or interest in property, as they are applied by the competent national authorities or public bodies in accordance with national law. The definition should cover all forms of property, including crypto assets.

###### *Amendment*

(12) In order to capture property which might be transformed and transferred in order to conceal its origin, and in order to ensure harmonisation and clarity of definitions across the Union, property that can be subject to freezing and confiscation should be defined broadly. It should cover legal documents or instruments, ***in any form, including electronic or digital,*** evidencing title or interest in property subject to freezing and confiscation including, for example, financial instruments, or documents that may give rise to creditor claims and are normally found in the possession of the person affected by the relevant procedures, as well as trusts. This Directive is without prejudice to the existing national procedures for keeping legal documents or instruments evidencing title or interest in property, as they are applied by the competent national authorities or public bodies in accordance with national law. The definition should cover all forms of property, including crypto assets.

#### Amendment 5

**Proposal for a directive**  
**Recital 17**

*Text proposed by the Commission*

(17) In order to perform effective asset tracing investigations, and to swiftly respond to cross-border requests, asset recovery offices should have access to the information that allows them to establish the existence, ownership or control of property that may become object of a freezing or a confiscation order. Therefore, asset recovery offices should have access to the relevant data such as fiscal data, national citizenship and population registries, commercial databases and social security information. This should include law enforcement information in so far as data such as criminal records, vehicles stops, property searches and previous legal actions such as freezing and confiscation orders or seizures of cash can be of value to identify relevant property. Access to information should be subject to specific safeguards that prevent the misuse of the access rights. These safeguards should be without prejudice to Article 25 of Directive (EU) 2016/680 of the European Parliament and of the Council<sup>23</sup>. ***The direct and immediate*** access to this information does not prevent Member States from making access subject to procedural safeguards as established under national law while taking due account of the need for asset recovery offices to be able to swiftly reply to cross-border requests. ***The implementation of the procedural safeguards for access to databases should not affect the ability of asset recovery offices to respond to requests from other Member States, especially in case of urgent*** requests. Access to relevant databases and registries under this Directive should complement access to bank account information pursuant to Directive (EU) 2019/1153 of the European Parliament and of the Council<sup>24</sup> and to beneficial ownership information pursuant to Directive (EU)

*Amendment*

(17) In order to perform effective asset tracing investigations, and to swiftly respond to cross-border requests, asset recovery offices should have access to the information that allows them to establish the existence, ownership or control of property that may become object of a freezing or a confiscation order. Therefore, asset recovery offices should have access to the relevant data such as fiscal data, national citizenship and population registries, commercial databases and social security information. This should include law enforcement information in so far as data such as criminal records, vehicles stops, property searches and previous legal actions such as freezing and confiscation orders or seizures of cash can be of value to identify relevant property. Access to information should be subject to specific safeguards that prevent the misuse of the access rights, ***including a court authorisation where required by national law***. These safeguards should be without prejudice to Article 25 of Directive (EU) 2016/680 of the European Parliament and of the Council<sup>23</sup>. ***Access to information by asset recovery offices should be as direct as possible, while respecting national constitutional requirements. The*** access ***without delay*** to this information does not prevent Member States from making access subject to procedural safeguards as established under national law, ***such as a court authorisation***, while taking due account of the need for asset recovery offices to be able to swiftly reply to cross-border requests. Access to relevant databases and registries under this Directive should complement access to bank account information pursuant to Directive (EU) 2019/1153 of the European Parliament and of the Council<sup>24</sup> and to beneficial ownership information pursuant

2015/849 of the European Parliament and of the Council<sup>25</sup>.

to Directive (EU) 2015/849 of the European Parliament and of the Council<sup>25</sup>.

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<sup>23</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

<sup>24</sup> Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122).

<sup>25</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 (OJ L 141 5.6.2015, p. 73).

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<sup>23</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

<sup>24</sup> Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122).

<sup>25</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 (OJ L 141 5.6.2015, p. 73).

## Amendment 6

### Proposal for a directive Recital 20

#### *Text proposed by the Commission*

(20) Confiscation leads to the final deprivation of property. However, preservation of property can be a prerequisite to confiscation and is often essential for the effective enforcement of a confiscation order. Property is preserved by means of freezing. In order to prevent

#### *Amendment*

(20) Confiscation leads to the final deprivation of property. However, preservation of property can be a prerequisite to confiscation and is often essential ***for the proper tracing of proceeds and other property directly or indirectly derived from criminal conduct,***

the dissipation of property before a freezing order can be issued, the competent authorities in the Member States, including asset recovery offices, should be empowered to take immediate action in order to secure such property.

***and*** for the effective enforcement of a confiscation order. Property is preserved by means of freezing. In order to prevent the dissipation of property before a freezing order can be issued, the competent authorities in the Member States, including asset recovery offices, should be empowered to take immediate action in order to secure such property. ***In order to take such action with due diligence, in a proportionate and appropriate manner and without undue delay, those competent authorities should have sufficient and qualified staff and the capacity for cooperation both at national level, between the relevant authorities, and at cross-border level.***

#### Amendment 7

##### Proposal for a directive Recital 21

###### *Text proposed by the Commission*

(21) Given the limitation on the right to property imposed by freezing orders, such provisional measures should not be maintained longer than necessary to preserve the availability of the property with a view to possible subsequent confiscation. ***This may require*** a review by the national court in order to ensure that the purpose of preventing the dissipation of property remains valid.

###### *Amendment*

(21) Given the limitation on the right to property imposed by freezing orders, such provisional measures should not be maintained longer than necessary to preserve the availability of the property with a view to possible subsequent confiscation. A review by the national court ***should be ensured in case a freezing order has been taken by a competent authority other than a judicial authority,*** in order to ensure that the purpose of preventing the dissipation of property remains valid.

#### Amendment 8

##### Proposal for a directive Recital 22

*Text proposed by the Commission*

(22) Freezing measures should be without prejudice to the possibility for a specific property to be considered evidence throughout the proceedings, provided that it would ultimately be made available for effective execution of the confiscation order. In the context of criminal proceedings, property may also be frozen with a view to its possible subsequent restitution or in order to safeguard compensation for the damage caused by a criminal offence.

*Amendment*

(22) Freezing measures ***should include measures aimed at preserving and optimizing the value of concerned property until its disposal and*** should be without prejudice to the possibility for a specific property to be considered evidence throughout the proceedings, provided that it would ultimately be made available for effective execution of the confiscation order. In the context of criminal proceedings, property may also be frozen with a view to its possible subsequent restitution or in order to safeguard ***the victims' rights to compensation and restitution*** for the damage caused by a criminal offence.

**Amendment 9**

**Proposal for a directive  
Recital 24**

*Text proposed by the Commission*

(24) The practice by a suspected or accused person of transferring property or proceeds to a knowing third party with a view to avoiding confiscation is common and widespread. Acquisition by a third party refers to situations where, for example, property has been acquired, directly or indirectly, for example through an intermediary, by the third party from a suspected ***or*** accused person, including when the criminal offence has been committed on their behalf or for their benefit, and when an accused person does not have property that can be confiscated. Such confiscation should be possible in cases where ***it has been*** established that third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer

*Amendment*

(24) The practice by a suspected or accused person of transferring property or proceeds to a knowing third party with a view to avoiding confiscation is common and widespread. Acquisition by a third party refers to situations where, for example, property has been acquired, directly or indirectly, for example through an intermediary, by the third party from a suspected, accused ***or convicted*** person, including when the criminal offence has been committed on their behalf or for their benefit, and when an accused person does not have property that can be confiscated. Such confiscation should be possible in cases where ***a national court has*** established that ***the*** third parties ***knew or ought to have known that the property is directly or indirectly linked to criminal conduct or*** knew or ought to have known that the purpose of the transfer or

was carried out free of charge or in exchange for an amount significantly ***lower than*** the market value. The rules on third party confiscation should extend to both natural and legal persons, without prejudice to the right of third parties to be heard, including the right to claim ownership of the property concerned. ***In any event***, the rights of bona fide third parties should not be affected.

acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer was carried out free of charge or in exchange for an amount significantly ***disproportionate to*** the market value. The rules on third party confiscation should extend to both natural and legal persons, without prejudice to the right of third parties to be heard, including the right to claim ownership of the property concerned. The rights of bona fide third parties should not be affected. ***In addition, in case of transferred tangible proceeds or tangible property directly derived from criminal conduct, the affected party having a close affiliation, of either family or business nature, with the suspected or accused person should bear the burden of proof that the purchasing of the confiscated property has taken place in bona fide and with due diligence.***

## Amendment 10

### Proposal for a directive Recital 26

#### *Text proposed by the Commission*

(26) Confiscation should also be possible where a court is satisfied that the instrumentalities, proceeds, or property in question is derived from criminal conduct but where a final conviction is not possible because of illness, absconding or death of the suspected or accused person, or because the suspected or accused person cannot be held liable because of immunity or amnesty as provided for under national law. ***The same should be possible where the time limits prescribed under national law have expired, where such time limits are not sufficiently long to allow for the effective investigation and prosecution of the relevant criminal offences.***

Confiscation in such cases should only be allowed where the national court is

#### *Amendment*

(26) Confiscation should also be possible where a court is satisfied, ***on the basis of all evidence adduced***, that the instrumentalities, proceeds, or property in question is derived from criminal conduct but where a final conviction is not possible because of illness, absconding or death of the suspected or accused person, or because the suspected or accused person cannot be held liable because of immunity or amnesty as provided for under national or international law. Confiscation in such cases should only be allowed where the national court is satisfied that the ***key*** elements of the offence are present, ***and that the property to be confiscated is of illegal origin. If the verifications directed at establishing the illegal origin of the***

satisfied that **all** the elements of the offence are present. For reasons of proportionality, confiscating property without a prior conviction should be limited to cases of serious crimes. The right of the defendant to be made aware of the proceeding and to be represented by a lawyer should not be affected.

***property to be confiscated take place within a criminal proceeding, the burden of proof should be on the prosecution.*** For reasons of proportionality, confiscating property without a prior conviction should be limited to cases of serious crimes, ***and only where the instrumentalities, proceeds or property are linked to the criminal offence. In the determination of that link, account should be taken of all the circumstances of the case.*** The right of the defendant to be made aware of the proceeding and to be represented by a lawyer should not be affected.

## Amendment 11

### Proposal for a directive Recital 27

#### *Text proposed by the Commission*

(27) For the purposes of this Directive, illness should be understood to mean the inability of the suspected or accused person to attend the criminal proceedings for an extended period, as a result of which the proceedings cannot continue.

#### *Amendment*

(27) For the purposes of this Directive, illness should be understood to mean the inability of the suspected or accused person, ***corroborated by an ascertainable medical report,*** to attend the criminal proceedings, ***even remotely,*** for an extended period, as a result of which the proceedings cannot continue ***after a certain delay.***

## Amendment 12

### Proposal for a directive Recital 28

#### *Text proposed by the Commission*

(28) Due to the intrinsically opaque nature of organised crime, it is not always possible to link property derived from criminal activities to a specific criminal offence and confiscate such property. In such situations, confiscation should be possible under certain conditions including

#### *Amendment*

(28) Due to the intrinsically opaque nature of organised crime, it is not always possible to link property derived from criminal activities to a specific criminal offence and confiscate such property. In such situations, confiscation should be possible under certain conditions including

in particular: the property is frozen based on suspicion of crimes committed within the framework of a criminal organisation, these criminal offences are liable to give rise to substantial economic benefits and the court is *satisfied* that the frozen property is derived from criminal activities carried out within the framework of a criminal organisation. These conditions should ensure that confiscation of property not linked to a specific offence for which the owner has been convicted is limited to criminal activities of criminal organisations that are serious in nature and liable to generate substantial benefits. When determining whether the *offences* are liable to give rise to significant benefits, Member States should take into account all relevant circumstances of the *offence*, including whether *the criminal activities* were committed with the intention to generate regular substantial profits. ***While it should not be a precondition for the national court to be satisfied that a criminal offence has been committed***, the court must be satisfied that the property in question is derived from criminal *offences*. When determining whether or not the property in question derived from criminal activities, the national courts should take into account all relevant circumstances of the case, including the fact that the property is substantially disproportionate to the lawful income of the owner. Member States should then require and award an effective possibility for the owner of the property to prove that the property in question derives from lawful activities.

in particular: the property is frozen based on suspicion of crimes committed within the framework of *or in connection with* a criminal organisation, these criminal offences are liable to give rise to substantial economic benefits, and the court is *convinced* that the frozen property is derived from criminal activities carried out within the framework of *or in connection with* a criminal organisation. These conditions should ensure that confiscation of property not linked to a specific offence for which the owner has been convicted is limited to criminal activities of criminal organisations, *or run in connection to them*, that are serious in nature and liable to generate substantial benefits. When determining whether the *criminal activities* are liable to give rise to significant benefits, Member States should take into account all relevant circumstances of the *criminal conduct*, including whether *they* were committed with the intention to generate regular substantial profits *or to deprive third-parties of a substantial part of their rights*. The court must be satisfied that the property in question is derived from criminal *conduct*. ***In this context specifically, the role of politically exposed persons in the exercise of their public function or by aiding or abetting of that person, particularly when part of structures financed, at least partially, by Union or non-Union public authorities should be taken into consideration***. When determining whether or not the property in question derived from criminal activities, the national courts should take into account all relevant circumstances of the case, including the fact that the property is substantially disproportionate to the lawful income of the owner. Member States should then require and award an effective possibility for the owner of the property to prove, *in a reasonable delay*, that the property in question derives from lawful activities.

## Amendment 13

### Proposal for a directive Recital 29

#### *Text proposed by the Commission*

(29) To ensure that property that is or may become subject to a freezing or confiscation order maintains its economic value Member States should put in place effective management measures. **Such** measures should include a systematic assessment of how to best preserve and optimise the value of property before the adoption of freezing measures, also known as pre-seizure planning.

#### *Amendment*

(29) To ensure that property that is or may become subject to a freezing or confiscation order maintains its economic value Member States should put in place effective management measures, ***unless the urgency of a case would require foregoing such measures. Those*** measures should include a systematic assessment of how to best preserve and optimise the value of property before the adoption of freezing measures, also known as pre-seizure planning. ***Any decision by the competent authorities to forego such assessment of the costs shall be duly justified.***

## Amendment 14

### Proposal for a directive Article 2 – paragraph 1 – point m

#### *Text proposed by the Commission*

(m) environmental crime, including illicit trafficking in endangered animal ***species and in endangered*** plant species ***and varieties*** as defined in in Directive 2008/99/EC of the European Parliament and of the Council<sup>50</sup>, as well as offences related to ship pollution as defined in Directive 2005/35/EC as amended by Directive 2009/123/EC<sup>51</sup>;

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<sup>50</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

<sup>51</sup> Directive 2009/123/EC of the European Parliament and of the Council of 21

#### *Amendment*

(m) environmental crime, including illicit ***trade and*** trafficking in endangered animal ***and*** plant species, ***including parts or derivatives thereof***, as defined in in Directive 2008/99/EC of the European Parliament and of the Council<sup>50</sup>, as well as offences related to ship pollution as defined in Directive 2005/35/EC as amended by Directive 2009/123/EC<sup>51</sup>;

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<sup>50</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

<sup>51</sup> Directive 2009/123/EC of the European Parliament and of the Council of 21

October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ L 280, 27.10.2009, p. 52).

October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ L 280, 27.10.2009, p. 52).

## **Amendment 15**

### **Proposal for a directive Article 3 – paragraph 1 – point 2**

#### *Text proposed by the Commission*

(2) ‘property’ means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property;

#### *Amendment*

(2) ‘property’ means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments, ***in any form, including electronic or digital,*** evidencing title or interest in such property;

## **Amendment 16**

### **Proposal for a directive Article 3 – paragraph 1 – point 9 a (new)**

#### *Text proposed by the Commission*

#### *Amendment*

***(9a) ‘public concerned’ means the persons affected or likely to be affected by the criminal offences within the scope of this Directive; for the purposes of this definition, persons having a sufficient interest or maintaining the impairment of a right or meeting any proportionate requirements under national law shall be deemed to have an interest;***

## **Amendment 17**

### **Proposal for a directive Article 3 – paragraph 1 – point 10**

*Text proposed by the Commission*

(10) ‘beneficial owner’ means a beneficial owner as defined in **Article 3, point (6), of Directive 2015/849/EU**<sup>55</sup> ;

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<sup>55</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 (OJ L 141 5.6.2015, p. 73).

*Amendment*

(10) ‘beneficial owner’ means a beneficial owner as defined in Directive 2015/849/EU<sup>55</sup>;

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<sup>55</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 (OJ L 141 5.6.2015, p. 73).

**Amendment 18**

**Proposal for a directive  
Article 4 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

1. To facilitate cross-border cooperation, Member States shall take measures to enable the swift tracing and identification of instrumentalities and proceeds, or property ***as regards*** a freezing or confiscation order in the course of criminal proceedings.

**Amendment 19**

**Proposal for a directive  
Article 4 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Asset tracing investigations pursuant to paragraph 1 shall be carried out to ensure restitution and compensation, especially of victims in accordance with the provisions of this Directive.***

## Amendment 20

### Proposal for a directive

#### Article 6 – paragraph 1 – introductory part

##### *Text proposed by the Commission*

1. For the purposes of performing the tasks referred to in Article 5, Member States shall ensure that asset recovery offices have immediate and direct access to the following information to the extent that information is necessary for the tracing and identification of proceeds, instrumentalities, and property:

##### *Amendment*

1. For the purposes of performing the tasks referred to in Article 5, Member States shall ensure that asset recovery offices have access ***without delay, in accordance with national law, including where necessary by a court order if required by national law*** to the following information to the extent that information is necessary for the tracing and identification of proceeds, instrumentalities, and property:

## Amendment 21

### Proposal for a directive

#### Article 6 – paragraph 2

##### *Text proposed by the Commission*

2. Where the information referred to in paragraph 1 is not stored in databases or registers, Member States shall take the necessary measures to ensure that asset recovery offices can swiftly obtain that information by other means.

##### *Amendment*

2. Where the information referred to in paragraph 1 is not stored in databases or registers, Member States shall take the necessary measures to ensure that asset recovery offices can swiftly obtain that information by other means, ***in accordance with national law, including where necessary by a court order if required by national law.***

## Amendment 22

### Proposal for a directive

#### Article 6 – paragraph 3

##### *Text proposed by the Commission*

3. The ***direct and immediate*** access to the information referred to in paragraph 1 shall be without prejudice to the procedural

##### *Amendment*

3. The access ***without delay*** to the information referred to in paragraph 1 shall be without prejudice to the procedural

safeguards established under national law.

safeguards established under national law,  
*including where necessary a court order if  
required by national law.*

## Amendment 23

### Proposal for a directive Article 9 – paragraph 4

#### *Text proposed by the Commission*

4. Member States shall ensure that the information provided by asset recovery offices pursuant to paragraphs 1, 2 and 3 can be presented as evidence before a national court of a Member State, in accordance with *procedures in national law*.

#### *Amendment*

4. Member States shall ensure that the information provided by asset recovery offices pursuant to paragraphs 1, 2 and 3 can be presented as evidence before a national court of a Member State, in accordance with *Member State's procedural rules and obligations under Article 6 TEU*.

## Amendment 24

### Proposal for a directive Article 9 – paragraph 6 – point b a (new)

#### *Text proposed by the Commission*

#### *Amendment*

*(ba) or otherwise would not be in accordance with fundamental principles of national law, including Member State's obligations under Article 6 TEU.*

## Amendment 25

### Proposal for a directive Article 11 – paragraph 1

#### *Text proposed by the Commission*

1. Member States shall take the necessary measures to enable the freezing of property necessary to ensure a possible confiscation of that property under *Article 12*.

#### *Amendment*

1. Member States shall take the necessary *and proportionate* measures to enable the freezing of property necessary to ensure a possible confiscation *and preservation* of that property under *Articles 12, 13, 14, 15 and 16, and to*

*ensure the right to restitution and compensation to victims according to the provisions of this Directive.*

## Amendment 26

### Proposal for a directive Article 11 – paragraph 2

*Text proposed by the Commission*

**2. Freezing measures shall include immediate action to be taken when necessary in order to preserve the property.**

*Amendment*

**deleted**

## Amendment 27

### Proposal for a directive Article 11 – paragraph 3

*Text proposed by the Commission*

**3. Member States shall enable asset recovery offices to take immediate action pursuant to paragraph 2 until a freezing order pursuant to paragraph 1 is issued. The validity of such temporary urgent freezing measures shall not exceed seven days.**

*Amendment*

**3. When necessary to preserve the property,** Member States shall enable asset recovery offices, **or other competent authorities in accordance with national law,** to take immediate action until a freezing order pursuant to paragraph 1 is issued. The validity of such temporary urgent freezing measures shall not exceed seven days.

## Amendment 28

### Proposal for a directive Article 11 – paragraph 4

*Text proposed by the Commission*

**4. Property in the possession of a third party can be subject to freezing measures pursuant to paragraphs 1, 2 and 3 where necessary to ensure a possible confiscation under article 13.**

*Amendment*

**4. Property in the possession of a third party can be subject to freezing measures pursuant to paragraphs 1 and 3 where necessary to ensure a possible confiscation under article 13.**

## Amendment 29

### Proposal for a directive Article 11 – paragraph 5

#### *Text proposed by the Commission*

5. Member States shall ensure that the freezing orders pursuant to paragraphs 1, 2, 3 and 4 are issued by a competent authority and are adequately motivated.

#### *Amendment*

5. Member States shall ensure that the freezing orders pursuant to paragraphs 1, 3 and 4 are issued by a competent authority and are adequately motivated. ***In case the freezing order under this Directive has been issued by a competent authority other than a judicial authority, national law shall provide that such an order is to be either validated or annulled by a judicial authority without undue delay.***

## Amendment 30

### Proposal for a directive Article 11 – paragraph 6

#### *Text proposed by the Commission*

6. The freezing order pursuant to paragraph 1 shall remain in force only for as long as it is necessary to preserve the property with a view to possible subsequent confiscation. Frozen property which is not subsequently confiscated, shall be returned to the owner of the property ***without delay***. The conditions or procedural rules under which such property is returned shall be determined by national law.

#### *Amendment*

6. The freezing order pursuant to paragraph 1 shall remain in force only for as long as it is necessary to preserve the property with a view to possible subsequent confiscation. Frozen property which is not subsequently confiscated, shall be returned ***without delay*** to the owner of the property, ***or to the person from whom the property was seized***. The conditions or procedural rules under which such property is returned shall be determined by national law.

## Amendment 31

### Proposal for a directive Article 11 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

**7a. The provisions under this article shall not preclude possibility to freezing on other legal grounds.**

## **Amendment 32**

### **Proposal for a directive Article 12 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall take the necessary measures to enable the confiscation, either wholly or in part, of instrumentalities **and** proceeds stemming from a criminal offence following a final conviction, which may also result from proceedings in absentia.

1. Member States shall take the necessary measures to enable the confiscation, either wholly or in part, of instrumentalities, proceeds **or property** stemming from a criminal offence following a final conviction, which may also result from proceedings in absentia.

## **Amendment 33**

### **Proposal for a directive Article 13 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

Member States shall take the necessary measures to enable the confiscation of proceeds, **or other property the value of which corresponds to proceeds, which, directly or indirectly, were transferred by a suspected or accused person to third parties, or** which were acquired by third parties from a suspected **or** accused person.

Member States shall take the necessary measures to enable the confiscation of proceeds **and instrumentalities** which were acquired by **or otherwise directly or indirectly transferred to a third party** from a suspected, accused **or convicted** person. **Member States shall also take the necessary measures to enable the confiscation of property, other than proceeds and instrumentalities and within the value that corresponds to those proceeds and instrumentalities transferred by a suspected, accused or convicted person to a third party.**

## **Amendment 34**

**Proposal for a directive**  
**Article 13 – paragraph 2**

*Text proposed by the Commission*

2. Paragraph 1 shall not affect the rights of bona fide third parties.

*Amendment*

2. Paragraph 1 shall not affect the rights of bona fide third parties. ***In case of transferred tangible proceeds or tangible property directly derived from criminal conduct, the affected party having a close affiliation with the suspected or accused person shall bear the burden of proof that the purchasing of the confiscated property has taken place in bona fide and with due diligence.***

***In all other cases, the court has to establish based on all the proven circumstances of the case that the benefiting third parties knew or ought to have known that the transferred instrumentalities, proceeds or property are directly or indirectly linked to criminal conduct or that the purpose of the transfer or acquisition was to avoid confiscation. Such facts and circumstances from which can be inferred that the purpose of the transfer or acquisition was to avoid confiscation include that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly disproportionate to the market value.***

**Amendment 35**

**Proposal for a directive**  
**Article 13 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Member States shall ensure that the affected person's rights are respected including by granting access to a lawyer, by awarding access to the file and by ensuring the right to be heard on issues of law and fact.***

## Amendment 36

### Proposal for a directive

#### Article 15 – paragraph 1 – point a

*Text proposed by the Commission*

(a) illness of the suspected or accused person;

*Amendment*

(a) illness of the suspected or accused person ***if this results in the expiry of the time limits laid down in national law for criminal liability***;

## Amendment 37

### Proposal for a directive

#### Article 15 – paragraph 1 – point d

*Text proposed by the Commission*

(d) immunity from prosecution of the suspected or accused person, as provided for under national law;

*Amendment*

(d) immunity from prosecution of the suspected or accused person, as provided for under national ***or international*** law;

## Amendment 38

### Proposal for a directive

#### Article 15 – paragraph 1 – point f

*Text proposed by the Commission*

***(f) the time limits prescribed by national law have expired, where such limits are not sufficiently long to allow for the effective investigation and prosecution of the relevant criminal offences.***

*Amendment*

***deleted***

## Amendment 39

### Proposal for a directive

#### Article 15 – paragraph 2

*Text proposed by the Commission*

2. Confiscation without a prior conviction shall be limited to criminal offences liable to give rise, directly or indirectly, to substantial economic benefit and only insofar as the national court is satisfied that all the elements of the offence are present.

*Amendment*

2. Confiscation without a prior conviction shall be limited to criminal offences liable to give rise, directly or indirectly, to substantial economic benefit and only insofar as the national court is satisfied that all the elements of the offence are present. ***The instrumentalities, proceeds, property to be confiscated must be linked directly or indirectly to the criminal offence. In the determination of the link, account shall be taken of all the circumstances of the case and of all the evidence adduced in the case. The burden of proof shall lie on the prosecution.***

**Amendment 40**

**Proposal for a directive  
Article 15 – paragraph 3**

*Text proposed by the Commission*

3. Before a confiscation order within the meaning of paragraphs 1 and 2 is issued by the court, Member States shall ensure that the affected person's rights of defence are respected including by awarding access to the file and the right to be heard on issues of law and fact.

*Amendment*

3. Before a confiscation order within the meaning of paragraphs 1 and 2 is issued by the court, Member States shall ensure that the affected person's rights of defence are respected including by ***granting access to a lawyer, and*** awarding access to the file, and the right to be heard on issues of law and fact.

**Amendment 41**

**Proposal for a directive  
Article 16 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the property is frozen in the context of an investigation into criminal offences committed in the framework of a criminal organisation;

*Amendment*

(a) the property is frozen in the context of an investigation into criminal offences committed in the framework of ***or in connection with*** a criminal organisation;

## Amendment 42

### Proposal for a directive

#### Article 16 – paragraph 1 – point c

##### *Text proposed by the Commission*

(c) the national court is satisfied that the frozen property is derived from criminal offences committed in the framework of a criminal organisation.

##### *Amendment*

(c) the national court is satisfied, ***on the basis of all evidence adduced***, that the frozen property is derived from criminal offences committed in the framework of ***or in connection with*** a criminal organisation.

## Amendment 43

### Proposal for a directive

#### Article 16 – paragraph 2

##### *Text proposed by the Commission*

2. When determining whether the frozen property is derived from criminal offences, account shall be taken of all the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is substantially disproportionate to the lawful income of the owner of the property.

##### *Amendment*

2. When determining whether the frozen property is derived from criminal offences, account shall be taken of all the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is substantially disproportionate to the lawful income of the owner of the property. ***The burden of proof shall lie on the prosecution.***

## Amendment 44

### Proposal for a directive

#### Article 16 – paragraph 4

##### *Text proposed by the Commission*

4. Before a confiscation order within the meaning of paragraphs 1 and 2 is issued by the court, Member States shall ensure that the affected person's rights of defence are respected including by awarding access to the file and the right to be heard on issues of law and fact.

##### *Amendment*

4. Before a confiscation order within the meaning of paragraphs 1 and 2 is issued by the court, Member States shall ensure that the affected person's rights of defence are respected including by ***granting access to a lawyer***, awarding access to the file and ***by ensuring*** the right to be heard on issues of law and fact.

## Amendment 45

### Proposal for a directive Article 17 – paragraph 2

#### *Text proposed by the Commission*

2. Member States shall **consider taking** measures allowing confiscated property to be used for public interest or social purposes.

#### *Amendment*

2. Member States shall **take the necessary** measures allowing confiscated property to be used for public interest or social purposes, **without prejudice to Article 18 of this Directive.**

## Amendment 46

### Proposal for a directive Article 18 – paragraph 1

#### *Text proposed by the Commission*

Where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Directive, Member States shall take the necessary measures to ensure that the confiscation measure does not affect victims' rights to obtain compensation for their claims.

#### *Amendment*

Where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Directive, Member States shall, **as a matter of priority**, take the necessary measures to ensure that the confiscation measure does not affect victims' rights to obtain compensation for their claims **stemming from material or immaterial harm, in an order of priority determined by national law.**

## Amendment 47

### Proposal for a directive Article 18 – paragraph 1 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

**The Commission and the Member States shall facilitate coordination between competent authorities and with third countries where instrumentalities, proceeds and property has been confiscated following the violation of**

*restrictive measures.*

*The Commission shall issue guidelines on the use of the confiscated instrumentalities, proceeds and property for compensation, restitution and reparations towards States, especially in the circumstances of a war of aggression insofar as the interests at stake are directly or indirectly affected by the criminal activities covered by this Directive.*

#### **Amendment 48**

##### **Proposal for a directive Article 18 a (new)**

*Text proposed by the Commission*

*Amendment*

##### **Article 18a**

##### ***Rights for the public concerned to participate in proceedings***

*Member States shall ensure that where, as a result of a criminal offence and in accordance with their national legal system, the public concerned have appropriate rights to participate in the proceedings covered by this Directive, for instance as a civil party.*

#### **Amendment 49**

##### **Proposal for a directive Article 19 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall ensure the efficient management of frozen and confiscated property until its disposal.

1. Member States shall ensure the efficient management of frozen and confiscated property until its disposal, ***including through the measures mentioned in Article 17, paragraph 2***

#### **Amendment 50**

**Proposal for a directive**  
**Article 19 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall ensure that, before issuing a freezing order within the meaning of Article 11 paragraph 1, competent authorities responsible for the management of frozen and confiscated property carry out an assessment of the costs which may be incurred in the management of the property which may be frozen, for the purposes of preserving and optimizing the value of such property until its disposal.

*Amendment*

2. Member States shall ensure that, before issuing a freezing order within the meaning of Article 11 paragraph 1, competent authorities responsible for the management of frozen and confiscated property carry out an assessment of the costs which may be incurred in the management of the property which may be frozen, for the purposes of preserving and optimizing the value of such property until its disposal, ***unless the urgency of a case would require foregoing such measure. Any decision by the competent authorities to forego such assessment of the costs shall be duly justified.***

**Amendment 51**

**Proposal for a directive**  
**Article 20 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States shall ensure that property frozen pursuant to Article 11 paragraph 1 ***can*** be transferred or sold before the issuing of a confiscation order in one or more of the following circumstances:

*Amendment*

1. Member States shall ensure that property frozen pursuant to Article 11 paragraph 1 ***cannot*** be transferred or sold before the issuing of a confiscation order, ***except*** in one or more of the following circumstances:

**Amendment 52**

**Proposal for a directive**  
**Article 20 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the property subject to freezing is perishable or rapidly depreciating;

*Amendment*

(a) the property subject to freezing is perishable or rapidly depreciating ***at a speed that exceeds the timeframe of the***

*proceeding;*

## Amendment 53

### Proposal for a directive

#### Article 20 – paragraph 1 – point b

*Text proposed by the Commission*

(b) the storage or maintenance costs of the property are disproportionate to its value;

*Amendment*

(b) the storage or maintenance costs of the property are disproportionate to its **market** value;

## Amendment 54

### Proposal for a directive

#### Article 20 – paragraph 1 – point c

*Text proposed by the Commission*

(c) the property ***is too difficult to administer, or its management*** requires special conditions and non-readily available ***expertise***.

*Amendment*

(c) ***the management of*** the property requires special conditions and ***expertise that are*** not readily available.

## Amendment 55

### Proposal for a directive

#### Article 20 – paragraph 2

*Text proposed by the Commission*

2. Member States shall adopt the necessary measures to ensure that the interests of the owner of the property are taken into account when issuing an interlocutory sale order, including whether the property to be sold is easily replaceable. With the exception of cases of absconding, Member States shall ensure that the owner of the property that may be subject to an interlocutory sale is notified and heard before the sale. The owner shall be given the possibility to request the sale of the property.

*Amendment*

2. Member States shall adopt the necessary, ***suitable and proportionate*** measures to ensure that the interests of the owner of the property are taken into account when issuing an interlocutory sale order, including whether the property to be sold is easily replaceable. With the exception of cases of absconding, Member States shall ensure that the owner of the property that may be subject to an interlocutory sale is notified and, ***if necessary, is*** heard before the sale, ***providing every guarantee that, if the***

*owner is proven innocent, compensation will be awarded in accordance with national law.* The owner shall be given the possibility to request the sale of the property.

## Amendment 56

### Proposal for a directive Article 20 – paragraph 3

#### *Text proposed by the Commission*

3. Earnings from interlocutory sales **should** be secured until a judicial decision on confiscation is reached. Member States shall take appropriate measures to protect third party buyers of property sold from retaliatory measures, to ensure that the property sold is not returned to persons convicted of the criminal offences referred to in Article 2.

#### *Amendment*

3. Earnings from interlocutory sales **shall** be secured until a **final** judicial decision on confiscation is reached. Member States shall take appropriate measures to protect third party buyers of property sold from retaliatory measures **or threat**, to ensure that the property sold is not returned to persons convicted of the criminal offences referred to in Article 2.

## Amendment 57

### Proposal for a directive Article 20 – paragraph 4

#### *Text proposed by the Commission*

4. Member States **may** require the costs for the management of frozen property to be charged to the beneficial owner.

#### *Amendment*

4. **When provided under national law**, Member States **shall** require the costs for the management of frozen property to be charged, **at least partially**, to the beneficial owner.

## Amendment 58

### Proposal for a directive Article 22 – paragraph 1

#### *Text proposed by the Commission*

Member States shall ensure that the freezing orders pursuant to Article 11,

#### *Amendment*

Member States shall ensure that the freezing orders pursuant to Article 11,

confiscation orders pursuant to Articles 12 to 16, and orders to sell the property pursuant to Article 20 are communicated to the affected person setting out the reasons for the measure.

confiscation orders pursuant to Articles 12 to 16, and orders to sell the property pursuant to Article 20 are communicated to the affected person setting out the reasons for the measure. ***The affected persons shall also be informed of their rights and of the legal remedies available pursuant to Article 23.***

## Amendment 59

### Proposal for a directive Article 23 – paragraph 2

#### *Text proposed by the Commission*

2. Member States shall provide for the effective possibility for the person whose property is affected to challenge the freezing order pursuant to article 11 before a court, in accordance with procedures provided for in national law. Where the freezing order has been taken by a competent authority other than a judicial authority, national law shall provide that such an order is first to be submitted for validation or review to a judicial authority before it can be challenged before a court.

#### *Amendment*

2. Member States shall provide for the effective possibility for the person whose property is affected to challenge the freezing order pursuant to article 11 before a court, in accordance with procedures provided for in national law. Where the freezing order has been taken by a competent authority other than a judicial authority, national law shall provide that such an order is first to be submitted for validation or review, ***in a reasonable delay***, to a judicial authority before it can be challenged before a court.

## Amendment 60

### Proposal for a directive Article 23 – paragraph 4 – subparagraph 3

#### *Text proposed by the Commission*

In the case of confiscation orders pursuant to ***Articles 14 and 16, such circumstances*** shall include ***specific*** facts and ***available evidence on the basis of*** which the ***property concerned is considered to be*** property ***that is*** derived from criminal conduct.

#### *Amendment*

In the case of confiscation orders pursuant to ***Article 13, such circumstance*** shall include facts and ***circumstances on*** which the ***finding was based that the third party knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, or that the transferred instrumentalities, proceeds or property were directly or indirectly linked***

*to, or derived from, criminal conduct. **Such facts and circumstances may be that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly disproportionate to the market value.***

## **Amendment 61**

### **Proposal for a directive**

#### **Article 23 – paragraph 4 – subparagraph 4**

##### *Text proposed by the Commission*

In the case of confiscation orders pursuant to Article 15, such circumstances shall include facts and evidence on the basis of which the national court concluded that all the elements of the offence are present.

##### *Amendment*

In the case of confiscation orders pursuant to Article 15, such circumstances shall include facts and evidence on the basis of which the national court concluded that all the elements of the offence are present, ***and that the property concerned is considered to be derived from, or directly or indirectly linked to criminal conduct.***

## **Amendment 62**

### **Proposal for a directive**

#### **Article 24 – paragraph 2 – point b a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***(ba) measures taken to ensure compensation and restitution in accordance with this Directive;***

## **Amendment 63**

### **Proposal for a directive**

#### **Article 24 – paragraph 3**

##### *Text proposed by the Commission*

3. Member States shall communicate their strategies, and any updates of their strategies, to the Commission within three months from their adoption.

##### *Amendment*

3. ***Asset recovery offices, asset management offices, and other competent authorities shall closely cooperate with the Commission to monitor, on a regular***

*basis, the implementation of this Directive and to exchange experiences and best practices on how to ensure victims' compensation and on the use of confiscated properties for public or social purposes.* Member States shall communicate their strategies, and any updates of their strategies, to the Commission within three months from their adoption.

#### Amendment 64

##### Proposal for a directive Article 25 – title

*Text proposed by the Commission*

Resources

*Amendment*

Resources *and training*

#### Amendment 65

##### Proposal for a directive Article 25 – paragraph 1

*Text proposed by the Commission*

Member States shall ensure that asset recovery offices and asset management offices performing tasks pursuant to this Directive, have appropriately qualified staff and appropriate financial, technical and technological resources necessary for the effective performance of their functions related to the implementation of this Directive.

*Amendment*

**1.** Member States shall ensure that asset recovery offices and asset management offices *and other competent authorities* performing tasks pursuant to this Directive, have *a sufficient number of* appropriately qualified staff and appropriate financial, technical and technological resources necessary for the effective performance of their functions related to the implementation of this Directive.

#### Amendment 66

##### Proposal for a directive Article 25 – paragraph 1 a (new)

***Without prejudice to judicial independence and specificities in the organisation of the judiciary across the Union, Member States shall request those responsible for the training of judges, prosecutors, police, judicial staff and competent authorities involved in asset identification, asset tracing, asset recovery and confiscation procedures to provide at regular intervals specialised training and exchanges of best practices at Union level to ensure the effective achievement of the objectives of this Directive. The specialised training shall cover the practical use of tools available for identification, tracing and recovery of assets, as well as for cooperation between the different authorities, and for the protection of the rights of the affected persons.***

## PROCEDURE – COMMITTEE ASKED FOR OPINION

|   |  |
|---|--|
| <b>Title</b>  | Asset recovery and confiscation  |
| <b>References</b>   | COM(2022)0245 – C9-0186/2022 – 2022/0167(COD)  |
| <b>Committee responsible</b><br>Date announced in plenary       | LIBE<br>22.6.2022  |
| <b>Opinion by</b><br>Date announced in plenary                  | JURI<br>15.9.2022  |
| <b>Associated committees - date announced in plenary</b>        | 15.12.2022   |
| <b>Rapporteur for the opinion</b><br>Date appointed             | Sergey Lagodinsky<br>26.10.2022  |
| <b>Discussed in committee</b>                                   | 24.1.2023  |
| <b>Date adopted</b>   | 21.3.2023  |
| <b>Result of final vote</b>                                     | +: 20<br>–: 0<br>0: 0  |
| <b>Members present for the final vote</b>                       | Pascal Arimont, Manon Aubry, Ilana Cicurel, Sergey Lagodinsky, Gilles Lebreton, Karen Melchior, Raffaele Stancanelli, Marie Toussaint, Adrián Vázquez Lázara, Axel Voss, Marion Walsmann, Tiemo Wölken, Lara Wolters |
| <b>Substitutes present for the final vote</b>                   | Daniel Buda, Pascal Durand, Virginie Joron, Maria-Manuel Leitão-Marques, Antonius Manders, Emil Radev, René Repasi   |
| <b>Substitutes under Rule 209(7) present for the final vote</b> | Frances Fitzgerald, Fabienne Keller  |

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

| 20        | +   |
|-----------|---|
| ECR       | Raffaele Stancanelli  |
| ID        | Gilles Lebreton   |
| PPE       | Pascal Arimont, Daniel Buda, Frances Fitzgerald, Antonius Manders, Emil Radev, Axel Voss, Marion Walsmann |
| Renew     | Ilana Cicurel, Fabienne Keller, Adrián Vázquez Lázara   |
| S&D       | Pascal Durand, Maria-Manuel Leitão-Marques, René Repasi, Tiemo Wölken, Lara Wolters                       |
| The Left  | Manon Aubry   |
| Verts/ALE | Sergey Lagodinsky, Marie Toussaint  |

| 0 | - |
|---|---|
|   |   |

| 0 | 0 |
|---|---|
|   |   |

Key to symbols:

+ : in favour

- : against

0 : abstention

## **OPINION OF THE COMMITTEE ON BUDGETS**

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a directive of the European Parliament and of the Council on Asset recovery and confiscation  
(COM(2022)0245 – C9-0186/2022 – 2022/0167(COD))

Rapporteur for opinion: Vlad Gheorghe

### **SHORT JUSTIFICATION**

Combating organised crime on the European Union (EU) level and enabling effective criminal assets confiscation is one of the current legislative term's priorities. Europol findings show though that Member States' asset recovery systems are not well equipped to effectively address the complex *modus operandi* of criminal organisations.

Therefore, we welcome the new measures aiming to reinforce the capacities of national asset recovery offices, to support asset tracing investigations, to guarantee a rapid exchange of information among competent authorities, to facilitate the treatment of criminal assets, to fight the violation of Union restrictive measures and to minimise the costs incurred by competent authorities for the criminal assets management and other measures.

In order to achieve the goals of this Directive, the confiscation of criminal assets must be based on evidence and the Rule of Law and occur rapidly, with best possible cooperation and information exchange among the Member States and with minimum costs to their national budgets. At the same time, the Directive should be more nuanced on the allocation of confiscated assets. As the reintroduction of criminal assets into the legal economy is the ultimate goal of confiscation, the destination of the recovered assets must be specified. In order to maximise the efficiency of confiscation and reuse of assets, this Budget Committee opinion introduces a series of proposals:

- In light of the current geopolitical context, the scope of the Directive needs to be complemented with further crime types, such as the crime of aggression or facilitation of aggression against Ukraine subject to the adoption of the relevant Council Decisions identifying and defining those crimes in accordance with Article 83 TFUE.
- While it is preferential to ease the financial burden for the Member States by putting the management costs on the beneficial owner or by proceeding with an interlocutory sale, still Member States need to guarantee sufficient budgetary resources to properly manage frozen

property in view of the final confiscation, as to limit the cases of state liability for the deterioration in value of the seized property.

- In order for the asset recovery offices and the asset management offices to initiate actions and fulfil their tasks, it is essential that they are equipped with sufficient staff, budgetary, technical and technological resources. Moreover, Member States need to guarantee regular training for relevant staff, in particular on ethics and anti-corruption measures.
- The crimes considered under this Directive often have the scope of illicit obtention of gains and are connected to the EU financial interests, therefore the EPPO should have the same level of access to information, as national competent authorities do, also in view of a potential extension of the EPPO competence to the fight against sanction evasion.
- Confiscated assets stem from criminal activities, which vary in nature and extent across the EU Member States. This variability makes it difficult to anticipate concrete amounts of costs and revenues resulting from confiscation. Making them a new Own Resource to the EU Budget mutualises risks and benefits and brings best European added value. To this end, we expect the Commission to make a detailed assessment of the use of resources stemming from criminal offences.
- Where the confiscated assets are related to the aggression against Ukraine and other associated crimes, including the violation of the EU restrictive measures, the monetary value of such assets should serve the goal of building and rebuilding of the infrastructure in Ukraine, as well as the compensation for the victim population. The opinion suggests that the compensation takes place with the use of a dedicated victims' claims registry and claims commission. As for the rebuilding of the infrastructure, such financial support should be based on projects and be implemented based on the principle of sound financial management in particular with the inclusion of anti-corruption measures. Such projects shall be subject to the scrutiny of the EU budgetary authority.

On April 7, the European Parliament called for the confiscation of Russian assets owned by Russian individuals and entities, frozen as a result of EU restrictive measures, in order to finance Ukraine's reconstruction. This opinion follows-up on this call and suggests to channel the proceeds through the EU budget as an External Assigned Revenue that would feed into the Neighbourhood, Development and International Cooperation Instrument. Following the Commission's assessment, monetary value of the confiscated assets can be channelled through another special dedicated budgetary instrument, such as Rebuild Ukraine Facility, provided that this instrument implies similar decision and supervisory power to the budgetary authority as the NDICI programme.

Such use of confiscated assets will constitute a concrete action of solidarity and justice. It will also help to address the global financial impact of Russia's aggression, including its indirect consequences for the EU.

## **AMENDMENTS**

The Committee on Budgets calls on the Committee on Civil Liberties, Justice and Home

Affairs, as the committee responsible, to take into account the following amendments:

## Amendment 1

### Proposal for a directive

#### Recital 2

##### *Text proposed by the Commission*

(2) The main motive for cross-border organised crime, including high-risk criminal networks, is financial gain. Therefore, to tackle the serious threat posed by organised crime, competent authorities should be given the means to effectively trace and identify, freeze, confiscate and manage the instrumentalities and proceeds of crime and property that stems from criminal activities.

##### *Amendment*

(2) The main motive for cross-border organised crime, including high-risk criminal networks, is financial gain. Therefore, to tackle the serious threat posed by organised crime, competent authorities should be given the means to effectively trace and identify, freeze, confiscate and manage the instrumentalities and proceeds of crime and property that stems from criminal activities. ***The net revenues resulting from the liquidation of such confiscated assets should be reintroduced into the legal economy. Where the confiscated assets stem from the criminal offences listed in Article 2(1), (2) and (3) and relate to the Russian aggression against Ukraine or in Article 2(3a), the net revenues resulting from their liquidation should serve the goal of building and rebuilding back better the infrastructure in Ukraine such as energy and food security, infrastructure and public services, including through the use of the financial instruments, as well as the compensation for the victim population.***

## Amendment 2

### Proposal for a directive

#### Recital 3

##### *Text proposed by the Commission*

(3) An effective asset recovery system requires the swift tracing and identification of instrumentalities and proceeds of crime,

##### *Amendment*

(3) An effective asset recovery system requires the swift tracing and identification of instrumentalities and proceeds of crime,

and property suspected to be of criminal origin. Such proceeds, instrumentalities, and property should be frozen in order to prevent its disappearance, following which it should be confiscated upon conclusion of criminal proceedings. An effective asset recovery system further requires the effective management of frozen and confiscated property to maintain its value for the State or for the restitution for victims.

and property suspected to be of criminal origin. Such proceeds, instrumentalities, and property should be frozen in order to prevent its disappearance, following which it should be confiscated upon conclusion of criminal proceedings. An effective asset recovery system further requires the effective management of frozen and confiscated property to maintain its value for the State or for the restitution for victims. ***As such, the reuse of confiscated assets for the compensation and support of victims of crime and for affected communities has the potential to build resilience and thereby prevent further organised crime.***

### Amendment 3

#### Proposal for a directive Recital 5

##### *Text proposed by the Commission*

(5) Therefore, the existing legal framework should be updated, so as to facilitate and ensure effective asset recovery and confiscation efforts across the Union. To that end, the Directive should lay down minimum rules on tracing and identification, freezing, confiscation and management of property within the framework of proceedings in criminal matters. In this context, proceedings in criminal matters is an autonomous concept of Union law interpreted by the Court of Justice of the European Union, notwithstanding the case law of the European Court of Human Rights. The term covers all types of freezing and confiscation orders issued following proceedings in relation to a criminal offence. It also covers other types of orders issued without a final conviction. Proceedings in criminal matters could also encompass criminal investigations by the police and other law enforcement authorities. It is necessary to reinforce the

##### *Amendment*

(5) Therefore, the existing legal framework should be updated, so as to facilitate and ensure effective asset recovery and confiscation efforts across the Union. To that end, the Directive should lay down minimum rules on tracing and identification, freezing, confiscation and management of property within the framework of proceedings in criminal matters. In this context, proceedings in criminal matters is an autonomous concept of Union law interpreted by the Court of Justice of the European Union, notwithstanding the case law of the European Court of Human Rights. The term covers all types of freezing and confiscation orders issued following proceedings in relation to a criminal offence. It also covers other types of orders issued without a final conviction. Proceedings in criminal matters could also encompass criminal investigations by the police and other law enforcement authorities. It is necessary to reinforce the

capacity of competent authorities to deprive criminals of the proceeds from criminal activities. For this purpose, rules should be laid down to strengthen asset tracing and identification, as well as freezing capabilities, to improve management of frozen and confiscated property, to strengthen the instruments to confiscate instrumentalities and proceeds of crime and property derived from criminal activities of criminal organisations, and to improve the overall efficiency of the asset recovery system.

capacity of competent authorities to deprive criminals of the proceeds from criminal activities. For this purpose, rules should be laid down to strengthen asset tracing and identification, as well as freezing capabilities, to improve management of frozen and confiscated property, to strengthen the instruments to confiscate instrumentalities and proceeds of crime and property derived from criminal activities of criminal organisations, and to improve the overall efficiency of the asset recovery system. ***Likewise, reinforcing the capacity of competent authorities requires Member States to guarantee sufficient human and financial resources for carrying out tasks laid down in this Directive. The additional revenue generated by measures enhancing the asset recovery system can serve as a means to cover costs incurred in connection with obligations under the Directive, and thereby support its effective implementation across the Union.***

#### Amendment 4

##### Proposal for a directive Recital 6

###### *Text proposed by the Commission*

(6) Moreover, the adoption of unprecedented and far-reaching Union restrictive measures triggered by the Russian invasion into Ukraine revealed the need to step up efforts to ensure the effective implementation of both sectorial and individual Union restrictive measures across the Union. While not criminal in nature, nor requiring criminal conduct as a pre-condition for their imposition, Union restrictive measures also rely on freezing of funds (i.e. targeted financial sanctions) and sectorial measures, and should thus benefit from strengthened capabilities in the context of identification and tracing of property. For such purpose, rules should be

###### *Amendment*

(6) Moreover, the adoption of unprecedented and far-reaching Union restrictive measures triggered by the Russian invasion into Ukraine revealed the need to step up efforts to ensure the effective implementation of both sectorial and individual Union restrictive measures across the Union. While not criminal in nature, nor requiring criminal conduct as a pre-condition for their imposition, Union restrictive measures also rely on freezing of funds (i.e. targeted financial sanctions) and sectorial measures, and should thus benefit from strengthened capabilities in the context of identification and tracing of property. For such purpose, rules should be

established to enhance the effective identification and tracing of property owned or controlled by persons and entities subject to such restrictive measures, and to promote greater international cooperation of asset recovery offices with their counterparts in third countries. Measures related to freezing and confiscation under this Directive, notably those under Chapters III and IV, remain however limited to situations where property stems from criminal activities, such as the violation of Union restrictive measures. This Directive does not regulate the freezing of funds and economic resources under Union restrictive measures.

established to enhance the effective identification and tracing of property owned or controlled by persons and entities subject to such restrictive measures, and to promote greater international cooperation of asset recovery offices with their counterparts in third countries. Measures related to freezing and confiscation under this Directive, notably those under Chapters III and IV, remain however limited to situations where property stems from criminal activities, such as the violation of Union restrictive measures. This Directive does not regulate the freezing of funds and economic resources under Union restrictive measures. ***In that regard, a legal regime should be established to enable the confiscation of private and state-owned Russian assets frozen by the Union in response to Russia's war of aggression against Ukraine and the subsequent use of those assets for the reconstruction of Ukraine.***

## Amendment 5

### Proposal for a directive Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) The existing legal framework should also be updated to enable the channelling of the net revenues resulting from the liquidation of the confiscated assets into the Union budget in the form of a new own resource in accordance with Article 311 TFEU, following a Commission preliminary impact assessment and without prejudice to restitution and compensation to the victims and public concerned. The impact assessment should elaborate on how the net revenues resulting from the liquidation of assets confiscated or recovered by Member States pursuant to this Directive could be made available to the Union budget as an own resource, in***

*accordance with Article 311 TFEU, while at the same time safeguarding the capacity of Member States to effectively implement the Directive and measures aimed at compensation and support for victims of crime. The Commission assessment should also evidence the European added value of such approach including by exploring how an own resource would enable to mutualise the risks and benefits deriving from the unpredictability and volatility of such revenues. The confiscation of assets can occur more often in some Member States than others and possible windfall gains, investments and efforts which need to be taken to curb criminal offences and to finally confiscate assets are inseparable and unpredictable at the moment. Finally, the Commission assessment should detail how such a new own resource could support Union priorities and the adequate financing of Union expenditure, while reducing the share of GNI-based contributions in the financing of the Union budget and facilitating efficiency gains compared to national spending.*

## **Amendment 6**

### **Proposal for a directive Recital 6 b (new)**

*Text proposed by the Commission*

*Amendment*

*(6b) Where the assets stem from the criminal offences listed in Article 2(1), (2) and (3) and relate to the Russian aggression against Ukraine or Article 2(3a), these revenues should be made available in the form of external assigned revenue until the relevant Own Resources Decision enters into force and without prejudice to restitution and compensation to the victims and public concerned. Such revenue should be mainly assigned to the Neighbourhood, Development and International Cooperation Instrument –*

*Global Europe on the Eastern Neighbourhood line (14 02 01 11) or, where appropriate, to the NDICI - Global Europe -provisioning of the common provisioning fund (14 02 01 70) line and the successor budget lines in the next MFF if needed. This revenue should be used to support projects to build and rebuild infrastructure in Ukraine and to provide compensation to the Ukrainian victim population. The Commission can assess the feasibility and relevance of channelling the external assigned revenues related to the Russian aggression against Ukraine to the [Rebuild Ukraine Facility], should the set up of the Facility serve the objectives of supporting projects to build and rebuild infrastructure in Ukraine and of providing compensation to the Ukrainian victim population and provide similar decision and supervisory power to the budgetary authority as the NDICI programme.*

#### **Amendment 7**

#### **Proposal for a directive Recital 6 c (new)**

*Text proposed by the Commission*

*Amendment*

*(6c) The proposals for projects to be financed from external assigned revenue related to the Russian aggression against Ukraine should be submitted to the Commission by the Ukrainian authorities after consulting domestic civil society organisations and other relevant stakeholders. The projects should include deliverables and spending guidelines that allow their implementation to be assessed. The European Parliament and the Commission should be able to monitor the impact of the projects and scrutinise, with the involvement of the civil society and by the means of regular reporting and of the discharge procedure, the implementation*

*of the projects to ensure that the partners responsible for implementation respect the principle of sound financial management in particular anti-corruption measures. Compensation to the Ukrainian victim population can be provided through a dedicated mechanism for the compensation of Ukrainian victims implemented under the Eastern Neighbourhood line (14 02 01 11) and aiming at the improvement of the living conditions of the victims. It could be based on a Ukrainian victims' claims registry and dedicated claims commission.*

## **Amendment 8**

### **Proposal for a directive Recital 7**

*Text proposed by the Commission*

(7) Measures aiming at increasing capabilities of tracing and identification of relevant property in relation to persons or entities subject to Union restrictive measures, as well as complementary measures to ensure that such property is not transferred or hidden to evade Union restrictive measures, contribute to the prevention and detection of possible violation of Union restrictive measures and enhanced cross-border cooperation in investigations into possible criminal offences.

*Amendment*

(7) Measures aiming at increasing capabilities of tracing and identification of relevant property in relation to persons or entities subject to Union restrictive measures, as well as complementary measures to ensure that such property is not transferred or hidden to evade Union restrictive measures, contribute to the prevention and detection of possible violation of Union restrictive measures and enhanced cross-border cooperation in investigations into possible criminal offences. *For such purposes, increased efforts for preventing the evasion of Union restrictive measures should be explored, including through the establishment of joint sanctions enforcement structures, with a view to supporting Member States in the implementation of Union restrictive measures.*

## **Amendment 9**

### **Proposal for a directive**

## Recital 11

*Text proposed by the Commission*

(11) [In order to ensure the effective implementation of Union restrictive measures, ***it is necessary to extend*** the scope of the Directive ***to*** the violation of Union restrictive measures].

*Amendment*

***(11) Similarly, the violation of Union restrictive measures is most notably motivated by considerations of financial gain. While generating profits, the circumvention of restrictive measures enables the continued use of frozen assets in ways which undermine the objectives of those restrictive measures. In order to ensure the effective implementation of Union restrictive measures, their violation should be included in the scope of the Directive in so far as they constitute criminal offences within the meaning of Directive (EU) [.../...] [Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures]. Criminal law measures adopted in the Union, and the freezing and confiscation that result therefrom, represent a way to support Ukraine's reconstruction.***

## Amendment 10

**Proposal for a directive  
Recital 11 a (new)**

*Text proposed by the Commission*

*Amendment*

***(11a) The Russian war of aggression against Ukraine has made the urgent mobilisation of substantial resources for the reconstruction of Ukraine crucial. The revised rules on asset recovery and confiscation should be future proof and enable the possibility to channel the net revenues of assets confiscated in the frame of criminal offences related to the war in Ukraine beyond the circumvention of Union's restrictive measures as soon as those offences are identified and defined as Union crimes in accordance with Article 83 TFEU.***

## Amendment 11

### Proposal for a directive Recital 17

#### *Text proposed by the Commission*

(17) In order to perform effective asset tracing investigations, and to swiftly respond to cross-border requests, asset recovery offices should have access to the information that allows them to establish the existence, ownership or control of property that may become object of a freezing or a confiscation order. Therefore, asset recovery offices should have access to the relevant data such as fiscal data, national citizenship and population registries, commercial databases and social security information. This should include law enforcement information in so far as data such as criminal records, vehicles stops, property searches and previous legal actions such as freezing and confiscation orders or seizures of cash can be of value to identify relevant property. Access to information should be subject to specific safeguards that prevent the misuse of the access rights. These safeguards should be without prejudice to Article 25 of Directive (EU) 2016/680 of the European Parliament and of the Council<sup>23</sup>. The direct and immediate access to this information does not prevent Member States from making access subject to procedural safeguards as established under national law while taking due account of the need for asset recovery offices to be able to swiftly reply to cross-border requests. The implementation of the procedural safeguards for access to databases should not affect the ability of asset recovery offices to respond to requests from other Member States, especially in case of urgent requests. Access to relevant databases and registries under this Directive should complement access to bank account information pursuant to Directive (EU) 2019/1153 of the European Parliament and of the

#### *Amendment*

(17) In order to perform effective asset tracing investigations, and to swiftly respond to cross-border requests, asset recovery offices should have access to the information that allows them to establish the existence, ownership or control of property that may become object of a freezing or a confiscation order. Therefore, asset recovery offices should have access to the relevant data such as **bank accounts data**, fiscal data, national citizenship and population registries, commercial databases and social security information. This should include law enforcement information in so far as data such as criminal records, vehicles stops, property searches and previous legal actions such as freezing and confiscation orders or seizures of cash can be of value to identify relevant property. Access to information should be subject to specific safeguards that prevent the misuse of the access rights. These safeguards should be without prejudice to Article 25 of Directive (EU) 2016/680 of the European Parliament and of the Council<sup>23</sup>. The direct and immediate access to this information does not prevent Member States from making access subject to procedural safeguards as established under national law while taking due account of the need for asset recovery offices to be able to swiftly reply to cross-border requests. The implementation of the procedural safeguards for access to databases should not affect the ability of asset recovery offices to respond to requests from other Member States, especially in case of urgent requests. Access to relevant databases and registries under this Directive should complement access to bank account information pursuant to Directive (EU) 2019/1153 of

Council<sup>24</sup> and to beneficial ownership information pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council<sup>25</sup>.

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<sup>23</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

<sup>24</sup> Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122).

<sup>25</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 (OJ L 141 5.6.2015, p. 73).

the European Parliament and of the Council<sup>24</sup> and to beneficial ownership information pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council<sup>25</sup>.

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<sup>23</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

<sup>24</sup> Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA (OJ L 186, 11.7.2019, p. 122).

<sup>25</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 (OJ L 141 5.6.2015, p. 73).

## **Amendment 12**

### **Proposal for a directive** **Recital 18**

#### *Text proposed by the Commission*

(18) To ensure the security of the information shared between asset recovery offices, the use of the Secure Information Exchange Network Application (SIENA),

#### *Amendment*

(18) To ensure the security of the information shared between asset recovery offices, the use of the Secure Information Exchange Network Application (SIENA),

managed by Europol in accordance with Regulation (EU) 2016/794 of the European Parliament and of the Council<sup>26</sup>, should be mandatory for all communications among asset recovery offices under this Directive. Therefore, in order to be able to fulfil all the tasks assigned by this Directive, all asset recovery offices should be able to directly access SIENA.

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<sup>26</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

managed by Europol in accordance with Regulation (EU) 2016/794 of the European Parliament and of the Council<sup>26</sup>, should be mandatory for all communications among asset recovery offices under this Directive. Therefore, in order to be able to fulfil all the tasks assigned by this Directive, all asset recovery offices, **as well as EPPO**, should be able to directly access SIENA.

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<sup>26</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

## Amendment 13

### Proposal for a directive

#### Recital 22

##### *Text proposed by the Commission*

(22) Freezing measures should be without prejudice to the possibility for a specific property to be considered evidence throughout the proceedings, provided that it would ultimately be made available for effective execution of the confiscation order. In the context of criminal proceedings, property may also be frozen with a view to its possible subsequent restitution or in order to safeguard compensation for the damage caused by a criminal offence.

##### *Amendment*

(22) Freezing measures should **include measures aimed at preserving and optimising the value of concerned property until its disposal and** be without prejudice to the possibility for a specific property to be considered evidence throughout the proceedings, provided that it would ultimately be made available for effective execution of the confiscation order. In the context of criminal proceedings, property may also be frozen with a view to its possible subsequent restitution or in order to safeguard compensation for the damage caused by a criminal offence.

## Amendment 14

### Proposal for a directive

## Recital 39

*Text proposed by the Commission*

(39) An effective recovery system requires concerted efforts of a wide range of authorities, from law enforcement, including customs authorities, tax authorities and tax recovery authorities to the extent that they are competent for asset recovery, asset recovery offices, judicial authorities and asset management authorities, including asset management offices. In order to ensure coordinated action by all competent authorities, it is necessary to establish a more strategic approach to asset recovery and promote a greater cooperation between the relevant authorities, and to obtain a clear overview of the results of asset recovery. For this purpose, Member States should adopt and regularly review a national strategy on asset recovery to guide actions in relation to financial investigations, freezing and confiscation, management as well as final disposal of the relevant instrumentalities, proceeds, or property. Furthermore, Member States should provide competent authorities with the necessary resources to be able to fulfil their tasks effectively. Competent authorities should be understood as the authorities entrusted with the carrying out of the tasks as outlined under this Directive and according to national set-ups.

*Amendment*

(39) An effective ***asset tracing***, recovery ***and reuse*** system ***as well as maintaining the value of frozen assets*** requires concerted efforts of a wide range of authorities, from law enforcement, including customs authorities, tax authorities and tax recovery authorities to the extent that they are competent for asset recovery, asset recovery offices, judicial authorities and asset management authorities, including asset management offices. In order to ensure coordinated action by all competent authorities, it is necessary to establish a more strategic approach to asset recovery and promote a greater cooperation between the relevant authorities, and to obtain a clear overview of the results of asset recovery. For this purpose, Member States should adopt and regularly review a national strategy on asset recovery to guide actions in relation to financial investigations, freezing and confiscation, management as well as final disposal of the relevant instrumentalities, proceeds, or property. Furthermore, Member States should provide competent authorities with the necessary resources to be able to fulfil their tasks effectively. Competent authorities should be understood as the authorities entrusted with the carrying out of the tasks as outlined under this Directive and according to national set-ups.

## Amendment 15

### Proposal for a directive

#### Recital 41

*Text proposed by the Commission*

(41) To ensure consistent approaches among Member States in the collection of statistics, the power to adopt acts in

*Amendment*

(41) To ensure consistent approaches among Member States in the collection of statistics, the power to adopt acts in

accordance with Article 290 of the TFEU should be delegated to the Commission to supplement this Directive by adopting more detailed rules on the information to be collected and the methodology for the collection of the statistics.

accordance with Article 290 of the TFEU should be delegated to the Commission to supplement this Directive by adopting more detailed rules on the information to be collected and the methodology for the collection of the statistics. ***In this scope, a relevant platform should be in place at Union level to support effective evaluation in the information collection process.***

**Amendment 16**  
**Proposal for a directive**  
**Recital 43**

*Text proposed by the Commission*

(43) To provide a more comprehensive overview of the action taken to freeze and confiscate, Member States should establish a central register of frozen, managed and confiscated instrumentalities, proceeds, or property, and collect the necessary statistics on the implementation of the relevant measures. Centralised registries of frozen and confiscated instrumentalities, proceeds, or property should be established at national level for the purpose of facilitating the management of the specific file. The aim of establishing centralised registries is to assist all the relevant authorities responsible for the recovery of criminal property with an accessible record of the property which is frozen, confiscated, or under management, from the moment it is frozen until it is returned to the owner or it is disposed of. Information entered in the registries should be retained only for as long as it is necessary for the purposes of management of the specific case, or for the purposes of gathering statistical data collection. For case management purposes, it should not be kept for longer than after the final disposal of the property following a confiscation order, or after its return to the owner in case of acquittal. Access to the information recorded in the centralised registries should be given only to

*Amendment*

(43) To provide a more comprehensive overview of the action taken to freeze and confiscate, Member States should establish a central register of frozen, managed and confiscated instrumentalities, proceeds, or property, and collect the necessary statistics on the implementation of the relevant measures. Centralised registries of frozen and confiscated instrumentalities, proceeds, or property should be established at national level for the purpose of facilitating the management of the specific file. The aim of establishing centralised registries is to assist all the relevant authorities responsible for the recovery of criminal property with an accessible record of the property which is frozen, confiscated, or under management, from the moment it is frozen until it is returned to the owner or it is disposed of. Information entered in the registries should be retained only for as long as it is necessary for the purposes of management of the specific case, or for the purposes of gathering statistical data collection. For case management purposes, it should not be kept for longer than after the final disposal of the property following a confiscation order, or after its return to the owner in case of acquittal. Access to the information recorded in the centralised registries should be given only to

authorities responsible for the recovery of criminal property, such as asset recovery offices, asset management offices, national courts or otherwise appointed authorities according to national dispositions.

authorities responsible for the recovery of criminal property, such as asset recovery offices, asset management offices, national courts or otherwise appointed authorities according to national dispositions. ***The Commission can provide specific guidelines for Member States on the collection and treatment of this information. Those guidelines can also set out the rules for the scope and practices of information exchange with third countries when the property concerned is frozen or confiscated under the Union sanctions regime.***

## Amendment 17

### Proposal for a directive Recital 45

#### *Text proposed by the Commission*

(45) Asset recovery offices should also closely cooperate with EU bodies and agencies, including Europol, Eurojust and the European Public Prosecutor's Office, in accordance with their respective mandates, insofar as it is necessary to trace and identify property within the cross-border investigations supported by Europol and Eurojust or within the investigations undertaken by the European Public Prosecutor's Office. Asset recovery offices should also cooperate with Europol and Eurojust, in accordance with their respective mandates, insofar as it is necessary to trace and identify property to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures.

#### *Amendment*

(45) Asset recovery offices should also closely cooperate with EU bodies and agencies, including Europol, Eurojust and the European Public Prosecutor's Office, in accordance with their respective mandates, insofar as it is necessary to trace and identify property within the cross-border investigations supported by Europol and Eurojust or within the investigations undertaken by the European Public Prosecutor's Office. Asset recovery offices ***should closely cooperate with the central and decentralised levels of the European Public Prosecutor's Office (EPPO) with regard to the Member States that participate in the enhanced cooperation on the establishment of the EPPO if applicable under Regulation (EU) 2017/1939<sup>1a</sup>. Asset recovery offices should therefore incur the reporting obligations under the EPPO Regulation, reporting to the EPPO in the same way as they do to national competent authorities and Financial Intelligence Units. Asset recovery offices*** should also cooperate with ***EPPO***, Europol and Eurojust, in

accordance with their respective mandates, insofar as it is necessary to trace and identify property to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures.

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***<sup>1a</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).***

## **Amendment 18**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point m**

##### *Text proposed by the Commission*

(m) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties as defined **in** Directive 2008/99/EC of the European Parliament and of the Council<sup>50</sup>, as well as offences related to ship pollution as defined in Directive 2005/35/EC as amended by Directive 2009/123/EC<sup>51</sup> ;

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<sup>50</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

<sup>51</sup> Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ L 280, 27.10.2009, p. 52).

##### *Amendment*

(m) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties as defined in Directive 2008/99/EC of the European Parliament and of the Council<sup>50</sup>, as well as offences related to ship pollution as defined in Directive 2005/35/EC as amended by Directive 2009/123/EC<sup>51</sup> ;

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<sup>50</sup> Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28).

<sup>51</sup> Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements (OJ L 280, 27.10.2009, p. 52).

## **Amendment 19**

**Proposal for a directive**  
**Article 2 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. This Directive shall apply to the crimes of aggression or the facilitation of aggression against Ukraine subject to the adoption of the relevant Council Decisions identifying and defining those crimes in accordance with Article 83 TFEU.**

**Amendment 20**

**Proposal for a directive**  
**Article 3 – paragraph 1 – point 1**

*Text proposed by the Commission*

*Amendment*

(1) ‘proceeds’ means any economic advantage derived directly or indirectly from a criminal offence consisting of any form of property, and including any subsequent reinvestment or transformation of direct proceeds and any valuable benefits;

(1) ‘proceeds’ means any economic advantage derived directly or indirectly from a criminal offence consisting of any form of property, and including any subsequent reinvestment or transformation of direct proceeds and any valuable benefits, **including cryptocurrency;**

**Amendment 21**

**Proposal for a directive**  
**Article 3 – paragraph 1 – point 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**(1a) ‘assets’ means the moveable and immovable property, savings in bank accounts, liquid money and business ownership associated with a crime or a suspected crime, whereby such assets are illegally obtained, are used to commit a crime, or exist as a result of a crime;**

**Amendment 22**

**Proposal for a directive**

## Article 5 – paragraph 2 – point c

### *Text proposed by the Commission*

(c) cooperate and exchange information with other Member States' asset recovery offices in the tracing and identification of instrumentalities and proceeds, or property which may become or is the object of a freezing or confiscation order;

### *Amendment*

(c) cooperate and exchange information with other Member States' asset recovery offices, ***as well as with the EPPO***, in the tracing and identification of instrumentalities and proceeds, or property which may become or is the object of a freezing or confiscation order;

## Amendment 23

### Proposal for a directive

#### Article 5 – paragraph 2 – point d

### *Text proposed by the Commission*

(d) exchange information with other asset recovery offices in the Member States related to the effective implementation of Union restrictive measures where necessary to prevent, detect or investigate criminal offences.

### *Amendment*

(d) exchange information with other asset recovery offices in the Member States related to the effective implementation of Union restrictive measures, ***as well as with the EPPO***, where necessary to prevent, detect or investigate criminal offences.

## Amendment 24

### Proposal for a directive

#### Article 5 – paragraph 3

### *Text proposed by the Commission*

3. Asset recovery offices shall be empowered to trace and identify property of persons and entities subject to EU targeted financial sanctions where necessary to prevent, detect or investigate criminal offences. To that effect, they shall cooperate with asset recovery offices and other relevant competent authorities in other Member States and exchange relevant information.

### *Amendment*

3. Asset recovery offices shall be empowered to trace and identify property of persons and entities subject to EU targeted financial sanctions where necessary to prevent, detect or investigate criminal offences. To that effect, they shall cooperate with asset recovery offices and other relevant competent authorities in other Member States, ***as well as with the EPPO***, and exchange relevant information.

## Amendment 25

### Proposal for a directive

#### Article 6 – paragraph 1 – point a

*Text proposed by the Commission*

(a) fiscal data, including data held by tax and revenue authorities;

*Amendment*

(a) ***data on bank accounts and financial transactions***, fiscal data, including data held by tax and revenue authorities;

## Amendment 26

### Proposal for a directive

#### Article 7 – paragraph 2

*Text proposed by the Commission*

2. Member States shall ensure that staff of the asset recovery offices comply with the rules on confidentiality and professional secrecy as provided for under applicable national law. Member States shall also ensure that staff of asset recovery offices have the necessary specialised skills and abilities to perform their roles effectively.

*Amendment*

2. Member States shall ensure that staff of the asset recovery offices comply with the rules on confidentiality and professional secrecy ***and ethics*** as provided for under applicable national law. Member States shall also ensure that staff of asset recovery offices have the necessary specialised skills and abilities to perform their roles effectively.

## Amendment 27

### Proposal for a directive

#### Article 7 – paragraph 3

*Text proposed by the Commission*

3. Member States shall ensure that appropriate technical and organisational measures are in place to ensure the security of the data in order for asset recovery offices to access and search the information referred to in Article 6.

*Amendment*

3. Member States shall ensure that appropriate technical and organisational measures are in place to ensure the security of the data in order for ***the*** asset recovery offices to access and search the information referred to in Article 6.

## Amendment 28

### Proposal for a directive

## Article 9 – paragraph 1 – subparagraph 1

### *Text proposed by the Commission*

Member States shall take the necessary measures to ensure that their asset recovery offices provide, upon request from an asset recovery office of another Member State, any information that is necessary for the performance of their tasks pursuant to Article 5. The categories of personal data that can be provided are those listed in Section B, point 2 of Annex II to Regulation (EU) 2016/794.

### *Amendment*

Member States shall take the necessary measures to ensure that their asset recovery offices provide, upon request from an asset recovery office of another Member State, ***as well as of the EPPO***, any information that is necessary for the performance of their tasks pursuant to Article 5. The categories of personal data that can be provided are those listed in Section B, point 2 of Annex II to Regulation (EU) 2016/794.

## Amendment 29

### Proposal for a directive Article 11 – paragraph 2

#### *Text proposed by the Commission*

2. Freezing measures shall include immediate action to be taken when necessary in order to preserve the property.

#### *Amendment*

2. Freezing measures shall include immediate action to be taken when necessary in order to preserve the ***value of frozen assets in particular in cases where there is no possibility to charge the costs for the management of frozen property to the beneficial owner or proceed with an interlocutory sale.***

## Amendment 30

### Proposal for a directive Article 17 – title

#### *Text proposed by the Commission*

Effective confiscation ***and*** execution

#### *Amendment*

Effective confiscation, execution ***and use of the confiscated assets***

## Amendment 31

### Proposal for a directive Article 17 – paragraph 2

#### *Text proposed by the Commission*

2. Member States shall ***consider***

#### *Amendment*

2. Member States shall ***take*** measures

**taking** measures allowing confiscated property to be used for public interest or social purposes.

allowing confiscated property to be used for public interest or social purposes, ***with a particular focus on the victims wherever possible.***

## Amendment 32

### Proposal for a directive Article 17 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. Member States shall decide for which areas of public interest and social purposes the net revenue resulting from the liquidation of confiscated assets may be used except for those established as an own resource in accordance with Article 311(3) TFEU and those stemming from the criminal offences listed in Article 2(1), (2) and (3) of this Directive when they relate to the Russian aggression against Ukraine and Article 2(3a) of this Directive, which shall constitute external assigned revenue in accordance with Article 21(5) of the Financial Regulation until the establishment of the relevant own resource in accordance with Article 311(3) TFEU and without prejudice to restitution, compensation, to the victims and public concerned and Member States' capacity to implement this Directive.***

## Amendment 33

### Proposal for a directive Article 17 – paragraph 2 b (new)

*Text proposed by the Commission*

*Amendment*

***2b. The net revenues resulting from the liquidation of confiscated assets stemming from the criminal offences listed in Article 2(1), (2) and (3) of this Directive where those offences relate to the Russian aggression against Ukraine and Article 2(3a) of this Directive shall be mainly assigned to the Neighbourhood,***

*Development and International Cooperation Instrument – Global Europe on the Eastern Neighbourhood line (14 02 01 11) and, where appropriate, to the NDICI - Global Europe - provisioning of the common provisioning fund line (14 02 01 70) under Heading 6 and the successor budget lines in the next MFF. This revenue shall be used to support projects to build and rebuild infrastructure in Ukraine such as energy and food security, infrastructure and public services and to provide compensation to the Ukrainian victim population.*

#### Amendment 34

##### Proposal for a directive Article 18 – paragraph 1

###### *Text proposed by the Commission*

Where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Directive, Member States shall take the necessary measures to ensure that the confiscation measure **does not affect** victims' rights to obtain compensation for their claims.

###### *Amendment*

Where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Directive, Member States shall take the necessary measures to ensure that the confiscation measure **serves the exercise of the** victims' rights to obtain compensation for their claims. .

#### Amendment 35

##### Proposal for a directive Article 19 – paragraph 1

###### *Text proposed by the Commission*

1. Member States shall ensure the efficient management of frozen and confiscated property until its disposal.

###### *Amendment*

1. Member States shall ensure the efficient management of frozen and confiscated property until its disposal **and aim at maintaining the value of the assets in particular in cases where there is no possibility to charge the costs for the management of frozen property to the beneficial owner or proceed with an interlocutory sale.**

**Amendment 36**  
**Proposal for a directive**  
**Article 21 – paragraph 2 – point c**

*Text proposed by the Commission*

(c) to cooperate with other competent authorities responsible for the tracing and identification, freezing and confiscation of property, pursuant to this Directive;

*Amendment*

(c) to cooperate with other competent authorities responsible for the tracing and identification, freezing and confiscation of property, pursuant to this Directive, ***including EPPO, Europol, Eurojust and national law enforcement authorities in other Member States;***

**Amendment 37**  
**Proposal for a directive**  
**Article 25 – paragraph 1**

*Text proposed by the Commission*

Member States shall ensure that asset recovery offices and asset management offices performing tasks pursuant to this Directive, have appropriately qualified staff and appropriate financial, technical and technological resources necessary for the effective performance of their functions related to the implementation of this Directive.

*Amendment*

Member States shall ensure that asset recovery offices and asset management offices performing tasks pursuant to this Directive ***as well as the authorities managing the centralised registries,*** have appropriately qualified staff, ***in particular by providing them with regular and relevant training activities including on ethics, integrity and anti-corruption,*** and appropriate financial, technical and technological resources necessary for the effective performance of their functions related to the implementation of this Directive. ***Member States shall ensure that the budgetary resources allocated to asset recovery offices and asset management offices are made publicly available.***

**Amendment 38**  
**Proposal for a directive**  
**Article 26 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall take the necessary measures to ensure that asset recovery offices, asset management offices, and other competent authorities performing tasks pursuant to Article 4, 19 **and 20**, have the power to enter, access and search, directly and immediately, the information referred to in paragraph 3.

*Amendment*

2. Member States shall take the necessary measures to ensure that asset recovery offices, asset management offices, and other competent authorities performing tasks pursuant to Article 4, 19, **20 and 21, as well as the Commission and EPPO**, have the power to enter, access and search, directly and immediately, the information referred to in paragraph 3.

**Amendment 39**

**Proposal for a directive  
Article 26 – paragraph 3 – point b**

*Text proposed by the Commission*

(b) the estimated or actual value of the **property** at the moment of the freezing, confiscation and disposal;

*Amendment*

(b) the estimated or actual value of the **assets** at the moment of the freezing, confiscation and disposal **as well as the nature of the criminal offences underpinning the freezing, confiscation and disposal**;

**Amendment 40**

**Proposal for a directive  
Article 27 – paragraph 1**

*Text proposed by the Commission*

1. Member States shall collect and maintain comprehensive statistics at central level on the measures taken under this Directive.

*Amendment*

1. Member States shall collect and maintain comprehensive **and detailed** statistics at central level on the measures taken under this Directive **including of the net value of proceeds resulting from the liquidation of confiscated assets**.

**Amendment 41**

**Proposal for a directive  
Article 27 – paragraph 2**

*Text proposed by the Commission*

2. Member States shall ensure that the statistics referred to in paragraph 1 are collected on a calendar basis and transmitted to the Commission on an annual basis, by **[1 September]** of the following year.

*Amendment*

2. Member States shall ensure that the statistics referred to in paragraph 1 are collected on a calendar basis and transmitted to the Commission on an annual basis, by **[15 March]** of the following year. ***The Commission shall make these statistics publicly available on a regular basis in order to ensure transparency. Within the scope of effectively supporting the evaluation of the collected statistics and in aiding the information collection process, a relevant platform shall be in place at Union level.***

**Amendment 42**

**Proposal for a directive  
Article 27 – paragraph 3**

*Text proposed by the Commission*

3. The Commission ***may adopt delegated acts in accordance with Article 30 laying*** down more detailed rules on the information to be collected and the methodology for the collection of the statistics referred to in paragraph 1 and the arrangements for their transmission to the Commission.

*Amendment*

3. The Commission ***shall lay*** down more detailed rules on the information to be collected and the methodology for the collection of the statistics referred to in paragraph 1 and the arrangements for their transmission to the Commission ***and may adopt delegated act in accordance with Article 30 for doing so.***

**Amendment 43**

**Proposal for a directive  
Article 28 – paragraph 1a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. For the purposes of this Directive and if applicable under Regulation (EU) 2017/1939[1], when the notion of competent authorities refers to investigating and prosecuting authorities, it shall be interpreted as including the central and decentralised levels of the***

*European Public Prosecutor's Office (EPPO) with regard to the Member States that participate in the enhanced cooperation on the establishment of the EPPO. Asset recovery offices shall therefore incur the obligations under the EPPO Regulation, including the obligation to report to the EPPO under Article 24 of the EPPO Regulation, undertaking of measures if instructed as a competent authority under Article 28(1) of the EPPO Regulation and access to information under Article 43(1) of the EPPO Regulation.*

*<sup>1</sup> Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO')*

## PROCEDURE – COMMITTEE ASKED FOR OPINION

|   |   |    |    |    |   |    |   |
|---|---|----|----|----|---|----|---|
| <b>Title</b>  | Asset recovery and confiscation   |    |    |    |   |    |   |
| <b>References</b>   | COM(2022)0245 – C9-0186/2022 – 2022/0167(COD)   |    |    |    |   |    |   |
| <b>Committee responsible</b><br>Date announced in plenary       | LIBE<br>22.6.2022   |    |    |    |   |    |   |
| <b>Opinion by</b><br>Date announced in plenary                  | BUDG<br>15.9.2022   |    |    |    |   |    |   |
| <b>Rapporteur for the opinion</b><br>Date appointed             | Vlad Gheorghe<br>1.9.2022   |    |    |    |   |    |   |
| <b>Discussed in committee</b>                                   | 9.2.2023  |    |    |    |   |    |   |
| <b>Date adopted</b>   | 28.3.2023   |    |    |    |   |    |   |
| <b>Result of final vote</b>                                     | <table> <tr> <td>+:                   </td><td>31</td></tr> <tr> <td>–:                   </td><td>1</td></tr> <tr> <td>0:                   </td><td>3</td></tr> </table>  | +: | 31 | –: | 1 | 0: | 3 |
| +:  | 31  |    |    |    |   |    |   |
| –:  | 1   |    |    |    |   |    |   |
| 0:  | 3   |    |    |    |   |    |   |
| <b>Members present for the final vote</b>                       | Rasmus Andresen, Pietro Bartolo, Olivier Chastel, Andor Deli, Pascal Durand, José Manuel Fernandes, Eider Gardiazabal Rubial, Vlad Gheorghe, Valérie Hayer, Niclas Herbst, Adam Jarubas, Fabienne Keller, Joachim Kuhs, Zbigniew Kuźmiuk, Pierre Larroustourou, Camilla Laureti, Janusz Lewandowski, Margarida Marques, Siegfried Mureşan, Victor Negrescu, Andrey Novakov, Dimitrios Papadimoulis, Karlo Ressler, Bogdan Rzońca, Eleni Stavrou, Nils Torvalds, Nils Ušakovs, Angelika Winzig |    |    |    |   |    |   |
| <b>Substitutes present for the final vote</b>                   | Francisco Guerreiro, Monika Vana  |    |    |    |   |    |   |
| <b>Substitutes under Rule 209(7) present for the final vote</b> | Karolin Braunsberger-Reinhold, Daniel Caspary, Daniel Freund, Isabel García Muñoz, Andreas Glück  |    |    |    |   |    |   |

## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

| 31        | +   |
|-----------|---|
| PPE       | Karolin Braunsberger-Reinhold, Daniel Caspary, José Manuel Fernandes, Niclas Herbst, Adam Jarubas, Janusz Lewandowski, Siegfried Mureşan, Andrey Novakov, Karlo Ressler, Eleni Stavrou, Angelika Winzig |
| Renew     | Olivier Chastel, Vlad Gheorghe, Andreas Glück, Valérie Hayer, Fabienne Keller, Nils Torvalds  |
| S&D       | Pietro Bartolo, Pascal Durand, Isabel García Muñoz, Eider Gardiazabal Rubial, Pierre Larroustourou, Camilla Laureti, Margarida Marques, Victor Negrescu, Nils Ušakovs                                   |
| The Left  | Dimitrios Papadimoulis  |
| Verts/ALE | Rasmus Andresen, Daniel Freund, Francisco Guerreiro, Monika Vana  |

| 1  | -          |
|----|------------|
| NI | Andor Deli |

| 3   | 0                               |
|-----|---------------------------------|
| ECR | Zbigniew Kuźmiuk, Bogdan Rzońca |
| ID  | Joachim Kuhs                    |

Key to symbols:

+ : in favour

- : against

0 : abstention

## PROCEDURE – COMMITTEE RESPONSIBLE

|   |  |                   |
|---|--|-------------------|
| <b>Title</b>  | Asset recovery and confiscation  |                   |
| <b>References</b>   | COM(2022)0245 – C9-0186/2022 – 2022/0167(COD)  |                   |
| <b>Date submitted to Parliament</b>                               | 25.5.2022  |                   |
| <b>Committee responsible</b><br>Date announced in plenary         | LIBE<br>22.6.2022  |                   |
| <b>Committees asked for opinions</b><br>Date announced in plenary | BUDG<br>15.9.2022  | JURI<br>15.9.2022 |
| <b>Associated committees</b><br>Date announced in plenary         | JURI<br>15.12.2022   |                   |
| <b>Rapporteurs</b><br>Date appointed                              | Loránt Vincze<br>10.10.2022  |                   |
| <b>Discussed in committee</b>                                     | 1.3.2023   |                   |
| <b>Date adopted</b>   | 23.5.2023  |                   |
| <b>Result of final vote</b>                                       | +: 50<br>-: 1<br>0: 4  |                   |
| <b>Members present for the final vote</b>                         | Abir Al-Sahlani, Malik Azmani, Pietro Bartolo, Theresa Bielowski, Malin Björk, Vasile Blaga, Karolin Braunsberger-Reinhold, Patrick Breyer, Saskia Bricmont, Damien Carême, Clare Daly, Lena Düpont, Lucia Ďuriš Nicholsonová, Laura Ferrara, Nicolaus Fest, Sylvie Guillaume, Andrzej Halicki, Sophia in 't Veld, Patryk Jaki, Marina Kaljurand, Assita Kanko, Fabienne Keller, Moritz Körner, Alice Kuhnke, Jeroen Lenaers, Juan Fernando López Aguilar, Nuno Melo, Javier Moreno Sánchez, Maite Pagazaurtundúa, Emil Radev, Paulo Rangel, Isabel Santos, Birgit Sippel, Sara Skyttedal, Vincenzo Sofo, Tineke Strik, Ramona Strugariu, Tomas Tobé, Milan Uhrík, Tom Vandendriessche, Elena Yoncheva |                   |
| <b>Substitutes present for the final vote</b>                     | Susanna Ceccardi, Gwendoline Delbos-Corfield, Loucas Fourlas, José Gusmão, Alessandra Mussolini, Matjaž Nemec, Carina Ohlsson, Thijs Reuten, Paul Tang, Róza Thun und Hohenstein, Loránt Vincze, Tomáš Zdechovský  |                   |
| <b>Substitutes under Rule 209(7) present for the final vote</b>   | Marie Dauchy, Vlad Gheorghe  |                   |
| <b>Date tabled</b>  | 26.5.2023  |                   |

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

| 50        | +   |
|-----------|---|
| ECR       | Patryk Jaki, Assita Kanko, Vincenzo Sofo  |
| ID        | Susanna Ceccardi, Tom Vandendriessche   |
| NI        | Laura Ferrara   |
| PPE       | Vasile Blaga, Karolin Braunsberger-Reinhold, Lena Düpont, Loucas Fourlas, Andrzej Halicki, Jeroen Lenaers, Nuno Melo, Alessandra Mussolini, Emil Radev, Paulo Rangel, Sara Skyttedal, Tomas Tobé, Loránt Vincze, Tomáš Zdechovský |
| Renew     | Abir Al-Sahlani, Malik Azmani, Lucia Ďuriš Nicholsonová, Vlad Gheorghe, Sophia in 't Veld, Moritz Körner, Maite Pagazaurtundúa, Ramona Strugariu, Róza Thun und Hohenstein  |
| S&D       | Pietro Bartolo, Theresa Bielowski, Sylvie Guillaume, Marina Kaljurand, Juan Fernando López Aguilar, Javier Moreno Sánchez, Matjaž Nemeč, Carina Ohlsson, Thijs Reuten, Isabel Santos, Birgit Sippel, Paul Tang, Elena Yoncheva    |
| The Left  | Malin Björk, José Gusmão  |
| Verts/ALE | Patrick Breyer, Saskia Bricmont, Damien Carême, Gwendoline Delbos-Corfield, Alice Kuhnke, Tineke Strik  |

| 1  | -           |
|----|-------------|
| NI | Milan Uhrík |

| 4        | 0   |
|----------|---|
| ID       | Annika Bruna, Marie Dauchy, Nicolaus Fest |
| The Left | Clare Daly                                |

Key to symbols:

+ : in favour

- : against

0 : abstention

## VOTE ON THE DECISION TO ENTER INTO INTERINSTITUTIONAL NEGOTIATIONS

| 53        | +   |
|-----------|---|
| ECR       | Patryk Jaki, Assita Kanko, Vincenzo Sofo  |
| ID        | Annika Bruna, Susanna Ceccardi, Tom Vandendriessche   |
| NI        | Laura Ferrara   |
| PPE       | Vasile Blaga, Karolin Braunsberger-Reinhold, Lena Düpont, Loucas Fourlas, Andrzej Halicki, Jeroen Lenaers, Nuno Melo, Alessandra Mussolini, Emil Radev, Paulo Rangel, Sara Skyttedal, Tomas Tobé, Loránt Vincze, Tomáš Zdechovský |
| Renew     | Abir Al-Sahlani, Malik Azmani, Lucia Ďuriš Nicholsonová, Vlad Gheorghe, Sophia in 't Veld, Fabienne Keller, Moritz Körner, Maite Pagazaurtundúa, Ramona Strugariu, Róza Thun und Hohenstein                                       |
| S&D       | Pietro Bartolo, Theresa Bielowski, Sylvie Guillaume, Marina Kaljurand, Juan Fernando López Aguilar, Javier Moreno Sánchez, Matjaž Nemec, Carina Ohlsson, Thijs Reuten, Isabel Santos, Birgit Sippel, Paul Tang, Elena Yoncheva    |
| The Left  | Malin Björk, Clare Daly, José Gusmão  |
| Verts/ALE | Patrick Breyer, Saskia Bricmont, Damien Carême, Gwendoline Delbos-Corfield, Alice Kuhnke, Tineke Strik  |

| 0 | - |
|---|---|
|   |   |

| 2  | 0             |
|----|---------------|
| ID | Nicolaus Fest |
| NI | Milan Uhrík   |

Key to symbols:

+ : in favour

- : against

0 : abstention