



Committee on Civil Liberties, Justice and Home Affairs

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on asset recovery and confiscation

2022/0167 (COD)

COMPROMISE AM A: articles 1 to 3 (chapter I) and recitals 1 to 13

AMs Covered: 1 (Rapp), 2 (Rapp), 3 (Rapp), JURI 3, JURI 4, JURI 14, JURI 15, JURI 16, BUDG 3, BUDG8 , BUDG 18, BUDG 20, 23 (Rapp), 24 (Rapp), 25 (Rapp), 26 (Rapp), 27 (Rapp), 28 (Rapp), 76 (S&D), 78 (S&D), 79 (ECR), 80 (ECR), 82 (Greens), 84 (Renew), 87 (Renew), 88 (Left), 89 (ECR), 90 (Greens), 91 (Left), 92 (S&D), 93 (EPP), 96 (Greens), 97 (EPP), 111 (S&D), 119 (S&D), 132 (Greens), 133 (Greens), 137 (Greens), 138 (EPP), 141(Greens), 142 (ECR), 143 (Greens), 144 (Greens), 145 (Greens), 146 (Renew), 147 (Greens), 148 (Greens), 149 (Greens), 150 (Greens), 151 (Greens), 153 (S&D),154 (Renew), 155 (Renew), 156 (Renew), 157 (Renew), 161 (EPP), 162 (S&D), 165 (Greens), 236 (Left),234 (S&D), 239 (S&D), 241 (S&D), 263 (S&D), 269 (S&D)

AMs Falling: JURI 1, BUDG 19, BUDG 21, 77 (Greens), 81 (ECR), 83 (Renew), 85 (S&D), 86 (Greens), 94 (Greens), 95 (Left), 98 (S&D), 134 (Left), 135 (Left), 136 (Greens), 139 (Greens), 140 (Left),152 (Greens), 158 (Left), 159 (Left),160 (Left), 163 (Renew), 164 (ECR), 166 (S&D), 167 (Greens), JURI 17

**CHAPTER I
GENERAL PROVISIONS**

Article 1

Subject matter

1. This Directive establishes minimum rules on the tracing and identification, freezing, confiscation, and management of property within the framework of proceedings in criminal matters.
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. (**AM133**)

Article 2

Scope

1. This Directive shall apply to the following criminal offences:

- (a) participation in a criminal organisation, as defined in Council Framework Decision 2008/841/JHA¹;
- (b) terrorism, as defined in Directive (EU) 2017/541 of the European Parliament and of the Council²;
- (c) trafficking in human beings, as defined in Directive 2011/36/EU of the European Parliament and of the Council³;
- (d) sexual exploitation of children and child pornography, as defined in Directive 2011/93/EU of the European Parliament and of the Council⁴;
- (e) illicit trafficking in narcotic drugs and psychotropic substances, as defined in Council Framework Decision 2004/757/JHA⁵;
- (f) corruption, as defined in the Convention drawn up on the basis of Article K.3(2)(c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union⁶ and in the Council Framework Decision 2003/568/JHA⁵; and in the Council Framework Decision 2003/568/JHA⁶;
- (g) money laundering, as defined in Directive (EU) 2018/1673 of the European Parliament and of the Council⁷;

¹ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

² Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).

³ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).

⁴ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

⁶ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54).

⁷ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22).

(h) forgery of means of payment, as defined in Directive (EU) 2019/713 of the European Parliament and of the Council⁸;

(i) counterfeiting currency, including the euro, as defined in Directive 2014/62/EU of the European Parliament and of the Council⁹;

(j) computer-related crime, as defined in Directive 2013/40/EU of the European Parliament and of the Council¹⁰;

(k) illicit trafficking in weapons, munitions and explosives, as defined in the Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against transnational organized crime¹⁰;

(l) fraud, including fraud and other criminal offences affecting the Union's financial interests as defined in Directive (EU) 2017/1371 of the European Parliament and of the Council¹¹;

(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 (AM137)*)

(n) facilitation of unauthorised entry and residence, as defined in Council Framework Decision 2002/946/JHA, and Council Directive 2002/90/EC¹²;

2. This Directive shall apply to the following offences to the extent that the offence is committed within the framework of a criminal organisation:

(a) counterfeiting and piracy of products;

(b) illicit trafficking in cultural goods, including antiques and works of art;

(c) forgery of administrative documents and trafficking therein;

(d) murder or grievous bodily injury;

(e) illicit trade in human organs and tissue;

(f) kidnapping, illegal restraint or hostage-taking;

(g) organised or armed robbery;

(h) racketeering and extortion;

(i) trafficking in stolen vehicles;

⁸ Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA (OJ L 123, 10.5.2019, p. 18).

⁹ Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law (OJ L 151, 21.5.2014, p. 1).

¹⁰ OJ L 89, 25.3.2014, p. 7.

¹¹ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

¹² Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17).

(j) tax crimes relating to direct taxes and indirect taxes and as defined in the national law of the Member States, which are punishable by deprivation of liberty or a detention order of at least one year.

(ja) illicit trafficking in nuclear or radioactive materials; (AMs 23, 144, 155)

(jb) crimes within the jurisdiction of the International Criminal Court; (AMs 24, 156, 141)

(jc) the unlawful seizure of aircraft or ships; (AMs 25, 150, 157)

(jd) sabotage; (AMs 26, 151)

(je) illicit trafficking in hormonal substances and other growth promoters; (AMs 143, 154)

(jf) arson; (AM149)

(jg) rape; (AM148)

(jh) swindling; (AMs 146, 147)

(ji) racism and xenophobia; (AM145)

3. [This Directive shall apply to the violation of Union restrictive measures as defined in the Directive of the European Parliament and of the Council].

4. This Directive shall apply to any other criminal offences set out in other Union legal acts if they provide specifically that this Directive applies to the criminal offences defined therein.

5. The provisions on tracing and identification of instrumentalities and proceeds, or property in Chapter II shall apply to all criminal offences as defined in national law which are punishable by deprivation of liberty or a detention order of at least one year.

Article 3

Definitions

For the purpose of this Directive, the following definitions apply:

(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;

(2) ‘property’ means property of any description, whether corporeal or incorporeal, movable or immovable, **including crypto-assets (AM162)** and legal documents or instruments **in any form**, evidencing title or interest in such property; **(AMs 27, JURI 15)**

(3) ‘instrumentalities’ means any property used or intended to be used, in any manner, wholly or partially, to commit a criminal offence;

(4) ‘tracing and identification’ means any investigation by competent authorities to determine instrumentalities, proceeds, or property that may be derived from criminal activities;

(5) ‘freezing’ means the temporary prohibition of the transfer, destruction, conversion, disposal or movement of property or temporarily assuming custody or control of property;

(6) ‘confiscation’ means a final deprivation of property ordered by a court in relation to a criminal offence;

(7) ‘SIENA’ means the secure information exchange network application, managed by Europol, aimed at facilitating the exchange of information between Member States and Europol;

(8) ‘criminal organisation’ means a criminal organisation as defined in Article 1 of the Council Framework Decision 2008/841/JHA;

(9) ‘victim’ means a victim as defined in Article 2(1), point (a), of Directive 2012/29/EU of the European Parliament and of the Council,¹³ as well as a legal person, as defined in national law, that has suffered harm as a result of any of the offences within the scope of this Directive;

(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;(AMs 165, JURI16)

(10) ‘beneficial owner’ means a beneficial owner as defined in Article 3, point (6), of Directive 2015/849/EU¹⁴;

(10a) ‘affected person’ means:

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

(b) a natural or legal person that owns property that is the object of a freezing order 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; (AM28)

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

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

(b) ascendants, descendants and siblings of the suspected, accused, or convicted persons or of the spouse or partner and the spouses and partners of these persons

(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 subparagraph 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 .

(11) ‘Union restrictive measures’ means measures adopted on the basis of Article 29 of the Treaty on European Union and Article 215 of the Treaty on the Functioning of the European Union;

¹³ Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

¹⁴ 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).

(12) ‘targeted financial sanctions’ means specific Union restrictive measures directed against certain persons or entities adopted on the basis of Article 29 of the Treaty on European Union and Article 215 of the Treaty on the Functioning of the European Union;

RELATED RECITALS

(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 (AM76)**, supporting effective investigations against criminal networks, eliminating proceeds from criminal activities, and making law enforcement and the judiciary fit for the digital age.

(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 (AM79)** means to effectively trace and identify, freeze, confiscate and manage the instrumentalities and proceeds of crime and property that stems from criminal activities.

2(a) new Criminal organisations usually reinvest part of their profits from criminal activities to create a financial base enabling them to continue those activities. (AM 80 part 1) In addition, criminal organisations often resort to violence, threat or intimidation in order to acquire 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. (AMs 92, 153) Organised crime has therefore become an economic worldwide operator with an entrepreneurial vocation and specialised in both legal and illegal supply of goods and services. (AMs 78, 111) Depriving criminals of these illicit profits is essential in order to disrupt their activities and to prevent them from infiltrating the legitimate economies. (AM 80 part 2)

2(b) new Economic and financial crime, in particular organised crime, often act 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. (AMs 119, 234, 239, 241, 263, 269)

(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. (AMs 1, 82)** 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.

(4) The current Union legal framework on tracing and identification, freezing, confiscation and management of proceeds, instrumentalities and property, and on asset recovery offices,

consists of Directive 2014/42/EU of the European Parliament and of the Council¹⁵, Council Decision 2007/845/JHA¹⁶ and Council Framework Decision 2005/212/JHA¹⁷. The Commission evaluated Directive 2014/42/EU and Council Decision 2007/845/JHA, concluding that the current framework has not fully achieved the policy objective of fighting organised crime through recovering its profits.

(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. ***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 as long as it is ensured that any procedure satisfies essential characteristics of a criminal procedure, in particular its safeguards. (AM84)*** 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.

(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.

(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

¹⁵ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

¹⁶ Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between asset recovery offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime (OJ L 332, 18.12.2007, p. 103).

¹⁷ Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (OJ L 68, 15.3.2005, p. 49).

Union restrictive measures and enhanced cross-border cooperation in investigations into possible criminal offences.

(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, *and the fleeting nature of criminal assets that can easily be moved or concealed (AM87)* cooperation with third countries should also be strengthened, *in full respect of fundamental rights. (AM88)*

(8a) There is a clear need for closer and more effective cooperation between all asset recovery authorities, including through the cooperation of asset recovery offices and asset management offices with their counterparts in other Member States. (AM89)

(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 components and ammunition, supplementing the United Nations Convention against transnational organized crime, to which the Union is party. (AM90)*~~ 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 , *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 (AM2)* 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 unauthorized entry and residence should be understood in the meaning of Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence and Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence. Council Framework Decision 2002/946/JHA provides for the possibility to accompany criminal penalties by 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.*

(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 (AM142)* 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. (AMs 93, JURI 3)*** 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 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^{18a}.***(AM3) ***In particular, this Directive should also apply to crimes within the jurisdiction of the International Criminal Court. (AM96)***

(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].

(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 (AMs 97, JURI 4)*** 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.

(13) 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, a broad definition of proceeds of crime should be provided for, to include the direct proceeds from criminal activity and all indirect benefits, including subsequent reinvestment or transformation of direct proceeds, in line with the definitions of Regulation (EU) 2018/1805 of the European Parliament and of the Council¹⁹. Thus proceeds should include any property

¹⁸ ***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)***

¹⁹ 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).

including that which has been transformed or converted, fully or in part, into other property, and that which has been intermingled with property acquired from legitimate sources, up to the assessed value of the intermingled proceeds. It should also include the income or other benefits derived from proceeds of crime, or from property into or with which such proceeds have been transformed, converted or intermingled.

COMPROMISE AM B: articles 4 to 10 (chapter II) and recitals 14 to 18

AMs Covered: 4 (Rapp), 5 (Rapp), JURI 5, JURI 19, JURI 20, JURI 21, JURI 22, JURI 23, JURI 24, BUDG 11, BUDG 22, BUDG 23, BUDG 24, BUDG 25, BUDG 27, BUDG 28, 29 (Rapp), 30 (Rapp), 32 (Rapp), 33 (Rapp), 34 (Rapp), 35 (Rapp), 36 (Rapp), 37 (Rapp), 38 (Rapp), 39 (Rapp), 40 (Rapp), 41 (Rapp), 42 (Rapp), 99 (S&D), 102 (Renew), 103 (Greens), 104 (Renew), 170 (Renew), 172 (S&D), 173 (Renew), 176 (Renew), 180 (Renew), 182 (Greens), 183 (Left), 187 (Renew), 188 (S&D), 189 (S&D), 190 (Renew), 191 (S&D), 192 (Renew), 193 (Renew), 194 (S&D), 195 (Greens), 197 (Renew), 198 (Renew), 199 (Greens), 201 (Renew), 202 (Greens), 204 (Renew), 206 (Greens), 207 (Renew), 208 (Left), 209 (Renew), 211 (Renew), 213 (Greens), 214 (Greens), 216 (Greens), 217 (ECR), 218 (Greens), 219 (Renew), 220 (Greens), 221 (S&D), 222 (EPP), 223 (Left), 224 (Renew), 225 (Renew)

AMs Falling: 31 (Rapp), 100 (Renew), 101 (S&D), 168 (Renew), 169 (Greens), 171 (ECR), 174 (S&D), 175 (Renew), 177 (Renew), 178 (Greens), 179 (Renew), 181 (Greens), 184 (S&D), 185 (Greens), 186 (Renew), 196 (Greens), 200 (Left), 203 (Renew), 205 (Greens), 210 (Greens), 212 (Greens), 215 (Left), JURI 18, BUDG 12, BUDG 26

CHAPTER II

TRACING AND IDENTIFICATION

Article 4

Asset tracing investigations

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 proceedings *in criminal matters*. (AM 29)

2. Asset tracing investigations pursuant to paragraph 1 shall be carried out immediately by competent authorities whenever an investigation is initiated in relation to a criminal offence which is likely to give rise to substantial economic benefit, or where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures.

2a. Asset tracing investigations pursuant to paragraph 1 shall be carried out also for the purposes of restitution and compensation to victims (AMs 172, JURI 19).

Article 5

Asset recovery offices

1. Each Member State shall set up at least one asset recovery office to facilitate cross-border cooperation in relation to asset tracing investigations.

2. Asset recovery offices shall have the following tasks:

(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; (AM176)

(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;

(c) cooperate and exchange information with other Member States asset recovery offices *and EPPO (AM180)* in the tracing and identification of instrumentalities and proceeds, or property which may become or is the object of a freezing or confiscation order;

(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.

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. (AM 30)

3. Asset recovery offices shall be empowered to trace and identify property of persons and entities subject to ~~EU targeted financial sanctions~~ *Union restrictive measures (AM182)* 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.

4. Member States shall enable asset recovery offices to take immediate action pursuant to Article 11 paragraph 2 where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures. Article 11 paragraph 5 shall apply mutatis mutandis.

Article 6

Access to information

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, in particular: (AM32)*

(a) direct and immediate access to: (AM33)

(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 ; (AMs 33, 188, 190)*
- (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) 2015/849 COM/2021/423];*
- (viii) national social security registers;
- (ix) *bank account registers, including information on wire-transfers and accounts balances;(AMs 33, 187)*
- (b) *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-assets²⁰ (AM192);*
 - (vii a) *information on relevant high-value goods or assets registers (AM189);*
 - (viii) *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).(AM193)*
 - (ix) *relevant information which is held by authorities competent for preventing, detecting, investigating or prosecuting criminal offences. (AMs 33, 34, 35, 36, 37, 38, 39)*

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 systematic and automatised manner in a streamlined and harmonized manner*~~ (AM197). *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.(AM40)*

²⁰ *Crypto-assets within the scope of the MiCA Regulation [Please insert the reference to the Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on Markets in Crypto-assets, and amending Directive (EU) 2019/1937]*

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. (AMs 41, 198)

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 to obtain a court order, if required by the relevant national law (JURI 21, JURI 22) and the guarantees provided under the Union data protection acquis (AM199)**

Article 7

Conditions for access to information by asset recovery offices

1. Access to information pursuant to Article 6 shall be performed only where necessary on a case-by-case basis **only when it is adequate, relevant and not excessive 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. (AMs 195, 201)**

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. (AM202)** Member States shall also ensure that staff of asset recovery offices have the necessary specialised skills and abilities to perform their roles effectively.

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.

Article 8

Monitoring access and searches by asset recovery offices

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: **(AM204)**

- (a) the national file reference;
 - (b) the date and time of the query or search;
 - (c) the type of data used to launch the query or search;
 - (d) the unique identifier of the results of the query or search;
 - (e) the name of the asset recovery office consulting the registry;
 - (f) the unique user identifier of the official who made the query or performed the search.
2. The logs referred to in paragraph 1 may be used only for data protection monitoring, including checking the lawfulness of data processing, and for ensuring data security and

integrity. The logs shall be protected by appropriate measures against unauthorised access and erased five years after their creation. If, however, they are required for monitoring procedures that are ongoing, they shall be erased once the monitoring procedures no longer require the logs.

Article 9

Exchange of information

1. 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)*. (AMs 206, 207, 208, 209)

Any personal data to be provided shall be determined on a case-by-case basis, in light of what is necessary for the performance of the tasks pursuant to Article 5.

2. When making a request pursuant to paragraph 1, the requesting asset recovery office shall, *in line with the principle of data minimization*, specify as precisely as possible the following: (AM211)

- (a) the object of the request;
- (b) the reasons for the request, including the relevance of the information requested for the tracing and identification of the property;
- (c) the nature of the proceedings;
- (d) the type of criminal offence for which the request is made;
- (e) the link of the proceedings to the requested Member State;
- (f) details on the property targeted or sought, such as bank accounts, real estate, vehicles, vessels, aircraft, companies and other high value items;
- (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*; (AM213)
- (h) where applicable, reasons for the urgency of the request.

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. (AM214)

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 this 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.* (AMs 216, JURI 23)

5. *Information under this Article shall be exchanged through SIENA or, where necessary on exceptional basis, through other secure channels* (AM217). Member States shall ensure that *their* asset recovery offices have direct access to SIENA.(AM42)

6. Asset recovery offices may refuse to provide information to the requesting asset recovery office if there are factual reasons to assume that the provision of information would:

(a) harm the fundamental national security interests of the requested Member State;

(b) jeopardise an ongoing investigation, or a criminal intelligence operation, or pose an imminent threat to the life or physical integrity of a person;

(c) 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. (AMs 218, 219, 220, 221, 222, 223, JURI 24)

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. (AM224)

Article 10

Time limits for provision of information

1. Member States shall ensure that asset recovery offices respond to requests for information pursuant to Article 9 paragraph 1, as soon as possible and in any event within the following time limits:

(a) seven calendar days, for all requests that are not urgent;

(b) eight hours, for urgent requests relating to information referred to in Article 6 (1), which is stored in databases and registers.

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. (AM225)

RELATED RECITALS

(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. *These may also include minimum thresholds for the value of instrumentalities, proceeds or property related to the criminal offence triggering the initiation of asset tracing investigations. (AM170) 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. (AM99)*

(15) Investigations to trace and identify property should also be launched where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures. For that purpose, asset recovery offices should be empowered to trace and identify property of persons or entities subject to targeted financial sanctions. Once property is identified asset recovery offices should have the power to temporarily freeze the property to ensure that property does not disappear.

(16) Due to the transnational nature of finances used by organised criminal groups, information that can lead to the identification of instrumentalities and proceeds of crime and other property owned or controlled by criminals or by persons or entities subject to Union restrictive measures should be exchanged rapidly between the Member States. For that purpose, it is necessary to empower asset recovery offices to trace and identify property which might be subsequently confiscated, to ensure they have access to the necessary information under clear conditions, and to establish rules on swiftly exchanging information with each other, spontaneously or upon request. In urgent cases where there is a risk of dissipation of the property, replies to information should be done as soon as possible and not later than 8 hours.

(17) In order to perform effective asset tracing investigations, and to swiftly respond to cross-border requests, asset recovery offices should have *direct* 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. *To the extent possible and where 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 fulfill their tasks under this Directive effectively. (AM4)* 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 Council²¹. 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 (AMs 173, 183, JURI 5, JURI 20, JURI 21)* 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. (AM102)* 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 Council²² and to beneficial ownership information pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council²³.

(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 Council²⁴, 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 *have direct* access *to* SIENA. (AM5)

COMPROMISE AM C: articles 11 to 14 (chapter III and recitals 19 to 25)

AMs Covered: 6 (Rapp), JURI 7, JURI 8, JURI 9, BUDG 13, 43 (Rapp), 44 (Rapp), 45 (Rapp), JURI 25, JURI 27, JURI 29, JURI 30, JURI 32, JURI 33, JURI 34, JURI 35, 107 (Greens), 108 (Greens), 109 (S&D), 110 (Greens), 226 (S&D), 227 (Greens), 229 (Renew), 230(Greens), 231 (ECR), 233 (Greens), 235 (Greens), 238(ECR) 240 (Greens), 243 (Greens), 244 (S&D), 245 (Greens), 246 (Greens), BUDG 29

AMs Falling: 46 (Rapp), 106 (S&D), 228 (Greens), 232 (Greens), 237 (Greens), 242 (Greens), 247 (Greens), JURI 26, JURI 28, JURI 31,

CHAPTER III FREEZING AND CONFISCATION

²¹ 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).

²² 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).

²³ 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).

²⁴ 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).

Article 11

Freezing

1. Member States shall take the necessary measures to enable the freezing of property necessary to ensure a possible confiscation of that property under Articles 12 to 16 (AM227) **and to ensure the right to restitution and compensation to victims according to the provisions of this Directive.** (AMs JURI 25, 226)

1.a Freezing measures shall consist of freezing orders and immediate action in the form of temporary urgent freezing measures. (AM43)

2. **Immediate action in the form of temporary urgent f**Freezing measures shall ~~include immediate action to~~ be taken when necessary in order to preserve the property **concerned.** (AMs 44, 229, JURI 27)

3. **Without prejudice to the powers of other competent authorities,** (AMs 230, 231) 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.

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.

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.**(AMs 233, JURI 29)

6. A freezing order 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 **to the owner of the property or to the person from whom the property was seized.** (AMs 235, JURI 30) The conditions or procedural rules under which such property is returned shall be determined by national law.

7. Where the property to be frozen consists of entities that should be preserved as a going concern, such as undertakings, the freezing order shall include measures to exclude access to this property by the persons owning or controlling them while allowing for continued operations.

Article 12

Confiscation

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.

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.(AM238)*

Article 13

Confiscation from a third party

1. Member States shall take the necessary measures to enable the confiscation of *instrumentalities and* proceeds, or other 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. (AMs 240, JURI 33)

The confiscation of those instrumentalities, proceeds or other property shall be enabled where a national court has established, based on concrete facts and circumstances, 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.(AM45)

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. (AMs 243, 244, JURI 34)*

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. (AMs 246, JURI 35)

Article 14

Extended confiscation

1. Member States shall take the necessary measures to enable the confiscation, either wholly or in part, of property belonging to a person convicted of a criminal offence where this offence is liable to give rise, directly or indirectly, to economic benefit, and where the national court is satisfied that the property is derived from criminal conduct.

2. In determining whether the property in question is derived from criminal conduct, 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 disproportionate to the lawful income of the convicted person.

RELATED RECITALS

(19) Freezing and confiscation under this Directive are autonomous concepts, which should not prevent Member States from implementing this Directive using instruments which, in accordance with national law, would be considered as sanctions or other types of measures.

(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 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.

(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~~ **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* (AMs 107, JURI 7)** in order to ensure that the purpose of preventing the dissipation of property remains valid.

(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.

(23) In addition to confiscation measures that allow authorities to deprive criminals of the proceeds or instrumentalities directly stemming from crimes, following a final conviction, it is necessary to enable confiscation of property of equivalent value to such proceeds or instrumentalities in order to capture property of equivalent value to the proceeds and instrumentalities of a crime, whenever it is impossible to locate such proceeds and instrumentalities. Member States are free to define the confiscation of property of equivalent value as subsidiary or alternative to direct confiscation, as appropriate in accordance with national law.

(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, ***on the basis of concrete facts and circumstances, a national court (AM110) has been established that the instrumentalities, proceeds or property to be confiscated are derived from or directly or indirectly linked to 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. (AM6)*** 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 front man, 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, in case 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. (AMs 109, 243, 244, JURI 9)

(25) Criminal organisations engage in a wide range of criminal activities. In order to effectively tackle organised criminal activities, there may be situations where it is appropriate that a criminal conviction for a criminal offence that is liable to give rise to economic benefits be followed by the confiscation not only of property associated with a specific crime, including proceeds of crime or its instrumentalities, but also of additional property which the court determines as being derived from criminal conduct.

COMPROMISE AM D: articles 15 and 16 (and recitals 26 to 28)
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<p>AMs Covered: 7 (Rapp), 8 (Rapp), JURI 11, JURI 36, JURI 37, JURI 39, JURI 40, JURI 43, JURI 44, 47 (Rapp), 48 (Rapp), 49 (Rapp), 112 (Greens), 114 (Renew), 115 (S&D), 116 (Greens), 249 (Greens), 253 (Greens), 254 (S&D), 255 (EPP), 259 (Greens), 260 (Greens), 261 (Greens), 267 (Greens), 268 (Renew), 270 (Greens)</p>
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<p>AMs Falling: 113 (EPP), 117 (Greens), 248 (S&D), 250 (Greens), 251 (Left), 252 (Left), 256 (Left), 257 (Greens), 258 (EPP), 262 (Greens), 264 (Greens), 265 (Greens), 266 (Greens), JURI 10, JURI 12, JURI 38, JURI 41, JURI 42</p>

Article 15

Non-conviction based confiscation

1. Member States shall take the necessary measures to enable, under the conditions set out in paragraph 2, the confiscation of instrumentalities and proceeds, or property as referred to in Article 12, or which was transferred to third parties as referred to in Article 13, in cases where criminal proceedings have been initiated but the proceedings could not be continued because of the following circumstances:

(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*;(AMs 249, JURI 36)

(b) absconding of the suspected or accused person;

(c) death of the suspected or accused person;

(d) immunity from prosecution of the suspected or accused person, as provided for under national *or international* law;(AMs 254, 255, JURI 37)

(e) amnesty granted to the suspected or accused person, as provided for under national law;

(f) the time limits prescribed by national law have expired, where such limits are not sufficiently long *and do not exceed 15 years* -to allow for the effective investigation and prosecution of the relevant criminal offences, ~~-not longer than 15 years-~~.(AMs 47, 259)

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 ~~has established (AM260)~~ 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.* (AM48) *The burden of proof shall lie with the prosecution.* (AMs JURI 39, 260)

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* (AMs 261, JURI 44) awarding access to the file and the right to be heard on issues of law and fact.

4. For the purposes of this Article, the notion of 'criminal offence' shall include offences listed in Article 2 when punishable by deprivation of liberty of a maximum of at least four years.

Article 16

Confiscation of unexplained wealth linked to criminal activities

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 (AM49) *which cannot be plausibly justified on the basis of lawful activities.* (AM268) *The burden of proof shall lie with the prosecution.* (AMs 267, JURI 43) ~~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.~~

~~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.~~

3. For the purposes of this Article, the notion of 'criminal offence' shall include offences referred to in Article 2 when punishable by deprivation of liberty of a maximum of at least four years.

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 (AM270)** awarding access to the file and the right to be heard on issues of law and fact.

RELATED RECITALS

(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 (AM115)** 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 15 years. (AM112) 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. (AM7)*** 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 (AM114) right of the defendant to be made aware of the proceeding and to be represented by a lawyer should not be affected.***

(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. (AMs 116, JURI 11)***

(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.(AM8)***

COMPROMISE AM E: articles 17 to 18b (and recital 28a to 28f)

AMs Covered: 9 (Rapp), 11 (Rapp), 12(Rapp), 13(Rapp), JURI 2, JURI 45, JURI 46, JURI 47, JURI 48, BUDG 1, BUDG 2, BUDG 4, BUDG 5, BUDG 6, BUDG 7, BUDG 9, BUDG 10, BUDG 30, BUDG 31, BUDG 32, BUDG 33, BUDG 34, 50 (Rapp), 51 (Rapp), 52 (Rapp), 53 (Rapp), 54 (Rapp), 55 (Rapp), 118 (Greens), 120 (Greens), 122 (S&D), 271 (Renew), 272 (Renew), 273 (S&D), 274 (EPP), 276 (Greens), 277 (Renew), 278 (EPP), 279 (Greens), 280 (S&D), 281 (Renew), 282 (S&D), 283 (Greens), 284 (Greens), 285 (S&D), 286 (S&D), 334 (Renew)

AMs Falling: 275 (Left)

Article 17

Effective confiscation and execution

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 the aim of victim compensation.(AM271)***

2. 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.(AM272)

3. Member States may conclude cost-sharing agreements with each-other on the execution of freezing and confiscation orders.(AM277)

~~2. Member States shall consider taking measures allowing confiscated property to be used for public interest or social purposes. (AM50)~~

Article 18

Victims compensation and restitution to victims (AMs 52, 280)

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 the confiscation measure. Member States shall pay particular attention to the victims' does not affect victims' rights to obtain compensation for their claims in cross-border cases. (AMs 53, 282)

Where, as a result of a criminal offence, a victim is entitled to 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.

Where it is not possible to restitute the property to the victim in accordance with paragraph 2, 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. (AMs 54, 55, 285, 286)

Article 18a

Further use of the confiscated property

1. Member States shall take the necessary (AMs 276, JURI 45) 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.

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. (AMs 51, 273, 274, 278)

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. (AMJURI 47)

Article 18b

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 has appropriate rights to participate in

the proceedings covered by this Directive, for instance as a civil party. (AMs 283, 284, JURI 48)

RELATED RECITALS

(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 possible to trace and identify such property. (AM9)

(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. (AMs 11, 118)

(28 c) 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 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 relaunching of the territories marked by the presence of organised crime. (AMs 12, 122)

(28 d) 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. (AM 13)

(28 e) 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 restrictive measures.

(28 f) 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.(AMs 120, 334, JURI47)

COMPROMISE AM F: articles 19 to 23 (Chapter IV and chapter V) and recitals (29) to (36)

AMs Covered: 10 (Rapp), 15 (Rapp), 56 (Rapp), 57 (Rapp), 58 (Rapp), 60 (Rapp), 61 (Rapp), , 121 (EPP), , 126 (Renew), 288 (EPP), 289 (Renew), 290 (Left), 292 (Greens), 293 (Greens), 294 (Greens), 295 (Left), 296 (Greens), 297 (Greens), 298 (Renew), 299 (Greens), 302 (Renew), 303 (Greens), 305 (EPP), 306 (Greens), 307 (Greens), JURI 50, JURI 56, JURI 58, JURI 61, JURI 13, JURI 53, JURI 54, JURI 55, JURI 56, JURI 57, JURI 59, BUDG 35, BUDG 36

AMs Falling: 14 (Rapp), 59 (Rapp), 123 (Greens), 124 (Left), 125 (S&D), 287 (Greens), 291 (Greens), 300 (Greens), 301 (S&D), 304 (Renew), 308 (Renew), JURI 49, JURI 51, JURI 52, JURI 60

**CHAPTER IV
MANAGEMENT**

Article 19

Asset management and pre-seizure planning

1. Member States shall ensure the efficient management of frozen and confiscated property until its disposal.
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~~ specific circumstances of a case would require foregoing such an assessment to be postponed. Any decision by the competent authorities to forego such an assessment shall be duly justified.*** (AMs 56, 288, JURI 50)
3. ***Member States may require the costs for the management of frozen property to be charged, at least partially, to the beneficial owner.*** (AMs 290, 296)

Article 20

Interlocutory sales

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:
 - (a) the property subject to freezing is perishable or ~~rapidly~~ (AM 57) depreciating;
 - (b) the storage or maintenance costs of the property are disproportionate to its ***market*** (JURI 53) value;

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

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 cases with duly justified circumstances***, Member States shall ensure that the owner of the property that may be subject to an interlocutory sale is notified and, ~~with the exception of cases of absconding or with duly justified circumstances where necessary, is~~ (AMs 58, 293) ***given the opportunity to be*** heard before the sale. The owner shall be given the possibility to request the sale of the property.

3. Earnings from interlocutory sales ~~should~~ ***shall*** (AMs 294, JURI56) 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.

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

Article 21

Asset management offices

1. Each Member State shall set up or designate at least one asset management office for the purpose of the management of frozen and confiscated property.

2. Asset management offices shall have the following tasks:

(a) to ensure the efficient management of frozen and confiscated property, either through directly managing frozen and confiscated property or through providing support and expertise to other competent authorities responsible for the management of frozen and confiscated property;

(b) to provide support with pre-seizure planning to the competent authorities responsible for the management of frozen and confiscated property;

(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 the areas of their competence*** (AM 297);

(d) to cooperate with other competent authorities responsible for the management of frozen and confiscated property in cross-border cases.

CHAPTER V

SAFEGUARDS

Article 22

Obligation to inform affected persons

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 rights and of the legal remedies available to that affected person pursuant to Article 23. (AMs 303, JURI58).* 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, (AM302) The affected persons shall also be informed of their

Article 23

Legal remedies

1. Member States shall ensure that the persons affected by the measures provided for under this Directive have the right to defence, to an effective remedy, and to a fair trial in order to uphold their rights.
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, (AM JURI 59)* to a judicial authority before it can be challenged before a court.
3. Where the suspected or accused person has absconded, Member States shall take all reasonable steps to ensure an effective possibility to exercise the right to challenge the confiscation order and shall require that the person concerned be summoned to the confiscation proceedings or that reasonable efforts be made to make the person aware of such proceedings.
4. Member States shall provide for the effective possibility for the person whose property is affected to challenge the confiscation order and the relevant circumstances of the case before a court, in accordance with procedures provided for in national law.

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. (AMs 60, 305, 306)*

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 (AM61)* from criminal conduct.

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 directly or indirectly derived from criminal conduct. (AMs 307, JURI61)*

5. When implementing this Directive, Member States shall provide that confiscation is not ordered to the extent it would be disproportionate to the offence committed or the accusation against the person concerned by the confiscation. When implementing this Directive, Member States shall provide that, in exceptional circumstances, confiscation is not ordered, insofar as it would, in accordance with national law, represent undue hardship for the affected person.
6. Member States shall provide for the effective possibility for the person whose property is affected to challenge an order pursuant to Article 20 to sell the property in question. Member States shall provide for the possibility that such an appeal has suspensory effect.
7. Third parties shall be entitled to claim title of ownership or other property rights including in the cases referred to in Article 13.
8. Persons whose property is affected by the measures provided for in this Directive shall have the right of access to a lawyer throughout the freezing and confiscation proceedings. The persons concerned shall be informed of that right.

RELATED RECITALS

- (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. (AMs 10, JURI13)***
- (30) In circumstances where the property frozen is perishable, rapidly depreciating, or whose maintenance costs are disproportionate to its expected value at the time of confiscation, or that is too difficult to administer or is easily replaceable, Member States should allow for the sale of this property. Before taking such a decision, the owner of the property should have the right to be heard. Member States should consider the possibility to charge the costs of the management of frozen property to the beneficial owner, for instance in alternative to the ordering of an interlocutory sale, and in case of final conviction. These rules, including the possibility for the costs for the management of frozen property to be charged to the beneficial owner, apply to property identified in the context of the implementation of Union restrictive measures to the extent that they have been frozen in relation to criminal charges, such as violation of Union restrictive measures.
- (31) Member States should set up asset management offices with the purpose of establishing specialised authorities tasked with the management of frozen and confiscated property in order to effectively manage the property frozen before confiscation and preserve its value, pending a final decision on the confiscation. Without prejudice to the Member States' internal administrative structures, asset management offices should either be the sole authority managing frozen or confiscated property, or should provide support to decentralised actors according to national management set-ups, and support relevant authorities with pre-seizure planning.
- (32) This Directive respects the fundamental rights and observes the principles recognized by the Charter of Fundamental Rights of the European Union ('the Charter') and the

European Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR'), as interpreted in the case-law of the European Court of Human Rights. This Directive should be implemented in accordance with those rights and principles.

- (33) Freezing and confiscation orders substantially affect the rights of suspected and accused persons, and in specific cases of third parties who are not being prosecuted. The Directive should provide for specific safeguards and judicial remedies in order to guarantee the protection of their fundamental rights in the implementation of this Directive in line with the right to a fair trial, the right to an effective remedy and the presumption of innocence as enshrined in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union.
- (34) Freezing, confiscation, and interlocutory sales orders should, *in principle*, be communicated to the affected ~~party~~ **person** (AM15) without delay, *except in circumstances wherein such communication can put at risk the confidentiality or integrity of a criminal investigation*. (AM126) 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.
- (35) When implementing this Directive, and in order to ensure the proportionality of confiscation measures, Member States should provide that confiscation of property is not ordered to the extent it would be disproportionate to the offence in question. Furthermore, Member States should provide for the possibility that, in exceptional circumstances, confiscation is not ordered, insofar as it would, in accordance with national law, represent undue hardship for the affected person, on the basis of the circumstances of the respective individual case which should be decisive. Such exceptional circumstances should be limited to cases where it would put the person concerned in a situation in which it would be very difficult for the affected person to survive and the circumstances of the respective individual case should be decisive.
- (36) This Directive should be implemented without prejudice to Directive 2010/64/EU of the European Parliament and of the Council¹, Directive 2012/13/EU of the European Parliament and of the Council², Directive 2012/29/EU of the European Parliament and of the Council³, Directive 2013/48/EU of the European Parliament and of the Council⁴, Directive (EU) 2016/343/EU of the European Parliament and of the Council⁵, Directive 2016/800/EU of the European Parliament and of the Council⁶ and Directive (EU) 2016/1919 of the European Parliament and of the Council.⁷

COMPROMISE AM G: articles 24 to 27 (Chapter VI) and recitals (37) to (43)
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AMs Covered: 16 (Rapp), 17 (Rapp), 62 (Rapp), 63 (Rapp), 64 (Rapp), 65 (Rapp), 66 (Rapp), 67 (Rapp), 68 (Rapp), 69 (Rapp), 70 (Rapp), 71 (Rapp), JURI 6, JURI 62, JURI 63, JURI 64, JURI 65, JURI 66, BUDG 14, BUDG 15, BUDG 16, BUDG 37, BUDG 38, BUDG 39, BUDG 40, BUDG 41, BUDG 42, 105 (Greens), 127 (Greens), 128 (Renew), 309 (Greens), 310 (S&D), 311 (Renew),
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312 (Renew), 313 (Greens), 314 (Greens), 315 (Greens), 316 (Greens), 317 (Renew), 321 (Renew), 322 (Renew), 323 (Greens), 324 (Greens), 325 (Greens), 326 (Renew), 327 (Left), 328 (Left), 329 (Renew), 330 (S&D), 331 (Renew), 332 (Greens), 333 (Greens), 335 (Renew), 336 (Renew), 337 (Renew), 338 (Renew), 339 (Greens), 340 (Greens), 341 (Greens), 342 (Greens), 343 (Greens), 344 (Greens), 345 (Greens), 347 (Greens)

AMs Falling: 67 (Rapp), 318 (Greens), 319 (Greens), 320 (Greens), 346 (Greens), 348 (Greens)

CHAPTER VI ASSET RECOVERY STRATEGIC FRAMEWORK

Article 24

National strategy on asset recovery

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. (AMs 309, 310)

2. The strategy shall include at least the following elements:

(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; (AMs 63, 311)

(b) a governance framework to achieve the strategic objectives and priorities, including *an effective cooperation framework between asset recovery offices 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*; (AMs 64, 312)

(c) appropriate mechanisms for coordination and cooperation at strategic and operational levels among all competent authorities *including the relevant Union agencies and bodies* ; (AM 315)

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

(e) procedures for regular monitoring and evaluation of the results achieved;

(f) *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* ; (AMs 313, 317, 316)

(g) *measures to be taken to ensure that the confiscated property is used to compensate the victims*; (AMs 314, JURI 62)

~~*For the purposes of the first subparagraph, point (b), Member States shall also duly assess the possibility and potential benefits of bringing their asset recovery and asset management offices under a single legal and organisational structure. (AM 67)*~~

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

Article 25

Resources

Member States shall ensure that asset recovery offices and asset management offices performing tasks pursuant to this Directive, have appropriately qualified ~~and continuously trained staff~~ and appropriate financial, technical and technological resources necessary for the effective performance of their functions related to the implementation of this Directive. (AM 323). *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 are provided at regular intervals. (AMs 324, JURI 66) In addition to their obligations under point (c) of Article 24(2), Member States shall update the Commission annually on the resources allocated to asset recovery offices and asset management offices. (AMs 321, 322)*

Article 26

Establishment of centralised registries of frozen and confiscated property

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. (AM326)*
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.
3. The following information shall be entered, accessible and searchable through the centralised registries referred to in paragraph 1:
 - (a) the property subject to a freezing or confiscation order, including details that enable the identification of the property;
 - (b) the estimated or actual value of the property at the moment of the freezing ~~confiscation and disposal~~; (AM68)
 - (c) the owner of the property, including the beneficial owner, where such information is available;
 - (d) the national file reference of the proceeding related to the property;
 - (e) the name of the authority entering the information in the registry;
 - (f) the unique user identifier of the official who entered the information in the registry.
4. The information referred to in paragraph 3 shall only be retained for as long as it is necessary for the purposes of keeping a record and overview of the property frozen, confiscated, or under management, and in any case it shall not be retained for longer than after its disposal, or to provide annual statistics as referred in Article 27.

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. (AMs 325, 327)

5. Member States shall ensure that appropriate technical and organisational measures are in place to ensure the security of the data contained in the centralised registries of frozen and confiscated property.

6. 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. (AMs 69, 328, 329, 330, 331, 332)

7. 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 XXX/XXX [please insert the reference to Regulation 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 and Directive XX/XXX? (Digitalisation of judicial cooperation package)].(AM333)

Article 27

Statistics

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. (AMs 70, 335)**

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 be sent to the Commission each year and shall include for all criminal offences at least the following:~~** (AMs 71, 336, 339)

(-a) the number of asset tracing investigations launched, and the number of asset traced; (AM340)

(a) the number of freezing orders initiated and number of freezing orders executed; (AM 341)

(b) the number of confiscation orders executed broken down by type of confiscation referred to in Articles 12 to 16; (AMs 342, 343)

(c) the value of property frozen;

(d) 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;

- (e) the number of requests for freezing orders to be executed in another Member State;*
- (f) the number of requests for confiscation orders to be executed in another Member State;*
- (g) the value of the property recovered following execution of a confiscation order in another Member State;*
- (h) the value of the property destined to be reused for law enforcement, prevention or social purposes as referred to in Article 18a;*
- ~~*(i) the number of cases in which confiscation was ordered in correlation with the number of convictions for the criminal offences covered by this Directive;*~~
- ~~*(j) the number of requests for freezing and confiscation orders rejected by the courts;*~~
- (k) the manner in which the property has been used ; and*
- (l) for the confiscation orders included in a respective annual report, the length of the procedure from freezing to final disposal (AM345)*

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.

RELATED RECITALS

- (37) It is particularly important that the protection of personal data, in accordance with Union law, is ensured in connection to processing of data under this Directive. To that aim, the rules of this Directive should be aligned with Directive (EU) 2016/680. In particular, it should be specified that any personal data exchanged by Asset Recovery Offices is to remain limited to the categories of data listed in Section B point 2, of Annex II to Regulation (EU) 2016/794 of the European Parliament and of the Council. Directive (EU) 2016/680 of the European Parliament and of the Council applies to the processing of personal data by national competent authorities, notably asset recovery offices, for the purposes of this Directive.
- (38) It is particularly important that the protection of personal data, in accordance with Union law, is ensured in connection to all exchanges of information under this Directive. To that aim, insofar as the processing of personal data for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties is concerned, data protection rules as set out in Directive (EU) 2016/680 are applicable in relation to measures taken under this Directive. Where relevant, notably having regard to the processing of personal data by asset management offices for the purpose of the management of property, the data protection rules set out in Regulation (EU) 2016/679 of the European Parliament and of the Council are applicable.
- (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 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. (AMs 16, 127)

- (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.*** (AM128)
- (40) In order to evaluate the effectiveness and efficiency of the asset recovery, asset management and confiscation framework, it is necessary to collect and publish a comparable set of statistical data on freezing, management and confiscation of property.
- (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.*** (AM17)
- (42) It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making⁸. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

- (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.

COMPROMISE AM H: new article 27a to 37 (Chapters VII and VIII) and recitals (43a) to (51)

AMs Covered: 18 (Rapp), 19 (Rapp), 20 (Rapp), 21 (Rapp), 22 (Rapp), 72 (Rapp), 73 (Rapp), 74 (Rapp), 75 (Rapp), BUDG 17, BUDG 38, BUDG 43, 129 (Renew), 349 (Renew), 351 (Renew), 352 (Renew), 353 (Renew), 354 (Renew), 355 (Left), 359 (Greens), 362 (Greens), 365 (Greens), 366 (S&D)

AMs Falling: 130 (Renew), 131 (Renew), 350 (Renew), 356 (Greens), 357 (Greens), 358 (Greens), 360 (Renew), 361 (Greens), 363 (Left), 364 (Greens)

CHAPTER VII COOPERATION

Article 27a (new)

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 ~~in relation to the implementation of this Directive~~ and to facilitate the exchange of best practices, ~~enhance and operational cooperation and the exchange of information~~ 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 ~~information and~~ best practices to improve cooperation with third countries;*
- (d) *~~enhance facilitate operational cooperation and the exchange of information 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. (AMs 72, 349, 359)

Article 28

Cooperation with EU bodies and agencies

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 ~~for which 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 should 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 fulfil the obligations under the EPPO 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. (AMs 352, 353)*

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* (AM73), and where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures.

3. *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. (AM74)*

Article 29

Cooperation with third countries

1. Member States shall ensure that asset recovery offices cooperate with their counterparts in third countries to the greatest extent possible, and subject to the applicable data protection legal framework, for the purposes of performing the tasks pursuant to Article 5, and where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures.

2. Member States shall ensure that asset management offices cooperate with their counterparts in third countries to the greatest extent possible for the purposes of performing the tasks pursuant to Article 21.

CHAPTER VIII

FINAL PROVISIONS

Article 30

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 27 shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of this Directive].

3. The delegation of power referred to in Article 27 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

6. A delegated act adopted pursuant to Article 27 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Article 31

Designated competent authorities and contact points

1. Member States shall inform the Commission about the authority or authorities designated to carry out the tasks pursuant to Articles 5 and 21.

2. Where a Member State has more than two authorities charged with the tasks pursuant to Articles 5 and 21, it shall nominate a maximum of two contact points to facilitate cooperation in cross-border cases.

3. By [... *months after the entry into force of this Directive*] at the latest, Member States shall notify the Commission of the competent authority or authorities as well as the contact points referred to in paragraphs 1 and 2 respectively.

4. By [...*months after the entry into force of this Directive*] at the latest, the Commission shall set up an online register listing all competent authorities and the designated contact point for each competent authority. The Commission shall publish and regularly update on its website the list of authorities referred to in paragraph 1.

Article 32

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*date of entry into force + 1 year*]. They shall forthwith transmit to the Commission the text of those provisions.

2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 33

Reporting

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. ***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.(AM75)***

2. The Commission shall, by [*date of entry into force + 4 (AMs 365, 366) 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.

Article 34

Relation with other instruments

1. This Directive is without prejudice to Directive 2019/1153/EU of the European Parliament and of the Council²⁵.

Article 35

Replacement of Joint Action 98/699/JHA, Framework Decision 2001/500/JHA and 2005/212/JHA, Decision 2007/845/JHA and Directive 2014/42/EU

1. Joint Action 98/699/JHA, Framework Decisions 2001/500/JHA and 2005/212/JHA, Decision 2007/845/JHA and Directive 2014/42/EU are replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the date for transposition of those instruments into national law.
2. With regard to the Member States bound by this Directive, references to instruments referred to in paragraph 1 shall be construed as references to this Directive.

Article 36

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 37

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.

Done at Brussels,

2022/0167 (COD)

RELATED RECITALS

- (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. (AMs 18, 129)*
- (44) Organised criminal groups operate across borders and increasingly acquire property in Member States other than those in which they are based and in third countries. Given the transnational dimension of organised crime, international cooperation is of the

²⁵ 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).

essence to recover the profits and confiscate the financial assets that allow criminals to operate. Member States should therefore ensure that both asset recovery and asset management offices cooperate closely with their counterparts in third countries to trace, identify and manage instrumentalities and proceeds, or property which may become or is the object of a freezing or confiscation order within the framework of proceedings in criminal matters. Moreover, for the effective implementation of Union restrictive measures, it is of paramount importance for asset recovery offices to cooperate with their counterparts in third countries where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures. In that regard, Member States should ensure that asset recovery offices establish working arrangements with their counterparts in those third countries with which there is an operational cooperation agreement in place that allows for the exchange of operational personal data with Europol or Eurojust.

- (45) Asset recovery offices should also closely cooperate with ~~EU~~ **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 that participate in the enhanced cooperation on the establishment of the EPPO. Asset recovery offices should therefore fulfil the obligations under the EPPO 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. In light of their duties established in Article 105 [EPPO Regulation] 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 cooperate with EPPO in the same manner as an asset recovery office of any other participating Member State in so far as it 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. (AMs 19, 352, 353)
- (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 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 the investigation and prosecution of criminal offences related to the violation of Union restrictive measures.*(AM20)
- (46) In order to ensure that there is a common understanding and minimum standards for asset tracing and identification, freezing and management, this Directive should lay down minimum rules for the relevant measures as well as related safeguards. The

adoption of minimum rules does not prevent Member States from granting more extensive powers to asset recovery offices or to asset management offices, or to provide for additional safeguards under national law, provided that such national measures and provisions do not undermine the objective of this Directive.

- (47) Since the objective of this Directive, namely facilitating confiscation of property *in proceedings (AM21)* 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.
- (48) As this Directive provides for a comprehensive set of rules, which would overlap with already existing legal instruments, it should replace Council Joint Action 98/699/JHA⁹, Council Framework Decision 2001/500/JHA¹⁰, Framework Decision 2005/212/JHA, Decision 2007/845/JHA, and Directive 2014/42/EU with regard to the Member States bound by this Directive.
- (49) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and to the Treaty of the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (50) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Directive.]
[or] [In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Directive and is not bound by it or subject to its application.]
- (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. (AM22)*