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**NOTE**

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Asset recovery and Confiscation: presentation by the Commission

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Delegations will find in Annex the slides used by the Commission in its presentation in the Working Party COPEN on 1 July 2022.



# Proposal on asset recovery and confiscation

COPEN  
1 July 2022

*Articles 1 - 10*

# Chapter I – General provisions

- Subject matter, scope and definitions
  - All phases of asset recovery (consolidating provisions under the ARO Decision and Confiscation Directive)
  - **New:** Union restrictive measures
  - Broader set of crimes
  - New definitions where necessary in particular regarding new provisions



# Chapter I – General provisions

- Article 1: Subject matter

1. Minimum rules for all asset recovery phases

- Not only freezing and confiscation but also **tracing and management**
- Within the framework of **proceedings in criminal matters** (*alignment to Regulation on mutual recognition of freezing and confiscation orders*)

2. **New: Rules to facilitate implementation of Union restrictive measures:**

- To prevent, detect or investigate the violation of restrictive measures



# Chapter I – General provisions

- Article 2: Scope

1. Eurocrimes Art. 83 TFEU

- Organised crime, terrorism, trafficking in human beings, child pornography, drugs, corruption, money laundering, forgery of means of payment, currency counterfeiting, cybercrime
- **Firearms trafficking**

1. **Other crimes harmonised at EU level – Art. 83 TFEU**

- Fraud, environmental crime, migrant smuggling

2. **Organised crime-intensive offences – Art. 83 TFEU**

- Counterfeiting, cultural goods, document fraud, murder, organs trafficking, kidnapping, organised robbery, racketeering, vehicle trafficking, tax crimes above one year.
- committed within the framework of a criminal organisation



# Chapter I – General provisions

- Article 2: Scope

- 3. New: Future offence of violation of Union restrictive measures – Art. 83 TFEU**

- 4. Cross-reference by future Union acts

- *Same approach as before (Confiscation directive, Article 3 at the end)*

- 5. Offences of > 1 year (for chapter II - tracing & identification) – Art. 87 TFEU

- *In line with scope of Asset Recovery Offices Council Decision*



# Chapter I – General provisions

- Article 3: Definitions

- Maintain definitions of ‘proceeds’, ‘property’, ‘instrumentalities’, ‘freezing’ and ‘confiscation’
- **Additional definitions of:**
  - ‘tracing and identification’
  - ‘SIENA’ (*from Police Cooperation Code*)
  - ‘criminal organisation’ (*Framework Decision on organised crime*)
  - ‘victim’ (*Victims Directive + legal persons*)
  - ‘beneficial owner’ (*reference to AMLD*)
  - ‘Union restrictive measures’ and ‘targeted financial sanctions’



## Chapter II – Tracing & identification – 87 TFEU

- Asset tracing investigations, asset recovery offices, access to and exchange of information
  - New: requirements for systematic asset tracing early on – high revenue crimes and Union restrictive measures
  - Clear tasks & powers for AROs beyond facilitating role
  - New: AROs' access to information – with safeguards
  - Rules on info exchange – maintaining the time limits



# Chapter II – Tracing & identification

## • Article 4: Asset tracing investigations (NEW)

1. Swift tracing of instrumentalities, proceeds and property
  - *General requirement to provide for the necessary preconditions*
2. Requirement for parallel asset tracing investigations (“immediately”):
  - Investigations on high-revenue offences;
  - Where necessary to prevent, detect, or investigate offences related to the violation of Union restrictive measures



## Chapter II – Tracing & identification

- Article 5: Asset recovery offices
  1. Establishment of at least one asset recovery office maintained
  2. Tasks:
    - Trace in support of national authorities
    - Trace in relation to freezing or confiscation order from another MS
    - Information exchange and Cooperation with other asset recovery offices
    - Info exchange with other asset recovery offices in relation to Union restrictive measures
  3. NEW: Asset recovery offices empowered to trace assets of persons subject to EU targeted financial sanctions
  4. NEW: Asset recovery offices able to take **temporary urgent freezing action**



## Chapter II – Tracing and identification

### • Article 6: Access to information (NEW)

- *Based on AMLD proposal (Art. 18)*
1. For the performance of the tasks in Art. 5
    - Immediate and direct access
    - To the extent that information is necessary for tracing, i.e. not all information
    - Fiscal data, real estate, population, vehicles and vessels, commercial data, social security, relevant law enforcement information
  2. When not stored in databases – measures to ensure AROs swiftly obtain the information
  3. Without prejudice to national procedural safeguards



## Chapter II – Tracing and identification

### • Article 7: Conditions for access to information (NEW)

- *Based on Directive access to financial information, 2019/1153 (Art. 5)*
  1. Access only where necessary, case-by-case, by designated and specifically authorised staff
  2. Ensure compliance with national rules on confidentiality and professional secrecy as well as skilled staff
  3. Technical and organisational measures to ensure data security



## Chapter II – Tracing and identification

- **Article 8: Monitoring access and searches by AROs (NEW)**

- *Based on Directive on access to financial information, 2019/1153 (Art. 6)*

1. Ensure that logs of all access and search by AROs are kept:

- National file reference, date and time, data to launch the search, unique identifier of the results, name of the ARO, identifier of the official

2. Logs to be used only for data protection monitoring, data security and integrity

- Logs protected and erased after five years (unless monitoring procedures are ongoing)



# Chapter II – Tracing and identification

- Article 9: Exchange of information (1)
  - *Self standing rules without cross-reference to the Swedish Initiative*
  - 1. Ensure AROs provide information across borders upon request (*Art. 3.1 ARO CD*)
    - **Categories of personal data** – Annex II Europol Regulation (*from Communication of alignment of LE info exchange to data protection - as in Police Cooperation Code*)
    - Personal data provided **case-by-case** and **in light of what is necessary**
  - 2. Specify in the request (*Art. 3.2 ARO CD*):
    - Object, reasons, etc.
    - **Type of criminal offence** (*from Swedish Initiative template*)
    - **Where applicable, urgency reasons** (*for stricter time limits in urgent cases; from Police Cooperation Code*)



## Chapter II – Tracing and identification

- Article 9: Exchange of information (2)
  3. Spontaneous exchange of information (*Art. 4.1 ARO CD*)
    - When aware of information necessary for other AROs' tasks
    - Explain reasons for providing information spontaneously
  4. **Ensure that information can be used as evidence**
  5. **Direct access and use of SIENA for info exchange**
    - *Police cooperation code: SIENA default communication channel*
  6. Grounds for refusal (*from Swedish Initiative*)
  7. **Reasons for refusal should affect the information related to the ground for refusal**



## Chapter II – Tracing and identification

- Article 10: Time limits for provision of information
  1. AROs to respond to requests as soon as possible, within
    - 7 days for non-urgent requests
    - 8 hours for urgent requests when information is directly accessible
    - *(In line with deadlines Swedish Initiative)*
  2. Possibility to postpone by 3 days:
    - In non-urgent cases, when burden is disproportionate
    - In urgent cases, when information is not directly accessible



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# Thank you



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