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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation - Progress report

Background

On 25 May 2022, the Commission submitted its proposal for a Directive on asset recovery and confiscation.¹ The purpose of the proposal is to consolidate and strengthen the existing legal framework in the area, so as to facilitate and ensure effective asset recovery and confiscation efforts across the Union.

The proposal has been examined in the Working Party on Judicial Cooperation in Criminal Matters (COPEN) since June 2022. The Member States have from the outset voiced support for the aims and structure of the proposal, but have also raised a number of questions on some of its provisions, in particular as regards those rules that constitute novelties in Union and national laws.

¹ 9598/22.

Certain aspects of the proposal were also discussed in CATS on 16 November 2022, specifically the powers of asset recovery offices and confiscation of unexplained wealth.

The Council had an exchange of views during its meeting of 9 December 2022 on the proposal, more particularly on the rights of people affected by confiscation measures.

After a careful examination of the full proposal in the light of these discussions, a document with a state of play and a redraft of the text of the Directive² was presented on 21 December 2022.

Activities of the Swedish Presidency

The Swedish Presidency has continued the examination of the proposal on the basis of the revised text during four meeting days in COPEN (9 January, 6-7 January and 8 March³). The examination has thereby focused in particular on the following issues:

- The scope of the Directive (Article 2 in the proposal):

There is an ongoing discussion on whether the scope of the Directive should be limited to offences under Union law or cover also other offences when committed within the framework of a criminal organisation.

- The chapter on tracing and identification (Articles 4 – 10 in the proposal):

Following remarks expressed by delegations, the Presidency has proposed a number of further redrafts of these provisions⁴. These redrafts to a large extent strive to ensure that a strong mechanism for asset recovery is put in place, while at the same time guaranteeing that this mechanism will fit in well with existing national systems in the area.

² 16294/22.

³ The meeting of 8 March will not yet have taken place when this document is issued.

⁴ See document 6505/23.

- The rule on confiscation of unexplained wealth (Article 16 in the proposal):

The Presidency and the COPEN working party have continued the work to ensure that this new rule can be agreed while addressing the specific issues raised in the course of the negotiations. Indeed, this new confiscation feature must ensure an effective mechanism of confiscation, while at the same time ensuring a strong protection of fundamental rights. The subsequent redrafts proposed by the Presidency have made it possible to approach common ground for Member States in this sense, but some work still remains before a text of the provision in question can be agreed.

In addition, discussions are ongoing on other provisions. The Presidency is confident that agreeable solutions will be found soon.

The way forward

The Presidency will continue the work to finalise a text which can be agreed by Member States, with a view of reaching a general approach at the next meeting of the Council (JHA) in June.
