

2022/0167 (COD)

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on asset recovery and confiscation**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2), Article 83(1) and (2) and Article 87(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> OJ C , , p. .

Whereas:

- (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 information exchange, 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 means to effectively trace and identify, freeze, confiscate and manage the instrumentalities and proceeds of crime and property that stems from criminal activities.
- (2a) Criminal organisations usually reinvest part of their profits from criminal activities to create a financial base enabling them to continue those activities. In addition, criminal organisations often resort to violence, threats or intimidation, as well as corruption, in order to acquire the control of companies, obtain concessions, authorisations, tenders or grants, or to achieve illicit profits or advantages and to infiltrate key infrastructures such as logistic hubs. Thereby those groups adversely affect the freedom of competition, or influence decisions of public authorities, threatening the rule of law and democracy. Organised crime has become an economic worldwide operator with an entrepreneurial aim. Depriving criminals of illicit profits is essential in order to disrupt their activities and to prevent them from infiltrating the legitimate economies.

- (2b) Economic and financial crime, in particular organised crime, often operates 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 may be issued also against legal persons in accordance with national law.
- (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 the issuing of a confiscation order within the framework of proceedings in criminal matters. An effective asset recovery system further requires the effective management of frozen and confiscated property to maintain its value for the State or for the restitution for victims.
- (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 Council<sup>2</sup>, Council Decision 2007/845/JHA<sup>3</sup> and Council Framework Decision 2005/212/JHA<sup>4</sup>. 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.

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<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</sup> 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).

- (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 Directive is without prejudice to the procedures that Member States may use to freeze and confiscate the property. 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 until its disposal based on a final confiscation order, 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.

[...]

- (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 organised crime, and its capacity to transfer criminal assets quickly across borders, cooperation with third countries should also be strengthened within the international legal framework.

[...]

- (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) of the TFEU. In addition to the crimes listed in Article 83(1), the scope of the Directive should also cover all crimes that are harmonised at EU level, including frauds against the financial interests of the European Union in light of the increasing involvement of organised criminal groups in such crime area. The scope of the Directive should further include environmental crimes, which are a core business for organised criminal groups and are often connected to money laundering or concern waste and residues produced in the context of drug production and trafficking. The facilitation of unauthorised entry and residence constitute a core business for organised criminal groups and is typically connected to the trafficking in human beings. The criminal offence of facilitating unauthorised entry and residence should be understood within the meaning of Council Directive 2002/90/EC of 28 November 2002<sup>5</sup> and Council Framework Decision 2002/946/JHA of 28 November 2002<sup>6</sup>. Council Framework Decision 2002/946/JHA provides for the possibility to accompany criminal penalties with the confiscation of the means of transport used to commit the offence, while clearly setting out at the same time that its provisions apply without prejudice to the protection afforded to refugees and asylum seekers in order to provide humanitarian assistance in accordance with international law.

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<sup>5</sup> Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17).

<sup>6</sup> Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1).

- (10) Apart from the offence of mere participation in a criminal organisation as defined in Article 2 of Council Framework Decision 2008/841/JHA, other crimes, as referred to in Article 1(1) Council Framework Decision 2008/841/JHA and as defined in the national law of the Member States, should be included in the scope of the Directive to the extent to which they are committed within the framework of a criminal organisation, as referred to in Article 1(1) of the of Council Framework and as defined in national law, with a view to capture illicit gain stemming from criminal activities typically carried out by criminal organisations. Member States are in this sense in particular encouraged to ensure that the crimes of counterfeiting and piracy of products, illicit trafficking in cultural goods, forgery of administrative documents and trafficking therein, murder or grievous bodily injury, illicit trade in human organs and tissue, kidnapping, illegal restraint or hostage-taking, organised or armed robbery, racketeering and extortion, trafficking in stolen vehicles, tax crimes relating to direct taxes and indirect taxes, arson, fraud and swindling, illicit trafficking in nuclear or radioactive materials and crimes which fall within the jurisdiction of the International Criminal Court are included in the scope of the Directive. This Directive does however not oblige a Member State to introduce or maintain any offence.
- (11) In order to ensure the effective implementation of Union restrictive measures, it is necessary to extend the scope of the Directive to criminal offences covered by the Directive of the European Parliament and of the Council on the definition of criminal offences and penalties for 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 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 Council<sup>7</sup>. Thus proceeds should include any property 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.

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<sup>7</sup> Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ L 303, 28.11.2018, p. 1).

(14) 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, thereby facilitating cross-border cooperation. 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. When determining whether the economic benefits are likely to be substantial, Member States may set minimum thresholds for the value of the expected proceeds or allow for a case-by-case assessment by competent authorities. In order to allow for sufficient flexibility in the launching of financial investigations, Member States may limit the scope to investigations into offences likely to have been committed within the framework of a criminal organisation. For the purpose of ensuring effective financial investigations, Member States should provide the necessary financial, technical and human resources.

[...]

(15a) To ensure the effective application of Union restrictive measures, the Union has established common minimum rules concerning the definitions of criminal conduct violating prohibitions and obligations included in Union restrictive measures. In order to facilitate the detection of criminal offences related to the new offence of violation of restrictive measures it is important to empower asset recovery offices to trace and identify property of persons and entities subject to restrictive measures, upon a request of national competent authorities based on indications and reasonable grounds to believe that such criminal offences have been committed. These powers should be without prejudice to the procedural requirements and safeguards established under national procedural law, including the rules on the initiation of criminal proceedings or, where necessary, the requirement to obtain a judicial authorisation.

- (15b) Considering that the effective tracing and identification of property might require tracing and identifying measures which would require the intervention of other authorities, it is important that asset recovery offices can request the relevant authorities to cooperate. The conditions for such requests would be subject to national law. Member States may include representatives from both law enforcement and judicial authorities in the staff of their asset recovery offices or may establish asset recovery offices both within the law enforcement and the judiciary.
- (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 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. The requirement for asset recovery offices to trace and identify instrumentalities, proceeds, or property which may become or is the object of a freezing or confiscation order issued by another Member State aims at facilitating the preparation or execution of freezing orders from other Member States, but does not imply an obligation to recognise such orders pursuant to Regulation (EU) 2018/1805.

(17) In order to perform effective asset tracing investigations, and to swiftly respond to cross-border requests, asset recovery offices should have access to the information that is necessary 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 immediate and direct access to relevant data such as real estate information, national citizenship and population registries, commercial databases and vehicle databases in addition to the access that asset recovery offices should have to bank account information pursuant to Directive (EU) 2019/1153 of the European Parliament and of the Council<sup>8</sup> and to beneficial ownership information pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council<sup>9</sup>. Access and searches shall be considered to be direct and immediate, inter alia, where the national authorities operating a registry transmit information expeditiously by an automated mechanism to competent authorities, provided that no intermediary institution is able to interfere with the requested data or the information to be provided. Moreover, Member States shall ensure that asset recovery offices have swift access, either directly and immediately or upon request, to other information which can be of value to identify relevant property, such as information on mortgages and loans, customs data or information on wire-transfers and accounts balances, as well as fiscal data, social security data and law enforcement information. As regard fiscal data, national social security data and law enforcement information, Member States may decide to give asset recovery offices access to this information on the basis of reasoned requests, and may enable the authorities holding such information to deny access to it under certain conditions, in order to ensure the integrity of investigations, the confidentiality of information provided by another Member State or third country as well as the proportionality of the requests in relation to the legitimate interests of a natural or legal person. Access to information should be subject to specific safeguards that prevent the misuse of the access rights. These safeguards complement the requirements to provide for logs of searches and access to information pursuant to Article 25 of Directive (EU) 2016/680 of the European Parliament and of the Council<sup>10</sup>. The access to this information does not prevent Member States from making access subject to procedural safeguards as established under national law while taking due account of the need for asset recovery

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<sup>8</sup> Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA, (OJ L 186, 11.7.2019, p. 122).

<sup>9</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 (OJ L 141 5.6.2015, p. 73).

offices to be able to swiftly reply to cross-border requests. The implementation of procedural safeguards should not affect the ability of asset recovery offices to respond to requests from other Member States, especially in case of urgent requests.

- (18) To ensure the security of the information shared between asset recovery offices, all asset recovery offices should be able to directly access the Secure Information Exchange Network Application (SIENA), managed by Europol in accordance with Regulation (EU) 2016/794 of the European Parliament and of the Council<sup>1</sup>. The SIENA system or, where necessary on an exceptional basis, other secure channels should be used for all communications among asset recovery offices under this Directive. It may be necessary to use another secure channel in exceptional cases for instance where the urgency of the request requires the temporary use of another communication channel or where the exchange of information requires the involvement of third countries or international organisations or there are objective reasons to believe that such involvement will be required at a later stage. The reference to the SIENA system should be read as applying also to its successor, if the SIENA system is later replaced.
- (18a) Considering the speed at which criminals transfer across jurisdictions Member States shall ensure that asset recovery offices exchange swiftly information necessary for the performance of their tasks. In exceptional cases, it might be objectively justified for asset recovery offices to refuse to provide information to another requesting asset recovery office if it would harm national security interests of the requested Member State, jeopardise ongoing investigations or criminal intelligence operations, pose an imminent threat to the life or physical integrity of a person or if it would clearly be disproportionate or irrelevant with regard to the purposes of which the information has been requested. When assessing the compliance with the principles of necessity and proportionality, asset recovery offices should exercise due diligence, including with regard to the respect of fundamental rights.

- (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, the competent authorities in the Member States, which may include asset recovery offices, should be empowered to take immediate action, which can take the form of an order, in order to secure such property until a freezing order has been issued. Given the exceptional nature of such action, Member States should limit its temporary validity.
- (20a) In cases where the competent authorities are not able to take immediate action, Member States should allow asset recovery offices to take such action. Such action may in particular be necessary where an asset recovery office has, following a request from an asset recovery office in another Member State traced and identified assets that can disappear very quickly, such as crypto assets, and where the competent authorities in the requested Member States are not able to take immediate action in the absence of a criminal investigation in that Member State. Asset recovery offices should be able to secure the assets until a European freezing order pursuant to Regulation (EU) 2018/1805 can be issued.
- [...]
- (21) Given the interference in the right to property caused by freezing orders, such provisional measures should not be maintained longer than necessary to preserve the availability of the property with a view to possible subsequent confiscation. This may require a review by the national court in order to ensure that the purpose of preventing the dissipation of property remains valid.

(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, subject to 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 confiscate such proceeds and instrumentalities. Member States are free to define the confiscation of property of equivalent value as subsidiary or alternative to confiscation of proceeds and instrumentalities, as appropriate in accordance with national law.

(23a) When implementing this Directive in respect of confiscation of property the value of which corresponds to instrumentalities, the relevant provisions could be applicable where, in view of the particular circumstances of the case at hand, such a measure is proportionate, having regard in particular to the value of the instrumentalities concerned. Member States may also take into account whether and to what extent the convicted person is responsible for making the confiscation of the instrumentalities impossible.

- (24) The practice by a suspected or accused person of transferring property or proceeds to a knowing third party with a view to avoiding confiscation is common and widespread. Acquisition by a third party refers to situations where, for example, property has been acquired, directly or indirectly, for example through an intermediary, by the third party from a suspected or accused person, including when the criminal offence has been committed on their behalf or for their benefit, and when an accused person does not have property that can be confiscated. Such confiscation should be possible at least in cases where it has been established that third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer was carried out free of charge or in exchange for an amount significantly disproportionate to the market value, that the property was transferred to closely related parties or that it remained under the effective control of the suspected or accused person. Transfers to closely related parties to the suspected or accused person could include transfers to family members or to natural persons who have legal arrangements, or any other close business relations, with the suspected or accused person; or to legal entities in which the suspected or accused person or a family member sits in the administrative, management or supervisory bodies. The rules on third party confiscation should extend to both natural and legal persons, without prejudice to the right of third parties to be heard, including the right to claim ownership of the property concerned. In any event, the rights of bona fide third parties should be protected in accordance with national law.

[...]

- (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. Such extended confiscation should be possible where a court is satisfied that the property in question is derived from criminal conduct, while there is no requirement of a conviction for such criminal conduct. The relevant conduct could consist of any type of offence. Individual offences do not have to be proven, but the court must be satisfied that the property in question is derived from such conduct. In this context, the court has to consider the specific circumstances of the case, including the facts and available evidence based on which a decision on extended confiscation could be issued. The fact that the property of the person is disproportionate to his lawful income could be among those facts giving rise to a conclusion of the court that the property derives from criminal conduct. Member States could also determine a requirement for a certain period of time during which the property could be deemed to have originated from criminal conduct.
- (26) Confiscation should also be possible where a final conviction is not possible because of illness, absconding or death of the suspected or accused person. The same should be possible where the limitation periods prescribed under national law for the relevant offences are below 15 years and have expired after the criminal proceedings have been initiated. Confiscation in such cases should only be allowed where the criminal proceedings could have led to a final criminal conviction should the circumstances above not have existed at least for offences liable to give rise, directly or indirectly, to substantial economic benefit, and where the court is satisfied that the instrumentalities, proceeds or property to be confiscated are derived from or directly or indirectly linked to the criminal offence. In cases of illness and absconding, the existence of proceedings in absentia in Member States would be sufficient to comply with the obligation to enable confiscation as set out in the first sentence. It is important to recall that international bodies have indicated the potential of the confiscation in absence of a conviction to address the obstacles to confiscation of illicit gains due to immunity and amnesty.

- (27) For the purposes of this Directive, illness should be understood to mean the inability of the suspected or accused person to attend the criminal proceedings for an extended period, as a result of which there is a risk that time limits laid down in national law for criminal liability expire the proceedings cannot continue.
- (28) In situations where the confiscation measures of Article 12 to 15 are not applied for legal or factual reasons determined by national law, it should still be possible to confiscate property that has been identified or, where the national legal system requires freezing, frozen in the context of an investigation in relation to a criminal offence based on indications that the property could be derived from criminal conduct. Such property should be confiscated where the court is satisfied that the property is derived from criminal conduct committed within the framework of a criminal organisation and where this conduct is liable to give rise, directly or indirectly, to substantial economic benefit. When determining whether criminal conduct is liable to give rise to substantial economic benefit, Member States may take into account all relevant circumstances, including the *modus operandi*, for example if a condition of the offence is that it was committed in the context of organised crime or with the intention of generating regular profits from criminal offences. Member States should enable confiscation of such unexplained wealth when the investigation in which the property was identified concerns an offence falling within the scope of this Directive that is punishable by deprivation of liberty of a maximum of at least four years. This condition ensures that the possibility of confiscation of unexplained wealth arises in criminal investigations into offences that meet a certain threshold of seriousness.
- (28a) When applying the national rules implementing this Directive, the competent national authorities may not order or not execute confiscation of unexplained wealth when in the individual case the application of the rules set out in the Directive would be manifestly unreasonable or disproportionate. Member States could also determine a requirement for a certain period of time during which the property could be deemed to have originated from such criminal conduct. Member States should ensure that the appropriate procedural rights of the affected person are respected. The rights of bona fide third parties should be protected in accordance with national law.

- (28b) While it should not be a precondition for the confiscation of unexplained wealth that individual offences be proven, there must be sufficient facts and circumstances for the court to be satisfied that the property in question is derived from criminal offences. The relevant conduct could consist of any type of offence committed within the framework of a criminal organisation and liable to give rise to substantial economic benefit, thus being serious in nature. When determining whether the property should be confiscated, the national courts should take into account all relevant circumstances of the case, including the available evidence and specific facts, such as that the value of the property is substantially disproportionate to the lawful income of the person. Another circumstance that could be considered is the absence of a plausible licit source of the property, as the provenance of lawfully acquired property can normally be accounted for. The person's connection to activities of a criminal organisation could also be of relevance. Also, other circumstances such as the situation in which the property was found or indications of participation in criminal activities might be taken into account. The assessment should be made on a case-by-case basis depending on the circumstances of the case. Member States may decide to allow for confiscation of unexplained wealth when criminal proceedings are discontinued or to be ordered separately from criminal proceedings into the offence.
- (28c) The Directive does not prevent Member States from adopting measures enabling the confiscation of unexplained wealth for other crimes or circumstances. Viewing that the subject matter of the Directive is limited to proceedings in criminal matters, the Directive, does not apply to confiscation measures in proceedings in civil matters, that Member States might have implemented.
- (28ca) Tracing and identification of property to be frozen and confiscated should be possible even after a final conviction for a criminal offence, or following proceedings in application of non-conviction based confiscation. This obligation does not prevent Member States from setting out reasonable time limits after the final conviction or final decision in the proceedings in application of non-conviction based confiscation, following expiration of which tracing and identification would no longer be possible.

[...]

- (28i) Considering that criminal activities can inflict great harm on the victims, it is essential to protect their rights, including the rights to compensation and restitution. Therefore, Member States should take the appropriate measures to ensure that victims' claims to restitution and compensation against the person who is subject to a confiscation measure as a result of a criminal offence are taken into account in asset tracing, freezing and confiscation proceedings, including in cross-border cases. Moreover, in order to facilitate the compensation and restitution of property to victims, it is necessary to facilitate the tracing of property that may become object of such claims as well as the information exchange between authorities competent for asset tracing and authorities competent for deciding upon or executing victim claims.
- (28j) The social reuse of confiscated property sends a visible message to society of the importance of values such as justice and legality, reaffirms the prevalence of the rule of law in the communities more directly affected by organised crime, and builds the resilience of those communities against criminal infiltration in the social and economic fabric, as observed in the Member States which have already adopted such measures. Therefore, Member States are encouraged to take the necessary measures to allow for the possibility that confiscated property is used for public interest or social purposes, so that confiscated property can be maintained as State property for justice, law enforcement, public service, social or economic purposes or be transferred to the authorities from the municipality or region where the property is located so that these authorities can use it for such purposes, including for assignment to organisations carrying out work of social interest. The use of confiscated property to such purposes is without prejudice to the budgetary autonomy of Member States.

[...]

- (28m) Member States could also use the confiscated property to contribute to mechanisms to support States affected by situations in response to which the Union restrictive measures have been adopted insofar as the offence committed is directly or indirectly linked to that situation. The Commission should facilitate cooperation between Member States and with third countries and could provide guidance on the most effective procedures and financial mechanisms available to support such countries with a view to promote the use of confiscated instrumentalities, proceeds and property for this purpose.
- (28n) Member States are encouraged to take appropriate measures to prevent the property from being acquired, directly or indirectly, in the course of its disposal upon a binding confiscation order by persons convicted in the criminal proceedings in which the property has been frozen. Such measures, which may be limited to property above a certain value, may include the exclusion of certain types of entities from participating in the auction of the property, requiring documentation from the buyer or assessing any links of the buyer with the convicted person. Member States may apply such measures also for the sale of frozen property.
- (29) To ensure that property that is or may become subject to a freezing or confiscation order maintains its economic value Member States should put in place effective management measures. This includes the efficient management of entities, such as undertakings, that should be preserved as a going concern, while taking the measures necessary to ensure that the suspect or accused person does not benefit directly or indirectly from the ongoing operations or, where appropriate, measures of supervision regarding the control of the entity.

- (29a) Where justified by the nature of the property, including its value or the need for specific management conditions, an assessment of how to minimise the management costs and preserve the value of the property should be carried out when preparing or, at the latest, without undue delay after executing the freezing order. The objective of the assessment is to provide the competent authorities with the relevant considerations to be taken into account before, during or after adopting or executing the freezing order. Member States may adopt guidance on how such assessment should be carried out taking into account the circumstances of the property to be frozen and ensuring that the assessment will not jeopardise the timely execution of the freezing order.
- (30) In situations where it may be reasonably assumed that 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 a final confiscation order. In accordance with national law, the decision on sale of a property of a specific nature may be subject to prior approval by a competent national authority. Before taking such a decision, Member States should ensure that the affected person, with the exception of cases where the affected person has absconded or cannot be located, is notified and, except in cases of urgency, is given the opportunity to be heard before the sale. Member States should provide for the possibility of an appeal against an interlocutory sale order. Member States should provide for the possibility for a Court to suspend the execution of such order, for example where necessary to safeguard the legitimate interests of the affected person, in particular where there is a risk of irreparable harm. Member States could also give the appeal suspensory effect by law. Member States could charge the costs of the management of frozen property to the owner or beneficial owner, for instance in alternative to the ordering of an interlocutory sale, and in case of a final conviction.

- (31) Member States should set up or designate one or more competent authorities that will function as 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 and the disposal of the property based on such decision. Without prejudice to the Member States' internal administrative structures, asset management offices should either be the sole authority managing frozen and confiscated property, or should provide support to decentralised actors according to national management set-ups, and support relevant authorities with planning. This Directive does not prescribe the legal or institutional nature of the asset management offices, and is without prejudice to institutional systems in the Member States.
- (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 or other persons 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 be communicated to the affected person without undue delay. Nevertheless, Member States should be able to provide for a right for competent authorities to postpone communicating freezing orders to the affected person due to the needs of the investigation. The purpose of communicating those orders is, *inter alia*, to allow the affected person to challenge them. Therefore, such communications should, as a general rule, indicate the reason or reasons for the order concerned. Where the affected person or whereabouts of the affected person are unknown or where the communication to each of the affected persons would entail a disproportionate burden, the communication may be made by means of a public announcement.
- (34a) The affected person 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, where possible. In the case of confiscation orders pursuant to provisions on extended confiscation and confiscation of unexplained wealth, circumstances that may be challenged by the affected person when challenging the confiscation order before a court should also include specific facts and available evidence on the basis of which the property concerned is considered to be property that is derived from criminal conduct.
- (35) When implementing this Directive, Member States may provide that, in exceptional circumstances, confiscation should not be ordered or executed, 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.
- (35a) While Member States are obliged to ensure that persons whose property is affected by the measures provided for in this Directive have the right of access to a lawyer throughout the freezing and confiscation proceedings, this Directive does not affect the rules applicable for legal aid provided free of charge.

- (36) This Directive should be implemented without prejudice to Directive 2010/64/EU of the European Parliament and of the Council<sup>10</sup>, Directive 2012/13/EU of the European Parliament and of the Council<sup>11</sup>, Directive 2012/29/EU of the European Parliament and of the Council<sup>12</sup>, Directive 2013/48/EU of the European Parliament and of the Council<sup>13</sup>, Directive 2014/60/EU of the European Parliament and of the Council<sup>14</sup>, Directive (EU) 2016/343/EU of the European Parliament and of the Council<sup>15</sup>, Directive 2016/800/EU of the European Parliament and of the Council<sup>16</sup> and Directive (EU) 2016/1919 of the European Parliament and of the Council.<sup>17</sup>

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<sup>10</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

<sup>11</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

<sup>12</sup> 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 (OJ L 315, 14.11.2012, p. 57).

<sup>13</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

<sup>14</sup> Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (OJ L 159, 28.5.2014, p. 1).

<sup>15</sup> Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

<sup>16</sup> Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

<sup>17</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p. 1).

- (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, the data protection rules as set out in Directive (EU) 2016/680 are applicable in relation to measures taken under this Directive are set out in Directive (EU) 2016/680, which lays down the rules relating to 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, in line with a set of principles relating to the processing of personal data, in particular lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality, and accountability. 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 recovery system requires concerted efforts of a wide range of authorities, from law enforcement, including customs authorities, tax authorities and tax recovery authorities to the extent that they are competent for asset recovery, asset recovery offices, judicial authorities and asset management authorities, including asset management offices. In order to ensure coordinated action by all competent authorities, it is necessary to establish a more strategic approach to asset recovery and promote a greater cooperation between the relevant authorities, and to obtain a clear overview of the results of asset recovery. It is also necessary to ensure closer and more effective cooperation between asset recovery offices and asset management offices and their counterparts in other Member States. 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. Member States may decide on the appropriate format of such strategy which may take into account their constitutional set up. This Directive should establish the elements to be included in the strategy, such as a description of the roles and responsibilities of all the competent authorities involved in asset recovery, and the arrangements for coordination and cooperation among them, without determining the concrete type of information to be included in the strategy. Furthermore, Member States should provide competent authorities with the necessary resources to be able to fulfil their tasks effectively. Competent authorities should be understood as the authorities entrusted with the carrying out of the tasks as outlined under this Directive and according to national set-ups.

[...]

(39b) Member States should ensure that asset management offices, and as appropriate asset recovery offices and other competent authorities performing tasks pursuant to this Directive, are able to swiftly obtain information necessary for the efficient management of frozen and confiscated property. For that purpose, Member States should establish efficient tools such as one or more registers of property frozen and confiscated pursuant to this Directive.

(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 minimum set of appropriate statistical data on freezing, management and confiscation of property.

[...]

(42a) In order to support the Commission in relation to the implementation of this Directive and facilitate cooperation among asset recovery offices and asset management offices as well as to exchange best practices, a network on asset recovery and confiscation should be established. The network should be composed of representatives from asset recovery offices and asset management offices and should be chaired by the Commission and, where appropriate by Europol. The Commission could invite representatives from Eurojust, the European Public Prosecutors Office, and where appropriate, the Anti-Money Laundering Authority to participate to the meetings of the network.

[...]

- (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 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, to the greatest extent possible, 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. Member States should make use of existing frameworks for cooperation and are encouraged to develop or adjust existing bilateral agreements or to accede to existing multilateral conventions or finally to establish new bilateral agreements when no other arrangement is in place. The data protection rules set out in Directive (EU) 2016/680 and, where relevant, in Regulation (EU) 2016/679 are applicable in relation to measures taken in this respect.
- (45) Asset recovery offices and asset management offices should also closely cooperate with EU bodies and agencies, including Europol, Eurojust and the European Public Prosecutor's Office, within their respective competences and in accordance with the applicable legal framework, insofar as it is necessary to trace and identify property within the cross-border investigations supported by Europol and Eurojust or within the investigations undertaken by the European Public Prosecutor's Office. Member States should, in accordance with their respective obligations under Regulation (EU) 2017/1939 ensure that their asset recovery offices fulfil the relevant obligations set out in Regulation (EU) 2017/1939.

[...]

- (46) In order to ensure that there is a common understanding and minimum standards for asset tracing and identification, freezing, confiscation 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 more extensive rules on freezing and confiscation, 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 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/JHA<sup>18</sup>, Council Framework Decision 2001/500/JHA<sup>19</sup>, 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.

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<sup>18</sup> Joint Action 98/699/JHA of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime (OJ L 333, 9.12.1998, p.1).

<sup>19</sup> Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ L 182, 5.7.2001, p. 1).

- (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 19/07/2022.

HAVE ADOPTED THIS DIRECTIVE:

# 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. This Directive applies without prejudice to freezing and confiscation measures within the framework of proceedings in civil or administrative matters.

### *Article 2*

#### Scope

1. This Directive shall apply to criminal offences covered by the:
  - (a) Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime<sup>20</sup>;
  - (b) 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<sup>21</sup>;
  - (c) 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<sup>22</sup>;

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<sup>20</sup> OJ L 300, 11.11.2008, p. 42.

<sup>21</sup> OJ L 88, 31.3.2017, p. 6.

<sup>22</sup> OJ L 101, 15.4.2011, p. 1.

- (d) 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<sup>23</sup>;
- (e) Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking<sup>24</sup>;
- (f) 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 Union<sup>25</sup> and Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector<sup>26</sup>;
- (g) Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law<sup>27</sup>;
- (h) 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<sup>28</sup>;
- (i) 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<sup>29</sup>;

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<sup>23</sup> OJ L 335, 17.12.2011, p. 1.

<sup>24</sup> OJ L 335, 11.11.2004, p. 8.

<sup>25</sup> OJ C 195, 25.6.1997, p. 1.

<sup>26</sup> OJ L 192, 31.7.2003, p. 54.

<sup>27</sup> OJ L 284, 12.11.2018, p. 22.

<sup>28</sup> OJ L 123, 10.5.2019, p. 18.

<sup>29</sup> OJ L 151, 21.5.2014, p. 1.

- (j) Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA<sup>30</sup>;
- (k) 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<sup>31</sup>;
- (l) 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<sup>32</sup>;
- (m) Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law<sup>33</sup> and Directive 2005/35/EC as amended by Directive 2009/123/EC of the European Parliament and of the Council of 21 October 2009 amending Directive 2005/35/EC on ship-source pollution and on the introduction of penalties for infringements<sup>34</sup>;
- (n) Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence<sup>35</sup>, and Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence<sup>36</sup>;

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<sup>30</sup> OJ L 218, 14.8.2013, p. 8.

<sup>31</sup> OJ L 89, 25.3.2014, p. 7.

<sup>32</sup> OJ L 198, 28.7.2017, p. 29.

<sup>33</sup> OJ L 328, 6.12.2008, p. 28.

<sup>34</sup> OJ L 280, 27.10.2009, p. 52.

<sup>35</sup> OJ L 328, 5.12.2002, p. 1.

<sup>36</sup> OJ L 328, 5.12.2002, p. 17.

- (o) Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive)<sup>37</sup>;
- (p) Directive [x] of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of Union restrictive measures.

2. This Directive shall apply to the criminal offences committed within the framework of a criminal organisation as they are referred to in Article 1(1) Council Framework Decision 2008/841/JHA.

[...]

- 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 and legal documents or instruments in any form, evidencing title or interest in such property;

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<sup>37</sup> OJ L 173, 12.6.2014, p. 179.

- (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;

[...]

- (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,<sup>38</sup> as well as a legal person, as defined in national law, that has suffered harm or economic loss as a direct result of any of the offenses within the scope of this Directive;

[...]

- (10) 'beneficial owner' means a beneficial owner as defined in Article 3, point (6), of Directive 2015/849/EU;

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<sup>38</sup> 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.

(10a) ‘affected person’ means: (a) a natural or legal person against whom a freezing or confiscation order is issued; (b) a natural or legal person that owns property that is the object of a freezing or confiscation order; or (c) a third party whose rights in relation to property that is the object of a freezing order or a confiscation order are directly prejudiced by that order; or (d) a natural or legal person whose property is subject to an interlocutory sale pursuant to article 20 of this Directive.

[...]

## 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.
  - 1a. Property mentioned in paragraph 1 shall also include property which may become or is the object of a freezing or confiscation order in accordance with Art. 10(2) of Directive [xx] of the European Parliament and of the Council on the definition of criminal offences and penalties for the violation of restrictive measures.
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. Member States may limit the scope to investigations into offences likely to have been committed within the framework of a criminal organisation.

## *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;
    - (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 the EPPO in the tracing and identification of instrumentalities and proceeds, or property which may become or is the object of a freezing or confiscation order.
- (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, in accordance with national law, to cooperate with them where necessary for the tracing and identification of instrumentalities, proceeds, or property;

3. Asset recovery offices shall be empowered to trace and identify property of persons and entities subject to EU restrictive measures where necessary to facilitate the detection of criminal offences referred to in Article 2.1 point (p) of this Directive, upon a request of national competent authorities based on indications and reasonable grounds to believe that a criminal offence pursuant to Article 3 of that Directive was committed. These powers shall be without prejudice to the procedural requirements and safeguards established under national procedural law, including the rules on the initiation of criminal proceedings or, where necessary, the requirement to obtain a judicial authorisation.

## *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 access to the information referred to in this Article to the extent that it is necessary for the tracing and identification of proceeds, instrumentalities, and property.
2. Member States shall ensure that asset recovery offices have immediate and direct access to the following information, provided that the information is stored in centralised or interconnected databases or registers held by public authorities:
  - (a) national real estate registers or electronic data retrieval systems and land and cadastral registers;
  - (b) national citizenship and population registers of natural persons;
  - (c) national motor vehicles, aircraft and watercraft registers;
  - (d) commercial registers, including business and company registers.

- (e) national beneficial ownership registers in accordance with Directive of the European Parliament and of the Council 2015/849; data available through the interconnection of beneficial ownership registers in accordance with Directive of the European Parliament and of the Council 2015/849.
  - (f) centralised bank account registries, in accordance with Directive (EU) 2019/1153 of the European Parliament and of the Council.
3. For the purposes of paragraph 1, Member States shall ensure that asset recovery offices can swiftly obtain, either directly and immediately or upon request the following information:
- (a) fiscal data, including data held by tax and revenue authorities;
  - (b) national social security data;
  - (c) relevant information which is held by authorities competent for preventing, detecting, investigating or prosecuting criminal offences;
  - (d) information on mortgages and loans;
  - (e) information contained in national currency databases and currency exchange databases;
  - (f) information on securities;
  - (g) customs data, including cross-border physical transfers of cash;
  - (h) information on annual financial statements by companies;
  - (j) information on wire-transfers and accounts balances;
  - (k) information on crypto-asset accounts and crypto-asset transfers as defined in Article 3 of Regulation (EU)2023/1113 of the European Parliament and of the Council;

- (l) 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).
4. Where the information referred to in paragraphs 2 and 3 is not stored in centralised or interconnected databases or registers held by public authorities, Member States shall take the necessary measures to ensure that asset recovery offices can swiftly obtain that information from relevant institutions by other means in a streamlined and standardized manner.
5. Member States may decide that access pursuant to paragraph 3 (a), (b) and (c):
  - requires a reasoned request and
  - the request to obtain such information may be denied if the provision of such information would jeopardise the success of an ongoing investigation, if it would be clearly disproportionate to the legitimate interests of a natural or legal person with regard to the purposes for which access has been requested or if it would comprise information provided by another Member State or third country where consent for its further transmission cannot be obtained.
6. The access to the information referred to in this Article shall be without prejudice to the procedural safeguards established under national law, including, where necessary the requirement to obtain a judicial authorisation.

### *Article 7*

#### Conditions for access to information by asset recovery offices

1. Access to information pursuant to Article 6 shall be performed only on a case-by-case basis where necessary and proportionate for the performance of the tasks pursuant to Article 5 by the staff specifically designated and authorised to access the information referred to in Article 6.

2. Member States shall ensure that staff of the asset recovery offices comply with the rules on confidentiality and professional secrecy as provided for under applicable national law as well as with the Union data protection acquis. Member States shall also ensure that staff of asset recovery offices have the necessary specialised skills and abilities to perform their roles effectively.
3. Member States shall ensure that appropriate technical and organisational measures are in place to ensure a level of security appropriate to the risk of processing 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. Member States shall provide for logs of access and search activities by asset recovery offices under this Directive to be kept in accordance with Article 25 of Directive 2016/680.  
  
[...]

### *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, any information that is necessary for the performance of their tasks pursuant to Article 5 and accessible to the requested asset recovery office. 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 exception of forensic identification information under Section B, point 2(c)(v).

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, and in accordance with Directive 2016/680.

2. When making a request pursuant to paragraph 1, the requesting asset recovery office shall specify as precisely as possible the following:
  - (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, if necessary for identification purposes, any ID if available, details on the natural or legal persons presumed to be involved, such as names, nationality and place of residence, national identification numbers or social security numbers, addresses, dates and places of birth, date of registration, country of establishment, shareholders, headquarters and subsidiaries;
  - (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.
4. Unless otherwise indicated by the asset recovery office providing information pursuant to paragraphs 1 or 2, the information provided can be presented as evidence before a national court or competent authority of the receiving Member State, in accordance with procedures in national law, including the procedural rules on admissibility of evidence in proceedings in criminal matters in line with the Charter of the fundamental rights of the European Union and with obligations of Member States as set out in Article 6 TEU.
5. Member States shall ensure that asset recovery offices have direct access to SIENA and use the specific fields designed for the asset recovery offices in the SIENA system that correspond to the information required under paragraph 2 or, where necessary on exceptional basis, through other secure channels for exchanging information pursuant to this Article.
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;

[...]

  - (bb) clearly be disproportionate or irrelevant with regard to the purposes for which it has been requested.

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.

### *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, which is stored in databases and registers to which they have direct access;
  - (c) three calendar days, for urgent requests relating to information to which they do not have direct access.
2. Where the information requested pursuant to paragraph 1, point (b) is not directly available or the request pursuant to paragraph 1, point (a) imposes a disproportionate burden, the asset recovery office receiving the request may postpone the provision of the information. In that case, the requested asset recovery office shall immediately inform the requesting asset recovery office of this postponement and shall provide the requested information as soon as possible, and in any event within seven days of the initial deadline established pursuant to paragraph 1, point (a) or three days of the initial deadline established pursuant to paragraph 1, points (b) and (c).
3. The time limits set out in paragraph 1 shall commence as soon as the request for information is received.

## **CHAPTER III**

### **Freezing and confiscation**

#### *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 Article 12 to 16. The freezing measures shall consist of freezing orders and immediate action.
2. Immediate action shall be taken when necessary in order to preserve the property until a freezing order has been issued. When immediate action does not take the form of a freezing order, Member States shall limit the temporary validity of the immediate action.
3. Without prejudice to the powers of other competent authorities, Member States shall enable asset recovery offices to take immediate action pursuant to paragraph 2 where there is an imminent risk that the property that they have traced and identified in the exercise of their tasks pursuant to Article 5(2)(b) disappears. The validity of such immediate action shall not exceed seven working days.  
  
[...]
5. Member States shall ensure that the freezing measures are taken by a competent authority and that the reasons for them are set out in the relevant decision or recorded in the case file if the freezing measure is not ordered in writing.
6. The 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 unfrozen without undue delay. The conditions or procedural rules under which such property is unfrozen shall be determined by national law.

## *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 subject to 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 subject to a final conviction, which may also result from proceedings in absentia. Such confiscation may be subsidiary or alternative to confiscation pursuant to paragraph 1.

## *Article 13*

### Confiscation from a third party

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

The confiscation of those proceeds or other property shall be enabled where a national court has established, based on the concrete facts and circumstances of the case, that those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation. Such facts and circumstances include:

- (a) the transfer or acquisition was carried out free of charge or in exchange for an amount which is clearly disproportionate to the market value of the property or
- (b) the property was transferred to closely related parties while remaining under the effective control of the suspected or accused person.

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

#### *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 the offence committed 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.
3. For the purposes of this Article, the notion of ‘criminal offence’ shall include at least the offences listed in Article 2 paragraphs 1 to 4 when punishable by deprivation of liberty of a maximum of at least four years.

#### *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;

(b) absconding of the suspected or accused person;

(c) death of the suspected or accused person;

[...]

(f) the limitation period for the relevant criminal offence prescribed by national law is below fifteen years and has expired after the initiation of criminal proceedings.

2. Confiscation without a prior conviction under this Article shall be limited to cases where, in absence of the circumstances pursuant to paragraph 1, criminal proceedings could have led to a criminal conviction, at least for offences liable to give rise, directly or indirectly, to substantial economic benefit, and where the national court is satisfied that the instrumentalities, proceeds or property to be confiscated are derived from or directly or indirectly linked to the criminal offence in question.

#### *Article 16*

##### Confiscation of unexplained wealth linked to criminal conduct

1. Member States shall take the necessary measures to enable, where, in accordance with national law, the confiscation measures of Article 12 to 15 may not be applied, the confiscation of property identified in the context of an investigation in relation to a criminal offence, where the national court is satisfied that the identified property is derived from criminal conduct committed within the framework of a criminal organisation where this conduct is liable to give rise, directly or indirectly, to substantial economic benefit.
2. When determining whether the property referred to in paragraph 1 should be confiscated, account shall be taken of all the circumstances of the case, including the available evidence and specific facts, which, where relevant, may include, but are not limited to:
  - that the value of the property is substantially disproportionate to the lawful income of the affected person,

- that there is no plausible licit source of the property,
- that the person is connected to people linked to a criminal organisation.

[...]

- 2d. Paragraph 1 shall not prejudice the rights of bona fide third parties.
- 3. For the purposes of this Article, the notion of ‘criminal offence’ shall include offences referred to in Article 2 paragraphs 1 to 4 when punishable by deprivation of liberty of a maximum of at least four years.
- 4. Member States may provide that the confiscation of unexplained wealth in accordance with this Article shall only be pursued where the property to be confiscated has been previously frozen in the context of an investigation in relation to a criminal offence committed within the framework of a criminal organisation.

#### *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.
  - 1a. For the purpose of paragraph 1, Member States shall ensure that competent authorities may use tracing and identification tools that are as effective as those available for the tracing and freezing of assets under Chapter II of this Directive.
  - 1b. [...]
  - 1c. Member States may conclude cost-sharing agreements with each-other on the execution of freezing and confiscation orders.

## *Article 18*

### Victims compensation

1. Member States shall take appropriate measures to ensure that where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Directive, those claims are taken into account within the asset tracing, freezing and confiscation proceedings.
2. Member States shall enable the competent authorities of asset tracing investigations pursuant to Article 4 to provide, upon request, to the authorities responsible for deciding upon or executing restitution and compensation claims, any information on assets identified that may be relevant for that purpose. Member States may also enable competent authorities of asset tracing investigations pursuant to Article 4 to provide such information even without such a request.
3. Member States shall ensure that Asset Recovery Offices may trace and identify instrumentalities and proceeds, or property which may become or is the object of a decision to compensate or to restitute property to a victim , at least where AROs act in cross-border cases in accordance with Article 5, paragraph 2 (b) and where the decision is issued by a court having competence in criminal matters in another Member State in the course of the criminal proceedings.
4. Where a victim is entitled to the restitution of property that at the same time is or may become subject to a confiscation measure provided for under this Directive, Member States shall take the necessary measures to restitute the property concerned to the victim, under the conditions set out in art. 15 of Directive 2012/29/EU of the European Parliament and of the Council.

5. Member States shall take the necessary measures to ensure that the execution of confiscation measures provided for under this Directive does not prejudice victims' rights to obtain compensation. Member States may decide to limit such measures to situations in which the lawful assets of the offender are not sufficient to cover the total amount of compensation.

#### *Article 18a*

##### Further use of the confiscated property

1. Member States are encouraged to take the necessary measures to allow the possibility of using confiscated property, where appropriate, for public interest or social purposes.
2. Without prejudice to applicable international law, Member States may use the instrumentalities proceeds and property confiscated in relation to the offences referred to in the Directive [xxxx] on the definition of criminal offences and penalties for the violation of Union restrictive measures, for contributing to mechanisms to support third countries affected by situations in response to which the Union restrictive measures were adopted, in particular in cases of war of aggression. The Commission may provide guidance to carry out that contribution.

## **CHAPTER IV**

### **Management**

#### *Article 19*

##### Asset management and planning

- 1. Member States shall adopt appropriate measures to ensure the efficient management of entities that should be preserved as a going concern, such as undertakings.
- 1a. Member States are encouraged to take appropriate measures to prevent the property from being acquired, in the course of its disposal upon a binding confiscation order, by persons convicted in the criminal proceedings in which the property has been frozen.
- 1. Member States shall ensure the efficient management of frozen and confiscated property until its disposal based on a final confiscation order.  
  
[...]
- 3. Member States shall ensure that, where justified by the nature of the property, competent authorities responsible for the management of frozen property assess the specific circumstances of the property that may become object of a confiscation order in order to minimise its estimated management costs and to preserve the value of such property until its disposal. Such assessment shall be carried out when preparing or, at the latest, without undue delay after executing the freezing order.
- 3a. Member States may require the costs for the management of frozen property to be charged, at least partially, to the beneficial owner.

## *Article 20*

### Interlocutory sales

1. Member States shall ensure that property frozen by a freezing order can be transferred or sold before a final confiscation order in one or more of the following circumstances.
  - (a) the property subject to freezing is perishable or rapidly depreciating;
  - (b) the storage or maintenance costs of the property are disproportionate to its market value;
  - (c) the management of the property requires special conditions and expertise which is non-readily available.
2. Member States shall ensure that the interests of the affected person 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 where the affected person has absconded or cannot be located, Member States shall ensure that the affected person is notified and, except in cases of urgency, is given the opportunity to be heard before the sale. The affected person shall be given the possibility to request the sale of the property.
3. Earnings from interlocutory sales shall be secured until a judicial decision on confiscation is reached.

## *Article 21*

### Asset management offices

1. Each Member State shall set up or designate at least one competent authority that shall function as asset management office for the purpose of the management of frozen and confiscated property until its disposal based on a final confiscation order.
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 and planning pursuant to Article 19;  
  
[...]
  - (c) to cooperate with other competent authorities responsible for the tracing and identification, freezing and confiscation of property, pursuant to this Directive;
  - (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 without undue delay. The orders shall set out the reasons for the measure as well as the rights and legal remedies available to that affected person pursuant to Article 23. Member States may provide for a right for competent authorities to postpone communication of the freezing orders to the affected person for as long as it is necessary to avoid jeopardizing a criminal investigation.

#### *Article 23*

##### Legal remedies

1. Member States shall ensure that the persons affected by the freezing orders pursuant to Article 11, and confiscation orders pursuant to Articles 12 to 16 have the right to an effective remedy and to a fair trial in order to uphold their rights.

- 1a. Member States shall ensure that the rights to defence, including the right of access to the file, the right to be heard on issues of law and fact and where relevant, the right to interpretation and translation, are guaranteed to those affected persons that are suspects or accused persons, or affected by confiscation pursuant to Article 16. Member States may provide that also other affected persons have these rights. In any case, Member States shall provide that such other affected persons also have the right of access to the file, the right to be heard on issues of law and fact as well as any other procedural rights which are necessary to effectively exercise their right to an effective remedy. The access may be limited to the documents related to the freezing or confiscation measure as long as the affected persons could have access to the documents necessary to exercise their right to an effective remedy.
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 may provide that such an order is first to be submitted for validation or review to a judicial authority before it can be challenged before a court.
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 pursuant to Articles 12 to 16, including the relevant circumstances of the case and available evidence on which the findings are based, before a court, in accordance with procedures provided for in national law.

[...]

6. Member States shall provide for the effective possibility for affected person to challenge an order pursuant to Article 20 to sell the property in question and shall grant the affected persons all procedural rights necessary to exercise their right to an effective remedy. Member States shall provide for the possibility that a Court can suspend the execution of such order, if otherwise there would be irreparable harm for the affected person.
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 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.

## **CHAPTER VI**

### **Asset Recovery Strategic Framework**

#### *Article 24*

##### National strategy on asset recovery

1. Member States shall by [six months after the transposition period of this Directive is over] adopt a national strategy on asset recovery and update it at regular intervals of no longer than five years.
2. The strategy shall include elements concerning the priorities of national policy in this area, the objectives and measures to achieve them, the role and responsibilities of the competent authorities, including arrangements for coordination and the cooperation among them, resources, training, and measures to be taken, where applicable, on the use of confiscated assets for public interest or social purposes, activities to be undertaken on cooperation with third countries, and arrangements allowing for regular evaluation of results.
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 appropriate financial, technical and technological resources necessary for the effective performance of their functions related to the implementation of this Directive. Without prejudice to judicial independence and differences in the organization of the judiciary across the Union, Member States shall ensure that specialised training and exchanges of best practices is available to the staff involved in asset identification, tracing and recovery and confiscation.

## *Article 26*

### Efficient management of frozen and confiscated property

1. For the purpose of managing frozen and confiscated property, Member States shall ensure that asset management offices, and as appropriate asset recovery offices, and other competent authorities performing tasks pursuant to this Directive are able to swiftly obtain information on frozen and confiscated property that is to be managed under this Directive. For that purpose, Member States shall establish efficient tools of management of the frozen or confiscated property, such as one central or more registries of property frozen and confiscated pursuant to this Directive.
2. Member States shall ensure that the following information can be obtained pursuant to paragraph 1:
  - (a) the property subject to a freezing or confiscation order which is to be managed pursuant to Article 19(1) until its disposal based on a final confiscation order, including details that enable the identification of the property;
  - (b) the estimated or actual value, where appropriate, of the property at the moment of the freezing, and confiscation and disposal;
  - (c) the owner of the property, including the beneficial owner as defined in Article 3, point (6), of Directive 2015/849/EU, where such information is available;
  - (d) the national file reference of the proceeding related to the property.

Where Member States establish a registry of frozen and confiscated property pursuant to paragraph 1, they should ensure that authorities having access to the register can search and obtain information on the name of the authority entering the information in the registry and on the unique user identifier of the official who entered the information in the registry.

3. Where Member States establish a register of frozen and confiscated property pursuant to paragraph 1, they shall ensure that the information referred to in paragraph 2 is 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 not for longer than after its disposal, or to provide annual statistics as referred in Article 27.
4. Where Member States establish a register of frozen and confiscated property pursuant to paragraph 1, Member States shall ensure that any personal data stored in the registries can 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, in accordance with the applicable data protection rules.
5. Where Member States establish a register of frozen and confiscated property pursuant to paragraph 1, Member States shall ensure that appropriate technical and organisational measures are in place to ensure the security of the data contained in the registries of frozen and confiscated property and shall designate the competent authority or authorities responsible for the management of the registers and for performing the tasks of the controller as defined in the applicable data protection rules.

#### *Article 27*

##### Statistics

1. Member States shall regularly collect from the relevant authorities and maintain comprehensive statistics in order to review the effectiveness of their confiscation systems. The statistics collected shall be sent to the Commission each year by 31 December of the following year and shall include:
  - (a) the number of freezing orders executed;
  - (b) the number of confiscation orders executed;

- (c) the estimated value of property frozen with a view to possible subsequent confiscation at the time of freezing;
- (d) the estimated value of property recovered at the time of confiscation;
- (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 or estimated value of the property recovered following execution in another Member State;
- (h) the value of confiscated property compared to its value at the time of freezing, where available at central level;
- (i) the breakdown of the numbers in paragraph 1 (b) and (d) per type of confiscation, where available at central level;
- (j) the number of interlocutory sales, where available at central level;
- (k) the value of the property destined to be reused for social purposes.

## CHAPTER VII

### Cooperation

#### *Article 27a*

##### Cooperation network on asset recovery and confiscation

1. The Commission shall establish a cooperation network on asset recovery and confiscation (the ‘network’) to facilitate cooperation among asset recovery offices and asset management offices and with Europol in relation to the implementation of this Directive, and to advise the Commission and enable the exchange of best practices in relation to the implementation of the measures provided for in this Directive.
2. Representatives from 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.

#### *Article 28*

##### Cooperation with Union 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 falling within the competence of the European Public Prosecutor’s Office.

2. Asset recovery offices and asset management offices shall cooperate with Europol and Eurojust, in accordance with the areas of their competence for the purposes of facilitating the identification of instrumentalities and proceeds, or property that may become or is the object of a freezing or confiscation order made by a competent authority in the course of proceedings in criminal matters, to facilitate the management of frozen and confiscated assets.

### *Article 29*

#### Cooperation with third countries

1. Member States shall ensure that asset recovery offices cooperate, within the international legal framework, with their counterparts in third countries to the greatest extent possible, and subject to the applicable legal framework on data protection, for the purposes of performing the tasks pursuant to Article 5.
2. Member States shall ensure that asset management offices cooperate, within the international legal framework, with their counterparts in third countries to the greatest extent possible, and subject to the applicable legal framework on data protection, for the purposes of performing the tasks pursuant to Article 21.

## CHAPTER VIII

### Final provisions

[...]

#### *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. Member States shall nominate a maximum of two contact points to facilitate cooperation in cross-border cases among asset recovery offices and a maximum of two contact points to facilitate cooperation among asset management offices. Such contact points do not themselves have to be charged with the tasks pursuant to Articles 5 or 21.
3. By [6 months after the expiration of the period for transposition of this Directive], Member States shall notify the Commission of the competent authority or authorities as well as, where relevant, the contact points referred to in paragraphs 1 and 2 respectively.
4. By [6 months after the expiration of the period for transposition of this Directive], 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 + 30 months]. They shall immediately communicate the text of those measures to the Commission.
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 [two years after the transposition period of this Directive is over], submit a report to the European Parliament and to the Council, assessing the implementation of this Directive.
2. The Commission shall, by [five years after the transposition period of this Directive is over], 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 Council.

*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,

*For the European Parliament*

*The President*

*For the Council*

*The President*

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