



Council of the  
European Union

Brussels, 28 March 2023  
(OR. en)

7266/23

LIMITE

COPEN 67  
DROIPEN 35  
JAI 284  
ENFOPOL 132  
CODEC 342

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Interinstitutional File:  
2022/0167(COD)

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#### NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	6505/23
Subject:	Proposal for a Directive on asset recovery and confiscation - Presidency note

Following the input given at the meeting of the COPEN Working Party on 8 March 2023 and in subsequent written contributions, the Presidency considers that it has gained sufficient knowledge of the positions of the delegations on the text and that time is now ripe to consider final compromise texts on a number of Articles. It is in this light that the Presidency proposes the redrafts of the said provisions included in the Annex to this note. Delegations are invited to consider the new texts, and the explanations given in the texts enclosed in boxes below, and to indicate, at the COPEN meeting on 4 April, whether they object with the compromise suggestions made. Modifications in relation to the original proposal are indicated in **bold** or ~~striketrough~~, with the latest modifications indicated also as underlined.

As regards Articles 15-25, the text in the Annex to this note is identical to the one included in the previous document to the Working Party<sup>1</sup>. The Presidency proposes to start the meeting with an examination of those Articles.

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<sup>1</sup> 6505/23.

Proposal for a

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

**on asset recovery and confiscation**

[...]

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

- (3) An effective asset recovery system requires the swift tracing and identification of instrumentalities and proceeds of crime, and property suspected to be of criminal origin. Such proceeds, instrumentalities, and property should be frozen in order to prevent its disappearance, following which it should be confiscated upon conclusion of criminal proceedings. An effective asset recovery system further requires the effective management of frozen and confiscated property to maintain its value for the State or for the restitution for victims **or legal persons that have suffered harm caused by a criminal offence**.
- (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 term covers all types of freezing and confiscation orders issued following proceedings in relation to a criminal offence. It also covers other types of **confiscation** orders issued without a final conviction by a court having jurisdiction in particular in criminal matters. Proceedings in criminal matters could also encompass criminal investigations by the police and other law enforcement authorities. In this context, the notion of court having jurisdiction in particular in criminal matters is an autonomous concept of Union law interpreted by the Court of Justice of the European Union covering any court or tribunal which applies a procedure that satisfies the essential characteristics of criminal procedure. The Directive is, however, without prejudice to the procedures that Member States may use to freeze and confiscate the property in question. It is, therefore, for the Member State to decide whether to ~~does not apply~~ implement some of its provisions to freezing and confiscation measures within the framework of proceedings in civil or administrative law matters as long as these proceedings fulfill the criteria of proceedings in criminal matters as interpreted by the Court of Justice of the EU. ~~In line with their national system, Member States may implement this Directive within the framework of either criminal law, administrative or civil law.~~ The Directive applies without prejudice to freezing and confiscation measures within the framework of ~~proceedings in civil or administrative matters~~. 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.

- ~~(6) — Moreover, the adoption of unprecedented and far reaching Union restrictive measures triggered by the Russian invasion into Ukraine revealed the need to step up efforts to ensure the effective implementation of both sectorial and individual Union restrictive measures across the Union. While not criminal in nature, nor requiring criminal conduct as a pre-condition for their imposition, Union restrictive measures also rely on freezing of funds (i.e. targeted financial sanctions) and sectorial measures, and should thus benefit from strengthened capabilities in the context of identification and tracing of property. For such purpose, rules should be established to enhance the effective identification and tracing of property owned or controlled by persons and entities subject to such restrictive measures, and to promote greater international cooperation of asset recovery offices with their counterparts in third countries. Measures related to freezing and confiscation under this Directive, notably those under Chapters III and IV, remain however limited to situations where property stems from criminal activities, such as the violation of Union restrictive measures. This Directive does not regulate the freezing of funds and economic resources under Union restrictive measures.~~
- ~~(7) — Measures aiming at increasing capabilities of tracing and identification of relevant property in relation to persons or entities subject to Union restrictive measures, as well as complementary measures to ensure that such property is not transferred or hidden to evade Union restrictive measures, contribute to the prevention and detection of possible violation of Union restrictive measures and enhanced cross-border cooperation in investigations into possible criminal offences.~~
- (8) The rules should facilitate cross-border cooperation by providing the competent authorities with the necessary powers and resources to respond in a swift and effective way to requests from authorities in other Member States. Provisions laying down rules on early tracing and identification, urgent action to freeze, or efficient management contribute to improving the possibilities for asset recovery across borders. Given the global nature of in particular organised crime, cooperation with third countries should also be strengthened.

(9) Due to the poly-criminal nature of and the systemic and profit-oriented cooperation of criminal organisations involved in a wide range of illicit activities in different markets, an effective fight against organised crime requires that freezing and confiscation measures are available to cover the profits from all offences where organised crime groups are active in. These crimes include the areas of crime listed in Article 83(1), including the illicit trafficking in weapons, munitions and explosives as defined in the Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against transnational organized crime, to which the Union is party. In addition to the crimes listed in Article 83(1), the scope of the Directive should also cover all crimes that are harmonised at EU level, including frauds against the financial interests of the European Union in light of the increasing involvement of organised criminal groups in such crime area. The scope of the Directive should further include environmental crimes, which are a core business for organised criminal groups and are often connected to money laundering or concern waste and residues produced in the context of drug production and trafficking. The facilitation of unauthorized entry and residence constitute a core business for organised criminal groups and is typically connected to the trafficking in human beings.

**(9bis) In addition to the crimes listed in Article 83(1) of the Treaty of Functioning of the European Union and other crimes harmonised at EU level, organised criminal groups obtain extensive profits from other crimes such as counterfeiting and piracy of products, the illicit trafficking in cultural goods, organised or armed robberies, racketeering and extortion or tax crimes. Other crimes, like murder or kidnapping, do not only serve as source of additional revenue in contract killings or through the collection of ransom money but also as a means of exerting control over an illicit market and as a mechanism to intimidate opponents. Moreover, there are crimes like the forgery of administrative documents or the trafficking in stolen vehicles that not only generate financial gain but also enable other offences carried out by organised crime groups.**

- (10) **Apart from the mere participation in a criminal organisation as defined in Article 2 Council Framework Decision 2008/841/JHA,** ~~Other crimes committed within the framework of a criminal organisation play a pivotal role in generating revenues and in enabling further crimes, including serious crimes with a cross-border nature. Such crimes,~~ **as defined in the national law of the Member States,** should be included in the scope of the Directive to the extent to which they are committed within the framework of a criminal organisation, **as defined in Article 1 of Council Framework Decision 2008/841/JHA,** **and punishable by deprivation of liberty of a maximum of at least [four] years.** The counterfeiting and piracy of products is linked to money laundering and the forgery of documents, and threatens the functioning of the single market and fair competition. The illicit trafficking in cultural goods, including antiques and works of art, is often intertwined with money laundering and constitutes an important source of financing for organised criminal groups. Forgery of administrative documents and trafficking therein, including bank documents or identification documents, is a key enabling tool for money laundering, trafficking in human beings, or migrant smuggling, and should as such be covered in the scope of this Directive. Other crimes which are often carried out within the framework of an organised crime group include murder or grievous bodily harm, as well as the illicit trade in human organs and tissue, which are a source of revenue for organised crime groups in the context of contract killings, intimidation and trafficking in human beings. Similarly kidnapping, illegal restraint or hostage taking, as well as racketeering and extortion, are utilized either as source of revenue through the collection of ransom money or as intimidation tactics against adversaries. The crime of organised or armed robbery is one of the most common forms to generate profits for organised criminal groups, and it is often committed in conjunction with other crimes, in particular the trafficking in firearms. Similarly, the trafficking in stolen vehicles cannot only generate profits but also represents an enabling crime to provide for the necessary instrumentalities to carry out further offences. In addition, it is key to include tax crimes to the extent it is committed as part of a criminal organisation in the scope of the Directive, as this specific crime is an enabling source of profits, especially when operating in a cross-border context. Typical techniques employed to commit tax fraud or evasion consist of making use of cross-border corporate structures or similar arrangements to fraudulently obtain tax benefits and refunds, hide assets or profits, merge legal with illicit profits and assets or to transfer them to other entities abroad to disguise their origins or (beneficial) ownership. **The purpose of this Directive is not to harmonise these offences and it does not oblige a Member State to introduce any offence that does not exist under its national law.**

- (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 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>5</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>5</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) In order to facilitate cross-border cooperation, **but not limited to cross-border cases**, the tracing and identification of property at an early stage of a criminal investigation is of essence to ensure the prompt identification of instrumentalities, proceeds, or property, which might be subsequently confiscated, including property related to criminal activities located in other jurisdictions. To ensure that financial investigations are sufficiently prioritised in all Member States, so to address a crime of cross-border nature, it is necessary to require competent authorities to launch asset tracing from the moment there is a suspicion of criminal activities that are likely to generate substantial economic benefits, **provided that unless in the individual case this is not considered appropriate in light of the type of offence and other relevant circumstances. To reduce the administrative burden for competent authorities and ensure proportionality between the resources needed for asset tracing investigations and the value of property to be confiscated, the obligation to launch asset tracing investigations should be limited to cases that are not minor.** When implementing the Directive, Member States ~~may decide to allow~~ should have a choice between allowing for a case-by-case assessment by competent authorities ~~or to determine~~ and setting a threshold for the value linked to the criminal offence. Member States shall organise the asset tracing investigations in accordance with national law and may determine which competent authorities should be responsible for carrying out the asset tracing investigations in which case. Asset recovery offices should be able to coordinate and support asset tracing investigations and cross-border requests for asset tracing investigations, where necessary.
- ~~(15) — Investigations to trace and identify property should also be launched where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures. For that purpose, asset recovery offices should be empowered to trace and identify property of persons or entities subject to targeted financial sanctions. Once property is identified asset recovery offices should have the power to temporarily freeze the property to ensure that property does not disappear.~~
- (15) In order to facilitate cross-border action as well as national support, Member States could ~~should~~ consider staffing the asset recovery offices with representatives, in the same or separate offices, from both law enforcement and judicial authorities.

- (16) Due to the transnational nature of finances used by organised criminal groups, information that can lead to the identification of instrumentalities and proceeds of crime and other property owned or controlled by criminals ~~or by persons or entities subject to Union restrictive measures~~ should be exchanged rapidly between the Member States. For that purpose, it is necessary to empower asset recovery offices to trace and identify property which might be subsequently confiscated, to ensure they have access to the necessary information under clear conditions, and to establish rules on swiftly exchanging information with each other, spontaneously or upon request. In urgent cases where there is a risk of dissipation of the property, replies to information should be done as soon as possible and not later than 8 hours. **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, **in so far as it is necessary for the tracing and identification of proceeds, instrumentalities and property**, that allows them to establish the existence, ownership or control of property that may become object of a freezing or a confiscation order. Therefore, asset recovery offices should have access to the relevant data ~~such as fiscal data, national citizenship and population registries, commercial databases and social security information. This should include law enforcement information in so far as data such as criminal records, vehicles stops, property searches and previous legal actions such as freezing and confiscation orders or seizures of cash can be of value to identify relevant property.~~ **As a general rule, Member States should be obliged to provide asset recovery offices swift access to relevant categories of data, either through direct and immediate access to registers or databases or by other means, such as by making a request to the institution holding the information. 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. Regarding certain ~~As regards some~~ categories of typically sensitive information – fiscal data, national social security ~~registers~~ data and law enforcement information – it should be left to Member States to determine, when implementing the Directive, to what extent asset recovery offices should be provided such access. Thereby Member States can take into account proportionality, the type of data or other relevant circumstances. However, Member States should consider giving ~~access~~ asset recovery offices swift access should be provided to the largest extent possible. It is recalled this Directive establishes minimum rules and that Member States, on a national level, have the possibility to give Asset Recovery Offices access to more information, such as employment data or bank account information. ~~With regard to proportionality and ongoing investigations, Member States may deny asset recovery offices access to fiscal data, social security information and law enforcement information.~~**

Access to information should be subject to specific safeguards that prevent the misuse of the access rights, **including the requirements relating to logging in accordance with** ~~These safeguards should be without prejudice to~~ Article 25 of Directive (EU) 2016/680 of the European Parliament and of the Council<sup>6</sup>. The direct and immediate access to this information does not prevent Member States from making access subject to procedural safeguards as established under national law while taking due account of the need for asset recovery offices to be able to swiftly reply to cross-border requests. The implementation of the procedural safeguards for access to databases should not affect the ability of asset recovery offices to respond to requests from other Member States, especially in case of urgent requests. Access to relevant databases and registries under this Directive should complement access to bank account information pursuant to Directive (EU) 2019/1153 of the European Parliament and of the Council<sup>7</sup> and to beneficial ownership information pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council<sup>8</sup>.

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<sup>6</sup> Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (OJ L 119, 4.5.2016, p. 89).

<sup>7</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>8</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).

- (18) To ensure the security of the information shared between asset recovery offices, **all asset recovery offices should be able to directly access** ~~the use of the Secure Information Exchange Network Application (SIENA), managed by Europol in accordance with Regulation (EU) 2016/794 of the European Parliament and of the Council<sup>9</sup>, should be mandatory for.~~ **The SIENA system or, where appropriate, other secure channels should be used for** all communications among asset recovery offices under this Directive. **It may be appropriate to use another secure channel 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.** ~~Therefore, in order to be able to fulfil all the tasks assigned by this Directive, all asset recovery offices should be able to directly access SIENA.~~
- (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.

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<sup>9</sup> Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53).

- (20) Confiscation leads to the final deprivation of property. However, preservation of property can be a prerequisite to confiscation and is often essential for the effective enforcement of a confiscation order. Property is preserved by means of freezing. In order to prevent the dissipation of property ~~before a freezing order can be issued~~, the competent authorities in the Member States, ~~including asset recovery offices~~, should be empowered to take immediate action in order to secure such property **until a freezing order has been issued.** ~~Member States should enable asset recovery offices to take the immediate action at least in some cases where exercising some of their tasks pursuant to this Directive.~~ ~~National law may determine the scope of tasks and cases in which asset recovery offices should be empowered to take such action.~~
- (20a) Immediate action is a temporary urgent freezing measure, the form of which is not defined by this Directive. In accordance with national law, the immediate action may ~~also~~ have the form of an order. National law may provide that following its validation or approval by a competent authority, the immediate action transforms into or is considered as a freezing order. National law may limit the temporary validity of the immediate action. In such cases, if by the expiration of this period neither the freezing order is issued nor is the immediate action validated or approved by the competent authority following which it transforms into or is considered as a freezing order, the effects of the immediate action cease and the temporarily frozen property should be returned.

- (20b) **Member States should enable asset recovery offices, to take the immediate action in cases where they exercise their task of tracing and identifying instrumentalities, proceeds, or property which may become or is the object of a freezing or confiscation order issued by another Member State, to the extent that it is necessary to avoid that property disappears. This could be the case in particular when competent authorities cannot act due to the lack of an ongoing criminal investigation in the Member States where the property is located. While not required to do so, Member States are encouraged to enable asset recovery offices to take immediate action also in cases where they exercise their task of tracing and identifying instrumentalities, proceeds, or property to support other competent national authorities responsible for asset tracing investigations, when these authorities are not able to take such immediate action and where therefore there is a risk of the disappearance of the property.**
- (21) Given the ~~limitation on~~ **interference in** the right to property ~~imposed~~ **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.
- (22a) **Where the property to be frozen consists of entities that should be preserved as a going concern, such as undertakings, the freezing order may include measures to temporarily restrict the exercise of rights to this property by the persons owning or controlling them while allowing for continued operations.**
- (23) In addition to confiscation measures that allow authorities to deprive criminals of the proceeds or instrumentalities ~~directly stemming from crimes~~, **subject to following** a final conviction, it is necessary to enable confiscation of property of equivalent value to such proceeds or instrumentalities in order to capture property of equivalent value to the proceeds and instrumentalities of a crime, whenever it is impossible to **confiscate** ~~locate~~ such proceeds and instrumentalities. Member States are free to define the confiscation of property of equivalent value as subsidiary or alternative to ~~direct~~ **confiscation of proceeds and instrumentalities**, as appropriate in accordance with national law.
- (24) The practice by a suspected or accused person of transferring property or proceeds to a knowing third party with a view to avoiding confiscation is common and widespread. Acquisition by a third party refers to situations where, for example, property has been acquired, directly or indirectly, for example through an intermediary, by the third party from a suspected 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 lower than the market value. The rules on third party confiscation should extend to both natural and legal persons, without prejudice to the right of third parties to be heard, including the right to claim ownership of the property concerned. In any event, the rights of bona fide third parties should not be affected.



- (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. This does not mean that it must be established that the property in question is derived from criminal conduct. Member States may provide that it could, for example, be sufficient for the court to consider on the balance of probabilities, or to reasonably presume that it is substantially more probable, that the property in question has been obtained from criminal conduct than from other activities. 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 court is satisfied that the instrumentalities, proceeds, or property in question is derived from criminal conduct but where a final conviction is not possible because of illness, absconding or death of the suspected or accused person, or because the suspected or accused person cannot be held liable because of immunity or amnesty as provided for under national law.~~ The same should be possible where the **limitation periods** ~~time limits~~ prescribed under national law **for the relevant offences** have expired **after the criminal proceedings have been initiated**, ~~where such time limits are not sufficiently long to allow for the effective investigation and prosecution of the relevant criminal offences.~~ Confiscation in such cases should only be allowed where **the criminal proceedings could have led to a final criminal conviction should the circumstances above not have existed.** ~~the national court is satisfied that all the elements of the offence are present. For reasons of proportionality, confiscating property without a prior conviction should be limited to cases of serious crimes.~~ The right of the defendant to be made aware of the proceeding and to be represented by a lawyer should not be affected. **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. When the suspected or accused person has absconded, Member States should take all reasonable steps and may require that the person concerned be summoned to or made aware of the confiscation proceedings. The Member States are encouraged to enable confiscation also where a final conviction is not possible because the suspected or accused person cannot be held liable because of amnesty granted before the final conviction as provided for under national law.**
- (27) For the purposes of this Directive, illness should be understood to mean the inability of the suspected or accused person to attend the criminal proceedings for an extended period, as a result of which the proceedings cannot continue. **Cases, where illness only results in a temporary suspension of the criminal proceedings, which may continue after such suspension, are not concerned.**

- (28) ~~{Due to the intrinsically opaque nature of organised crime, it is not always possible to link property derived from criminal conduct activities to a specific criminal offence and confiscate such property. In such situations, it should be possible to confiscate property belonging to the person subject to the investigation~~ **confiscation should be possible when the property is identified in the context of an investigation in relation to a criminal offence under certain conditions including in particular: the property is frozen based on suspicion of crimes** ~~a criminal offence committed within the framework of a criminal organisation, these criminal offences are this criminal offence is liable to give rise to substantial economic benefits~~ **benefit, the investigation into this criminal offence does not result in a judgment of acquittal** and the court is satisfied that the frozen property is derived from **any criminal conduct that is liable to give rise, directly or indirectly, to substantial economic benefit and committed** ~~activities carried out within the framework of a criminal organisation. 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. These conditions should ensure that confiscation of property not linked to a specific offence for which the owner has been convicted is limited to property stemming from criminal conduct activities of criminal organisations that is are, because of their link to organised crime, serious in nature and liable to generate substantial benefits. When determining whether the offences are liable to give rise to significant benefits, Member States should take into account all relevant circumstances of the offence, including whether the criminal activities were committed with the intention to generate regular substantial profits.~~

(28-a) While it should not be a precondition for the national court to be satisfied that a **specific** criminal offence has been committed, **there must be sufficient facts and circumstances** for the court ~~must to~~ be satisfied that the property in question is derived from criminal ~~conduct offences. Confiscation of unexplained wealth should be possible where a court is satisfied that the property in question is derived from criminal conduct~~ committed within the framework of a criminal organisation. The relevant conduct could consist of any type of offences. Individual offences do not have to be proven, but the court must be satisfied that the property in question is derived from such conduct. ~~This does not mean that it this must be established that the property in question is derived from such criminal conduct.~~ Member States may provide that it could, for example, be sufficient for the court to consider on the balance of probabilities, or to reasonably presume that it is substantially more probable, that the property in question has been obtained from such criminal conduct than from other activities. When determining whether or not the property in question derived from criminal **conduct committed within the framework of a criminal organisation** activities, the national courts should take into account all relevant circumstances of the case, including the ~~available evidence and specific facts and~~, such as that the value of fact that the property is substantially disproportionate to the lawful income of the **affected person to whom the property belongs** ~~owner~~. Another circumstance that ~~should~~ could be considered is the absence of a plausible licit source ~~reasonable explanation regarding the origin of the property, as the provenance of lawfully acquired property can normally be accounted for.~~ The person's connection to people linked to a criminal organisation could also be of relevance. The assessment should be made on a case-by-case basis depending on the circumstances of the case. The mechanism of confiscation of unexplained wealth is not intended to be used 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 defence of the affected person are respected.** ~~Member States should then require and award an effective possibility for the owner of the property to prove that the property in question derives from lawful activities.~~

(28-b) The standard of proof as regards the origin of the property that this Directive sets out in provision on extended confiscation and in provision on confiscation of unexplained wealth is the same, in principle. Under both provisions, the court has to be satisfied that the property is derived from criminal conduct, while there is no requirement of any conviction for such criminal conduct. While the provision on extended confiscation is only applicable when a person is convicted of a criminal offence, in which case property belonging to that person can be ordered where the court is satisfied that the property is derived from criminal conduct, the provision on confiscation of unexplained wealth applies irrespective of the outcome of the investigation in relation to an offence that triggered its application. Confiscation of unexplained wealth should be possible when proceedings are discontinued, regardless of the reason, as well as when proceedings result in a judgment. In cases of conviction, either extended confiscation or confiscation of unexplained wealth would in principle be possible. The Directive does not indicate which form of confiscation should take precedence but Member States may do so. Unlike extended confiscation, confiscation of unexplained wealth may in principle be ordered in cases of acquittal. ~~The principle of *ne bis in idem* must, however, be observed. The provision on confiscation of unexplained wealth is not intended to be applied if, in the individual case, the application would come into conflict with that principle.~~ It should be noted that when the offence is prosecuted, the confiscation order should not necessarily have to be tried in conjunction with the offence, Member States could also allow for the issue of confiscation to be separated from the criminal charges and be tried separately. ~~However, as regards confiscation of unexplained wealth, the scope of the criminal conduct is limited to conduct committed in the framework of criminal organisation which would fall in the scope of this Directive according to Article 2 paragraphs 1 to 4 and which would be punishable by deprivation of liberty of a maximum of at least four years, would there be a conviction for such conduct. Moreover, when determining whether the property is derived from criminal conduct, in the provision on confiscation of unexplained wealth the court may consider substantial disproportionality of the property to the lawful income of the person, as opposed to any disproportionality according to the provision on extended confiscation.]~~

- (28a) This Directive is without prejudice to the procedures that Member States may use to confiscate the property in question. In line with their national system, Member States may implement this Directive on non-conviction based confiscation and confiscation of unexplained wealth within the framework of either criminal law or other branches of law, as long as the proceedings fall under proceedings in criminal matters as interpreted by the Court of Justice of the European Union, notwithstanding the case law of the European Court of Human Rights.**
- (28b) When determining whether a criminal offence or criminal conduct is liable to give rise to 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.**
- (28c) 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.**
- (29) To ensure that property that is or may become subject to a freezing or confiscation order maintains its economic value Member States should put in place effective management measures. Such measures should apply to frozen property and to confiscated property until its disposal based on a final confiscation order. They should not apply after the disposal of the property based on a final confiscation order, where the Member States may provide for rules for applicable mechanisms by which the property, or its value, forfeit to a state or other public budget, may be used for victims' compensation, for public interest or social purposes, or for other purposes as defined by national law. This Directive does not harmonise the mechanisms following the disposal of the property based on a final confiscation order.**

- (29a) **Where justified by the nature of the property, including for example its value or the need for specific management conditions or expertise implied by its nature, such measures should include a systematic an assessment of how to best minimise the management costs and preserve and optimise the value of the property carried out before when the adoption execution of a freezing order freezing measures preparing or executing a freezing order, also known as pre-seizure planning. While the objective of the assessment is to provide the competent authorities with the relevant considerations to be taken into account before freezing property, the freezing order may be adopted before the finalization of such assessment if this is necessary to preserve the property in question. 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 adoption and execution of the freezing order.**

- (30) ~~In circumstances~~ **At least 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, ~~where possible except in cases of urgency,~~ the ~~affected person~~ **owner of the property** should have the right to be **notified and given the opportunity to be heard.** Member States ~~should~~ **may** consider the possibility to 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. **Member States should take appropriate measures to prevent the property from being returned during the execution of the interlocutory sale, directly or indirectly, to the persons convicted in the criminal proceedings affected by the interlocutory sale of the frozen property in which the property has been frozen.** The content of such measures is not defined by this Directive and should be determined by Member States. The obligation to take the appropriate preventative measures does not entail the obligation to prevent the concerned behaviour in each individual case. ~~These rules, including the possibility for the costs for the management of frozen property to be charged to the owner or beneficial owner, apply to property identified in the context of the implementation of Union restrictive measures to the extent that they have been frozen in relation to criminal charges, such as violation of Union restrictive measures.~~



- (31) Member States should set up **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 ~~or~~ **and confiscated** property, or should provide support to decentralised actors according to national management set-ups, and support relevant authorities with pre-seizure 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, where asset management offices may also carry out tasks of asset recovery offices, or where certain tasks of asset management offices may be outsourced.**
- (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 **measures, and** confiscation; and interlocutory sales orders should be communicated to the affected **person party** without **undue** delay. **Nevertheless, Members States should be able to provide for a right for the competent authorities may to postpone communicating freezing measures to the affected person due to the needs of the investigation.** The purpose of communicating those **measures and** orders is, inter alia, to allow the affected person to challenge them ~~before a court~~. Therefore, such communications should, as a general rule, indicate the reason or reasons for the **measure or 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 party** should have the effective possibility to challenge the freezing **measures, and the** 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.** ~~The same possibility should be provided for the owner affected by an order to sell the property before confiscation.~~ **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, and in order to ensure the proportionality of confiscation measures ~~which are not limited to proceeds~~, Member States ~~may~~ should provide **for the possibility** that confiscation of property ~~is~~ **may not be** ordered to the extent it would be disproportionate to the offence **or accusation** in question. **This possibility should allow the competent authorities to assess for instance to what extent the confiscation of instrumentalities is proportionate.** Furthermore, Member States ~~may~~ should provide for the possibility that, in exceptional circumstances, confiscation ~~of property other than proceeds~~ is not ordered, insofar as it would, in accordance with national law, represent undue hardship for the affected person, on the basis of the circumstances of the respective individual case which should be decisive. Such exceptional circumstances should be limited to cases where it would put the person concerned in a situation in which it would be very difficult for the affected person to survive and the circumstances of the respective individual case should be decisive.
- (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, data protection rules as set out in Directive (EU) 2016/680 are applicable in relation to measures taken under this Directive. Where relevant, notably having regard to the processing of personal data by asset management offices for the purpose of the management of property, the data protection rules set out in Regulation (EU) 2016/679 of the European Parliament and of the Council are applicable.

- (39) An effective recovery system requires concerted efforts of a wide range of authorities, from law enforcement, including customs authorities, tax authorities and tax recovery authorities to the extent that they are competent for asset recovery, asset recovery offices, judicial authorities and asset management authorities, including asset management offices. In order to ensure coordinated action by all competent authorities, it is necessary to establish a more strategic approach to asset recovery and promote a greater cooperation between the relevant authorities, and to obtain a clear overview of the results of asset recovery. For this purpose, Member States should adopt and regularly review a national strategy on asset recovery to guide actions in relation to financial investigations, freezing and confiscation, management as well as final disposal of the relevant instrumentalities, proceeds, or property. **Member States may decide on the appropriate format of such strategy which may take into account their constitutional traditions in terms of separation of powers and competences and may be either sectorial or a part of a broader strategical document. Without prejudice to whether the Member States provide for the adoption of one or more strategies, their overall content should encompass the territory of the entire Member State.** 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.

- (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. Member States should endeavour to collect data for certain statistics at a central level, with a view to sending them to the Commission. This means that the Member States should make reasonable efforts to collect the data concerned. It does not mean, however, that the Member States are under an obligation to achieve the result of collecting the data where there is a disproportionate administrative burden or when there are high costs for the Member State concerned.

The wording in Recital 40 is to a large extent a reproduction of the corresponding Recital in Directive 2014/42/EU.

- (41) ~~[To ensure consistent approaches among Member States in the collection of statistics, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission to supplement this Directive by adopting more detailed rules on the information to be collected and the methodology for the collection of the statistics.]~~
- (42) ~~It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law Making<sup>18</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.~~

<sup>18</sup> OJ L 123, 12.5.2016, p. 1.

- (43) To provide a more comprehensive overview of the action taken to freeze and confiscate, Member States should ~~establish~~ **have in place** ~~a~~ central registers of frozen, managed and confiscated instrumentalities, proceeds, or property, and collect the necessary statistics on the implementation of the relevant measures. Centralised registries of frozen and confiscated instrumentalities, proceeds, or property should ~~be established~~ **be in place** exist at national level for the purpose of facilitating the management of the specific file. **The Directive does not require the establishment of new registers if a Member State already has appropriate central registers in place.** Member States should designate authorities responsible for the management of the centralised registries. The aim of ~~establishing~~ the centralised registries is **should be** to assist all the relevant authorities responsible for the recovery of criminal property with an accessible record of the property which is frozen, confiscated, or under management, from the moment it is frozen until it is returned to the owner or it is disposed of. Information entered in the registries should be retained only for as long as it is necessary for the purposes of management of the specific case, or for the purposes of gathering statistical data collection. For case management purposes, it should not be kept for longer than after the final disposal of the property following a confiscation order, or after its return to the owner in case of acquittal. Access to the information recorded in the centralised registries should be given only to authorities responsible for the recovery of criminal property, such as asset recovery offices, asset management offices, national courts or otherwise appointed authorities according to national dispositions, **for the purpose of performing their respective tasks.**



- (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, closely** with their counterparts in third countries to trace, identify and manage instrumentalities and proceeds, or property which may become or is the object of a freezing or confiscation order within the framework of proceedings in criminal matters. **Member States should make use of existing frameworks for cooperation and are encouraged, but not obliged, to establish new bilateral agreements when no other arrangement is in place. The data protection rules set out in Directive (EU) 2016/680 are applicable in relation to measures taken in this respect.** Moreover, for the effective implementation of Union restrictive measures, it is of paramount importance for asset recovery offices to cooperate with their counterparts in third countries where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures. **In that regard, Member States should ensure that asset recovery offices establish working arrangements with their counterparts in those third countries with which there is an operational cooperation agreement in place that allows for the exchange of operational personal data with Europol or Eurojust.**

- (45) Asset recovery offices should also closely cooperate with EU bodies and agencies, including Europol, Eurojust and the European Public Prosecutor's Office, in accordance with their respective mandates, insofar as it is necessary to trace and identify property within the cross-border investigations supported by Europol and Eurojust or within the investigations undertaken by the European Public Prosecutor's Office. **Member States participating in the enhanced cooperation on the establishment of the EPPO should ensure that their asset recovery offices comply with the obligations under Council Regulation (EU) 2017/1939, including the reporting obligation provided for by Article 24 thereof, and follow the instructions of and undertake the investigation measures assigned to them by the EPPO, in accordance with Article 28 thereof.** ~~Asset recovery offices should also cooperate with Europol and Eurojust, in accordance with their respective mandates, insofar as it is necessary to trace and identify property to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures.~~
- (46) In order to ensure that there is a common understanding and minimum standards for asset tracing and identification, freezing and management, this Directive should lay down minimum rules for the relevant measures as well as related safeguards. The adoption of minimum rules does not prevent Member States from granting more extensive powers to asset recovery offices or to asset management offices, or to provide for additional safeguards under national law, provided that such national measures and provisions do not undermine the objective of this Directive.
- (46a) **This Directive lays down minimum standards for confiscation within the framework of proceedings in criminal matters. It does not prevent Member States from providing more extensive powers in their national law, including, for example, in relation to their rules on evidence or in relation to the scope of applicability of extended confiscation or confiscation of unexplained wealth, or from providing 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 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>19</sup>, Council Framework Decision 2001/500/JHA<sup>20</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>19</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>20</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. ~~XX/XX/20XX~~**.

HAVE ADOPTED THIS DIRECTIVE:

## 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. **These rules are without prejudice to the procedures that Member States may use to freeze and confiscate the property in question, including within the framework of proceedings in civil or administrative matters. This Directive ~~does not apply~~ applies without prejudice to freezing and confiscation measures within the framework of proceedings in civil or administrative matters.**

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

The Presidency suggests restoring previous wording that seemed acceptable to all Member States at an earlier stage of the negotiations. **Member States** that are in favour of other solutions are invited to indicate this.

## Article 2

### Scope

1. This Directive shall apply to ~~the following~~ criminal offences **covered by the relating to:**

(a) ~~participation in a criminal organisation, as defined in Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime~~<sup>21</sup>;

(b) ~~terrorism, as defined in 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>22</sup>;

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<sup>21</sup> ~~Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).~~

<sup>22</sup> ~~Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA (OJ L 88, 31.3.2017, p. 6).~~

- (c) ~~trafficking in human beings, as defined in 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>23</sup>;
- (d) ~~sexual exploitation of children and child pornography, as defined in 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>24</sup>;
- (e) ~~illicit trafficking in narcotic drugs and psychotropic substances, as defined in 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>25</sup>;
- (f) ~~corruption, as defined in the Convention drawn up on the basis of Article K.3(2)(c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union~~<sup>26</sup> and ~~in the Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector~~<sup>27</sup>;
- (g) ~~money laundering, as defined in Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law~~<sup>28</sup>;

<sup>23</sup> ~~Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15.4.2011, p. 1).~~

<sup>24</sup> ~~Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).~~

<sup>25</sup> ~~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 (OJ L 335, 11.11.2004, p. 8).~~

<sup>26</sup> ~~OJ C 195, 25.6.1997, p. 1.~~

<sup>27</sup> ~~Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54).~~

<sup>28</sup> ~~Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (OJ L 284, 12.11.2018, p. 22).~~

(h) ~~forgery of means of payment, as defined in Directive (EU) 2019/713 of the European Parliament and of the 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>29</sup>;

(i) ~~counterfeiting currency, including the euro, as defined in 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>30</sup>;

(j) ~~computer-related crime, as defined in 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>31</sup>;

(k) ~~illicit trafficking in weapons, munitions and explosives, as defined in the Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against transnational organized crime~~<sup>32</sup>;

(l) ~~fraud, including fraud and other criminal offences affecting the Union's financial interests as defined in Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law~~<sup>33</sup>;

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<sup>29</sup> Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA (OJ L 123, 10.5.2019, p. 18).

<sup>30</sup> Directive 2014/62/EU of the European Parliament and of the Council of 15 May 2014 on the protection of the euro and other currencies against counterfeiting by criminal law (OJ L 151, 21.5.2014, p. 1).

<sup>31</sup> 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 (OJ L 218, 14.8.2013, p. 8).

<sup>32</sup> OJ L 89, 25.3.2014, p. 7.

<sup>33</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

(m) ~~environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties as defined in in Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law<sup>34</sup> and as well as offences related to ship pollution as defined in 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>35</sup>~~

(n) ~~facilitation of unauthorised entry and residence, as defined in Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence<sup>36</sup>, and Council Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence<sup>37</sup>;~~

(o) ~~market abuse, as defined in 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>38</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.**

The Presidency notes the proposed amendment of paragraph 1 reflects the current majority. **Member States** that are in favour of other solutions are invited to indicate this.

<sup>34</sup> ~~Directive 2008/99/EC of the European Parliament and of the Council of 19 November 2008 on the protection of the environment through criminal law (OJ L 328, 6.12.2008, p. 28). The reference to the 2008 and 2009 Directives will be replaced with a reference to the not yet adopted Directive on the protection of the environment through criminal law, if that Directive will be adopted before the finalisation of the current text.~~

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

<sup>36</sup> ~~Council Framework Decision 2002/946/JHA on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1).~~

<sup>37</sup> ~~Directive 2002/90/EC defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17).~~

<sup>38</sup> ~~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) (OJ L 173, 12.6.2014, p. 179).~~



2. This Directive shall **also** apply to the following offences, **where the offence is to the extent that the offence is committed within the framework of a criminal organisation as defined in Council Framework Decision 2008/841/JHA and is punishable by deprivation of liberty of a maximum of at least [four] years.**÷

Delegations have expressed a number of concerns regarding this Article. Some wish to delete the provision, others wish to change parts of the wording, lower or raise the penalty level indicated or move the substance of the provision to Article 1.

In the light of the debate, the Presidency considers that the current text remains a good basis for a balanced compromise between the various positions of delegations.

~~(a) counterfeiting and piracy of products;~~

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

~~(c) forgery of administrative documents and trafficking therein;~~

~~(d) murder or grievous bodily injury;~~

~~(e) illicit trade in human organs and tissue;~~

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

~~(g) organised or armed robbery;~~

~~(h) racketeering and extortion;~~

~~(i) trafficking in stolen vehicles;~~

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

~~3. [This Directive shall apply to the violation of Union restrictive measures as defined in **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**].~~

Paragraph 3 has been included in paragraph 1, as proposed by several Member States.

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<sup>39</sup>**

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, and legal documents or instruments evidencing title or interest in such property;
- (3) ‘instrumentalities’ means any property used or intended to be used, in any manner, wholly or partially, to commit a criminal offence;

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<sup>39</sup> **Some delegations have requested to have a definition of ‘affected persons’ inserted here. The Presidency considers that the need to clarify the meaning of ‘affected persons’ and, if so, what the term should mean, will must be discussed in relation to each provision in which the term occurs. If delegations wish to make clarifications, it will then be determined if this is best done by inserting a definition here – which would seem difficult, as the term would likely have to be given a different meaning in different provisions – or by using more specific language in the relevant provisions.**

- (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 **or criminal conduct**<sup>40</sup>;

The Presidency suggests deleting “or criminal conduct” to align the scope with Regulation 2018/1805. These words were originally introduced with Article 16 in mind. However, they do not seem necessary as the definition says “in relation to a criminal offence” and at the origin of the unexplained wealth procedure there is an investigation into a criminal offence.

**Member States** that are in favour of other solutions are invited to indicate this.

- ~~(7) ‘SIENA’ means the secure information exchange network application, managed by Europol, aimed at facilitating the exchange of information between Member States and Europol;~~
- (8) ‘criminal organisation’ means a criminal organisation as defined in Article 1 of the Council Framework Decision 2008/841/JHA;
- ~~(9) ‘victim’ means a victim as defined in Article 2(1), point (a), of Directive 2012/29/EU of the European Parliament and of the Council;<sup>41</sup> as well as a legal person, as defined in national law, that has suffered harm as a result of any of the offences within the scope of this Directive;~~
- ~~(10) ‘beneficial owner’ means a beneficial owner as defined in Article 3, point (6), of Directive 2015/849/EU<sup>42</sup>;~~

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<sup>40</sup> **Some delegations wish to reword this definition.**

<sup>41</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.

<sup>42</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).

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

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

## 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 ~~criminal proceedings~~ **in criminal matters**.
2. Asset tracing investigations pursuant to paragraph 1 shall, ~~when considered appropriate with account taken to the type of offence and the circumstances of the individual case,~~ 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<sup>43</sup> economic benefit, **unless not considered appropriate in view of the type of offence and the circumstances of the individual case., at least in cases which are not minor,** or where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures. **When implementing the Directive, Member States may determine a threshold for the value linked to the criminal offence or allow for a case-by-case assessment.**

**The Presidency considers that the current text has a broad support from delegations. Member States that are in favour of other solutions are invited to indicate this.**

<sup>43</sup> Some delegations wish to delete the word “substantial”, or to reformulate the phrase in which the said word is included.

## 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 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 another Member State;
  - (c) cooperate and exchange information with other Member States' asset recovery offices in the tracing and identification of instrumentalities and proceeds, or property which may become or is the object of a freezing or confiscation order;
  - ~~(d) exchange information with other asset recovery offices in the Member States related to the effective implementation of Union restrictive measures where necessary to prevent, detect or investigate criminal offences.~~
- ~~3. Asset recovery offices shall be empowered to trace and identify property of persons and entities subject to EU targeted financial sanctions where necessary to prevent, detect or investigate criminal offences. To that effect, they shall cooperate with asset recovery offices and other relevant competent authorities in other Member States and exchange relevant information.~~
- ~~4. Member States shall enable asset recovery offices to take immediate action pursuant to Article 11 paragraph 2 where necessary to prevent, detect or investigate criminal offences related to the violation of Union restrictive measures. Article 11 paragraph 5 shall apply mutatis mutandis.~~

One Member State has a scrutiny reservation on the Article, particularly regarding “is the object of” in paragraph 2 (b) and (c).

The Presidency considers that the current text has a broad support from delegations. **Member States** that are in favour of other solutions are invited to indicate this.

## 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, **provided that the information is stored in centralised or interconnected databases or registers or databases held by public authorities**, have immediate and direct access to the following information to the extent that ~~it information~~ is necessary for the tracing and identification of proceeds, instrumentalities, and property:

~~(a) fiscal data, including data held by tax and revenue authorities;~~

~~(b)~~ **(a)** national real estate registers or electronic data retrieval systems and land and cadastral registers;

~~(c)~~ **(b)** national citizenship and population registers of natural persons;

~~(d)~~ **(c)** national motor vehicles, aircraft and watercraft registers;

~~(e)~~ **(d)** commercial **registers** ~~databases~~, including business and company registers;

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

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

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

2bis. In addition to the information referred to in paragraph 1 and 2, and for the purposes of performing the tasks referred to in Article 5, Member States shall consider giving ~~ensure that~~ asset recovery offices swift access, to the largest extent possible within the limits provided for by national law, to the following information ~~to the extent that~~ in so far as information is necessary for the tracing and identification of proceeds, instrumentalities, and property:

(a) fiscal data, including data held by tax and revenue authorities;

(b) national social security ~~registers~~ data;

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

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

~~3. When implementing this Directive, By derogation from paragraph 1, Member States may, by derogation from paragraph 1, deny asset recovery offices access to information referred to in paragraph 1 points (a), (f) and (g), if the access to such information would have a negative impact on ongoing investigations or if it would be disproportionate to the legitimate interests of a natural person with regard to the purposes for which access has been requested.~~



As regards this article there is a discrepancy between Member States that wish for a far-reaching access for ARO to information, and others that wish for a more limited access and a more flexible text in relation to national legislation. The Presidency notes that a majority of Member States preferred the current text to the alternate wording in the box of the previous version. Before considering this article closed, we would like to hear if the following, slightly more ambitious alternative wording would be acceptable to delegations:

2bis. In addition to the information referred to in paragraph 1 and 2, and for the purposes of performing the tasks referred to in Article 5, Member States shall give asset recovery offices swift access to the following information in so far as it is necessary for the tracing and identification of proceeds, instrumentalities, and property:

[...]

2tris. Member States may decide to give access pursuant to paragraph 2bis on the basis of reasoned requests. The request to obtain such information might be denied for instance if the provision of such information would have a negative impact on an ongoing investigation, if it would be disproportionate to the legitimate interests of a natural and legal person with regard to the purposes for which access has been requested or if it would comprise information provided by another Member States or third country pursuant to exchanges among tax authorities.

Some Member States suggested adding additional information, such as information from the private sector, while some Member States are opposing such addition. As a compromise a sentence has been added to recital (17). **Member States** that cannot accept this compromise are invited to indicate this.

## Article 7

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

1. ~~Access to~~ Information pursuant to Article 6 shall **only** be performed **accessed for the purposes of performing the tasks referred to in Article 5 and** only where necessary on a case-by-case basis by the staff specifically designated and authorised to access the information referred to in Article 6.
2. Member States shall ensure that staff of the asset recovery offices comply with the rules on confidentiality and professional secrecy as provided for under applicable national law. Member States shall also ensure that staff of asset recovery offices have the necessary specialised skills and abilities to perform their roles effectively.
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** ~~the security of the data~~ in order for asset recovery offices to access and search the information referred to in Article 6.

The Presidency considers this Article provisionally agreed by the Working Party.
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## Article 8

### Monitoring access and searches by asset recovery offices

1. ~~Without prejudice to Article 25 of Directive 2016/680, Member States shall ensure that the authorities holding the information referred to in Article 6~~ **that is stored in registers or databases keep** ~~Member States shall provide for logs of all access and search activities by asset recovery offices under in accordance with this Directive~~ **to be kept in accordance with Article 25 of Directive 2016/680. The logs shall contain the following:**

- ~~(a) the national file reference;~~
- ~~(b) the date and time of the query or search;~~
- ~~(c) the type of data used to launch the query or search;~~
- ~~(d) the unique identifier of the results of the query or search;~~
- ~~(e) the name of the asset recovery office consulting the registry;~~

~~(f) the unique user identifier of the official who made the query or performed the search.~~

~~2. The logs referred to in paragraph 1 may be used only for data protection monitoring, including checking the lawfulness of data processing, and for ensuring data security and integrity. The logs shall be protected by appropriate measures against unauthorised access and erased five years after their creation. If, however, they are required for monitoring procedures that are ongoing, they shall be erased once the monitoring procedures no longer require the logs.~~

The Presidency considers that the current text has a broad support from delegations. **Member States** that are in favour of other solutions are invited to indicate this.

One Member State prefers the original text.

## *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, and if available, details on** the natural or legal persons presumed to be involved, such as names, **national identification numbers or social security numbers**, addresses, dates and places of birth, date of registration, shareholders, headquarters;

A few Member States have questioned the addition of national identification numbers or social security numbers. The Presidency has therefore added a phrase that possibly can be acceptable for all Member States. **Member States** that cannot accept this compromise are kindly asked to indicate this.

- (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 pursuant to Article 5. When providing such information, asset recovery offices shall set out the reasons why the information exchanged is considered necessary.

4. ~~Member States shall ensure that the information provided by asset recovery offices pursuant to paragraphs 1, 2 and 3~~ **Unless otherwise indicated by the asset recovery office providing information pursuant to paragraphs 1 or 2, the asset recovery office receiving the information shall be entitled to present the information** ~~can be presented~~ as evidence before a national court **or competent authority** of a Member State, in accordance with procedures in national law.

The Presidency still believes that the current paragraph 4 constitutes a reasonable compromise between widely different interests. In this regard, we note that delegations that favoured the Commissions proposal could accept the text by way of compromise. We furthermore note that this solution means that no information will be used as evidence against the wishes of the Member State providing the information. A reference to “competent authority” has been added to reflect the fact that the sharing of information will mostly be carried out during the criminal investigation phase.

We thus suggest keeping the current wording. Member States that are in favour of other solutions are invited to indicate this.

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 or, where appropriate, other secure channels** for exchanging information pursuant to this Article.

A few Member States prefer the creation of a separate template instead of the use of the fields in SIENA. The Presidency considers that the use of SIENA, which can be developed further if needed, is a better option and the option preferred by the majority of Member States. **Member States** that are in favour of other solutions are invited to indicate this.

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

- (a) harm the fundamental national security interests of the requested Member State;
- (b) jeopardise an ongoing investigation, or a criminal intelligence operation, or pose an imminent threat to the life or physical integrity of a person.

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

Only one MS has opposed the addition of (c). Therefore the Presidency considers the current wording being the preference of the majority. Member States that are in favour of other solutions are invited to indicate this.

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

### *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) ~~14 seven~~ calendar days, for all requests that are not urgent;

(b) eight hours, for urgent requests relating to information referred to in Article 6 (1), which is stored in databases and registers **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 three days of the initial deadline established pursuant to paragraph 1.

**2bis. In order to fulfil the time limit pursuant to paragraph 1, point (b), Member States may delegate the authority to respond to other functions, such as the Single Point of Contact pursuant to Directive 202xx/xx [Directive on the exchange of information between the law enforcement authorities].**

**3. The time limits set out in paragraph 1 shall commence as soon as the request for information is received.**

To meet the wish from several Member States to limit the application of paragraph 1, point (b), to “office hours”, the Presidency proposes an alternative, in order not to weaken the wording compared to the current Framework Decision. This alternative allows for responses to be sent by other national authorities or functions, for example the law enforcement Single Point of Contact, when needed. **Member States** that are in favour of other solutions are invited to indicate this.

The suggested paragraph 1(c) deals with other urgent requests than those which concern directly accessible information, and are therefore in line with the draft directive on the exchange of information between law enforcement authorities (repealing Framework Decision 2006/960/JHA). Most Member States have welcomed this addition, while a few are opposing it. As a consequence of this addition, a deletion has been made in paragraph 2.

### **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 **Articles 12 to 16 by competent authorities.**  
~~Article 12. The freezing measures shall consist of freezing orders and immediate action.~~

2. ~~Freezing measures shall include immediate action to~~ **Immediate action shall** be taken when necessary in order to preserve the property **until a freezing order has been issued.** **Member States may limit the temporary validity of the immediate action.**

3. Without prejudice to the powers of other competent authorities to take immediate action, Member States shall enable asset recovery offices ~~to take the immediate action in the course of proceedings in criminal matters at least in some cases~~ where necessary to preserve the property that they have traced and identified in exercise of ~~they are exercising~~ their tasks pursuant to Article 5(2)(b). ~~The scope of tasks and cases in which asset recovery offices should be empowered to take such action may be defined in national law.~~ to take immediate action pursuant to paragraph 2 until a freezing order pursuant to paragraph 1 is issued.<sup>44</sup>

A number of delegations have expressed concerns regarding paragraph 3 while others would prefer more far-reaching powers for the AROs. In light of the debate, the Presidency considers that the current text remains a good basis for a balanced compromise between the various positions of delegations. Member States that are in favour of other solutions are invited to indicate this.

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

5. Member States shall ensure that the freezing ~~measures orders pursuant to paragraphs 1, 2, 3 and 4 are taken issued~~ 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**~~are adequately motivated.~~

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

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

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<sup>44</sup> **Many delegations have suggestions on this provision.**



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

The Presidency considers this Article provisionally agreed by the Working Party.

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

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

The Presidency considers this Article provisionally agreed by the Working Party.

## 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** ~~this offence~~ is liable to give rise, directly or indirectly, to economic benefit, and where the national court is satisfied that the property is derived from criminal conduct.
2. In determining whether the property in question is derived from criminal conduct, account shall be taken of all the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person.
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.**

The Presidency has taken note that two Member States favour a threshold of five years, while two other Member States do not want a threshold at all. The Presidency however considers that the current text has a broad support from delegations. **Member States** that are in favour of other solutions are invited to indicate this.

## 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(2), 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 **at least** 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;

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

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

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

2. Confiscation without a prior conviction **under this Article** shall be limited to **cases where the criminal proceedings could have led to a criminal conviction should the circumstances according to paragraph 1 not have existed and to** criminal offences liable to give rise, directly or indirectly, to substantial economic benefit ~~and only insofar as the national court is satisfied that all the elements of the offence are present.~~

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

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

The Presidency believes there is support for the Article in general but has, in response to requests for additional clarity, introduced some additions to paragraph 1 (f).

**Member States** that are in favour of other solutions are invited to indicate this.

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

With the most recent amendments, the Presidency has tried to take into account as many of the concerns expressed by Member States as is possible without altering the general structure of the provision (which has gained the support of a solid majority of Member States).

The Presidency particularly invites discussion on the suggested new amendments (underlined) but would also like to know whether Member States, in a spirit of compromise, could accept the Article as a whole.

1. Member States shall take the necessary measures to enable the confiscation of property **identified in the context of an investigation in relation to a criminal offence and belonging to a person subject to the investigation**, ~~where confiscation is not possible pursuant to Articles 12 to 15~~ **the national court is satisfied that the property is derived from criminal conduct liable to give rise, directly or indirectly, to substantial economic benefit and committed within the framework of a criminal organisation.** ~~and the following conditions are fulfilled:~~

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

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

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

The Presidency believes there is support for the current structure of paragraph 1, including the reference to property “identified” (rather than “frozen”).

Regarding the qualification of the relevant criminal conduct, there is strong support for a reference to criminal conduct committed within the framework of a criminal organisation. As for substantial economic benefit, there are more Member States requesting a reference than actively opposing it. As a compromise, and bearing in mind that these are only minimum rules, the Presidency suggests including both criteria.

To address concerns regarding the rights of third parties, the Presidency also suggests limiting the provision to confiscation from a person that is subject to the investigation. This would be more in line with Article 14, which concerns “confiscation [...] of property belonging to a person convicted of a criminal offence[...]”.

2. When determining whether the ~~frozen~~ property **referred to in paragraph 1** is derived from criminal offences ~~conduct~~ **committed within the framework of a criminal organisation**, account shall be taken of all the circumstances of the case, including the **available evidence and** specific facts ~~and available evidence~~, such as:

- - that the value of the property is substantially disproportionate to the lawful income of **the affected person to whom the property belongs, and**
- - that there is no ~~reasonable explanation of the origin~~ **plausible licit source** of the property, **or**
- - **that the person is connected to people linked to a criminal organisation**~~under which the property was found and the personal and economic circumstances of the affected person~~ owner of the property.

The Presidency suggests changing the focus from “criminal conduct” to “criminal conduct committed within the framework of a criminal organisation,” as a third example of relevant circumstances can then be added. The second example has been rephrased to avoid the any impression that a reversal of the burden of proof is intended.

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

#### *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~~.

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

The Presidency believes the text reflects the current majority. **Member States** that are in favour of other solutions are invited to indicate this.

## *Article 18*

### **Victims compensation**

Where, as a result of a criminal offence, victims **or legal persons, as defined in national law, that have suffered harm as a result of any of the offences within the scope of this Directive**, have claims against the person who is subject to a confiscation measure provided for under this Directive, Member States shall take the necessary measures to ensure that the confiscation measure does not affect ~~victims~~<sup>2</sup> **their** rights to obtain compensation for their claims.

The Presidency considers this Article provisionally agreed by the Working Party.
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## CHAPTER IV MANAGEMENT

### *Article 19*

#### **Asset management and pre-seizure planning**

1. Member States shall ensure the efficient management of frozen and confiscated property until its disposal **based on a final confiscation order**.
2. Member States shall ensure that, ~~before issuing~~ **executing a freezing order** within the meaning of ~~Article 11 paragraph 1~~, **where justified by the nature of the property**, competent authorities responsible for the management of frozen and confiscated property **assess the specific circumstances of the property to be frozen that may become object of a confiscation order in order to minimise its estimated management costs and to preserve** ~~carry out an assessment of the costs which may be incurred in the management of the property which may be frozen, for the purposes of preserving and optimizing the value of such property until its disposal.~~ **Such assessment shall be carried out when preparing or executing the freezing order.**
3. Member States shall ensure that carrying out of the assessment pursuant to paragraph 2 **does not result in undue delay in the adoption and execution of the freezing order.**

The Presidency suggests amendments to clarify that the assessment does not have to be terminated before issuing the freezing order and that an assessment does not have to take place when freezing property for evidentiary reasons. **Member States** are invited to indicate whether they share this assessment.



### Interlocutory sales

1. Member States shall ensure that property frozen **by a freezing order** pursuant to Article 11 paragraph 1 can be transferred or sold before the issuing of a **final** confiscation order **at least where** ~~in~~ one or more of the following circumstances **may be reasonably assumed**:

- (a) the property subject to freezing is perishable or rapidly depreciating;
- (b) the storage or maintenance costs of the property are disproportionate to its value;
- (c) the property is too difficult to administer, or its management requires special conditions and non-readily available expertise.

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

The Presidency suggests that “at least” remain in paragraph 1 as it seems to reflect the current majority. Furthermore, the Presidency suggests adding a possibility to be heard unless there is a case of urgency in order to avoid causing delays in urgent cases. **Member States** are invited to indicate whether they agree with these suggestions.

3. Earnings from interlocutory sales should be secured until a judicial decision on confiscation is reached. Member States shall take appropriate measures to ~~protect third party buyers of property sold from retaliatory measures, to ensure that the property sold is not~~ **prevent the property from being returned; directly ~~or indirectly,~~ to the affected persons when executing the interlocutory sale. ~~convicted in the criminal proceedings in which the property has been frozen or to third parties with family or business relations to any such convicted person.~~** of the criminal offences referred to in Article 2.

The Presidency suggests replacing “convicted persons” as interlocutory sales typically take place before a conviction. It could also be relevant e.g. in cases of unexplained wealth. In this context, it should be clear that the term “affected person” refers not to any person affected but only to the person that was affected by the interlocutory sale (who was in possession and/or the owner of the property).

The reference to the execution of the interlocutory sale is intended to clarify that tracing for future transaction does not have to be performed; a background check of the person acquiring the property sold would suffice.

**Member States** who are not in favour of this solution are invited to indicate their alternative suggestions.

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

## *Article 21*

### **Asset management offices**

1. Each Member State shall set up or designate at least one **competent authority that will 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 pre-seizure planning**;

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

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

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

The Presidency notes that some Member States have asked to make this provision optional by replacing “shall” with “may”. However, the Presidency believes that Article 21 as it is now formulated reflects the current majority. **Member States** that are in favour of other solutions are invited to indicate this.

## CHAPTER V

### SAFEGUARDS

#### *Article 22*

#### **Obligation to inform affected persons**

Member States shall ensure that the freezing ~~measures~~ **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** setting out the reasons for the measure. **Member States may provide for a right for ~~When it is necessary to avoid jeopardizing a criminal investigation, the~~ competent authorities ~~to may~~ postpone communication of the freezing measures to the affected person when it is necessary to avoid jeopardizing a criminal investigation.**

The Presidency believes the proposed amendment of Article 22 reflects the current majority. **Member States** that are in favour of other solutions are invited to indicate this.

### Legal remedies

1. Member States shall ensure that the persons affected by **the freezing measures pursuant to Article 11, and confiscation orders pursuant to Articles 12 to 16** ~~the measures provided for under this Directive~~ have the right to defence ~~including access to the file and the right to be heard on issues of law and fact~~, to an effective remedy and to a fair trial in order to uphold their rights.

~~Member States shall ensure that the right to defence, the access to the file and the right to be heard on issues of law and fact is guaranteed to those affected persons that are suspects or accused persons, or whose property is or may be subject to confiscation pursuant to Article 16. Member States and may provide that also other affected persons have these rights. Member States shall ensure that persons whose property is or may be subject to confiscation pursuant to Article 16, have the right (...).~~

<p>The Presidency suggests, as a compromise, a higher degree of protection to those subject to confiscation under Article 16 (equivalent to that of suspects and accused persons).</p>
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2. Member States shall provide for the effective possibility for the person whose property is affected to challenge the freezing **measure order** pursuant to article 11 before a court, in accordance with procedures provided for in national law. Where the freezing **measure order** has been taken by a competent authority other than a judicial authority, national law **may shall** provide that such a **measure 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, and 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.

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

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

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

5. When implementing this Directive, Member States shall provide **for the possibility** that confiscation is **may not be** ordered to the extent it would be disproportionate to the offence committed or the accusation against the person concerned by the confiscation. When implementing this Directive, Member States shall provide **for the possibility** that, in exceptional circumstances, confiscation is **may not be ordered**, insofar as it would, in accordance with national law, represent undue hardship for the affected person.

It is suggested to reinstate paragraph 5, in a somewhat more flexible version.
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6. Member States shall provide for the effective possibility for the person whose property is affected to challenge an order pursuant to Article 20 to sell the property in question. **Except for urgent cases,** Member States shall provide for the possibility that such an appeal has suspensory effect, **at least where necessary to safeguard the legitimate interests of the affected person, especially where there is a risk of irreparable harm.**

The additions are intended to introduce more nuance to this provision.
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7. Third parties shall be entitled to claim title of ownership or other property rights including in the cases referred to in Article 13.

8. Persons whose property is affected by the measures provided for in this Directive shall have the right of access to a lawyer throughout the freezing and confiscation proceedings. The persons concerned shall be informed of that right.

## CHAPTER VI

### ASSET RECOVERY STRATEGIC FRAMEWORK

#### *Article 24*

##### National strategy on asset recovery

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

2. The strategy shall include ~~at least the following~~ elements: **concerning the objectives to achieve, the role of the competent authorities, the cooperation mechanisms among them, resources and training, and mechanisms allowing for regular monitoring and evaluations of results.**

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

~~(b) a governance framework to achieve the strategic objectives and priorities, including a description of the roles and responsibilities of all the competent authorities and cooperation mechanisms;~~

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

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

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

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

In response to Member States' requests for more flexibility, the Presidency suggests a less rigid version of paragraph 2. **Member States** who are not in favour of this solution are invited to indicate their alternatives.

#### *Article 25*

#### **Resources**

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

The Presidency considers this Article provisionally agreed by the Working Party.

## Article 26

### Establishment of centralised registries of frozen and confiscated property

1. For the purpose of managing **property** frozen and confiscated **pursuant to this Directive** ~~property~~ **until its disposal based on a final confiscation order**, Member States shall by **[one year after the transposition period of this Directive is over]** ~~put~~ **have** in place centralised registries containing information related to the freezing, confiscation and management of instrumentalities and proceeds, or property which ~~may become~~ or is the object of a freezing or confiscation order.
2. Member States shall take the necessary measures to ensure that asset recovery offices, asset management offices, and other competent authorities performing tasks pursuant to Article 4, 19 and 20, have, **for the purpose of performing those tasks**, the power to enter, access and search, directly and immediately, the information referred to in paragraph 3, **to the extent that it is necessary and proportionate to the purpose**.
3. The following information, **where available**, shall be entered, accessible and searchable through the centralised registries referred to in paragraph 1:
  - (a) the property subject to a freezing or confiscation order **until its disposal based on a final confiscation order**, including details that enable the identification of the property;
  - (b) the estimated or actual value of the property at the moment of the freezing, **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<sup>45</sup>**, ~~where such information is available~~;
  - (d) the national file reference of the proceeding related to the property;
  - (e) the name of the authority entering the information in the registry;

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<sup>45</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).**



~~(f) the unique user identifier of the official who entered the information in the registry.~~

4. The information referred to in paragraph 3 shall only be retained for as long as it is necessary for the purposes of keeping a record and overview of the property frozen, confiscated, or under management, and in any case it shall not be retained for longer than after its disposal, or to provide annual statistics as referred in Article 27.<sup>46</sup>

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

**6. Member States shall designate the competent authority or authorities responsible for the management of the centralised registries of frozen and confiscated property and taking the role of data controller in accordance with Article 3(8) of Directive (EU) 2016/680 of the European Parliament and of the Council<sup>47</sup>.**

Additional flexibility has been added. The Presidency considers the current text a balanced compromise between the positions of Member States that have questioned the added value of the Article and Member States that have asked for more far-reaching rules in certain respects. A new paragraph 6 has been added in line with the opinion of the European Data Protection Supervisor. **Member States** are kindly invited to indicate whether they agree with the current text.

<sup>46</sup> **Some delegations have argued that this obligation is not necessary, whereas others wish to ensure that it is possible to retain the data longer than what is the case according to the current text.**

<sup>47</sup> **Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.**

Statistics

1. Member States shall **regularly** collect and maintain comprehensive statistics ~~at central level on the measures taken under this Directive~~ **from the relevant authorities. The statistics collected shall be sent to the Commission each year [on a calendar basis by [1 September] of the following year] and shall include:**
  - a) **the number of freezing orders executed;**
  - b) **the number of confiscation orders executed[, and the breakdown per type of confiscation];**
  - c) **the estimated value of property frozen[, at least of property frozen] with a view to possible subsequent confiscation at the time of freezing;**
  - d) **the [estimated] value of the property [recovered] confiscated, and the breakdown per type of confiscation following execution in another Member State;**
  - e) **[the value of confiscated property compared to its value at the time of freezing, where available];**
  - f) **[the number of interlocutory sales].**
2. Member States shall ~~ensure that the statistics referred to in paragraph 1 are collected on a calendar basis and transmitted to the Commission on an annual basis, by [1 September] of the following year~~ **also send each year the following statistics to the Commission, if they are available at a central level in the Member State concerned:**
  - a) **the number of requests for freezing orders to be executed in another Member State;**
  - b) **the number of requests for confiscation orders to be executed in another Member State;**
  - c) **the value or estimated value of the property recovered following execution in another Member State.**

3. ~~The Commission may adopt delegated acts in accordance with Article 30 laying down more detailed rules on the information to be collected and the methodology for the collection of the statistics referred to in paragraph 1 and the arrangements for their transmission to the Commission.~~ **Member States shall endeavour to collect data referred to in paragraph 2 at a central level.**

The new wording is based on the corresponding provision in Directive 2014/42/EU. Square brackets contain alterations of the text of that Directive that could be considered.

## CHAPTER VII COOPERATION

### *Article 28*

#### **Cooperation with EU bodies and agencies**

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

As some delegations questioned the deletion of the paragraph, the Presidency suggests the following amendment, along with amendments to recital 45, as a compromise. Could Member States agree to this?

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

**Cooperation with third countries**

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

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

Amendments have been made to recital 44 in order to clarify that the obligation to cooperate “to the greatest extent possible” does not mean that Member State are obliged to enter into new bilateral agreements with third countries. It has also been clarified in the recital that the cooperation is subject to the data protection rules set out in Directive (EU) 2016/680.

## CHAPTER VIII

### FINAL PROVISIONS

#### Article 30

#### **Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 27 shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of this Directive].
3. The delegation of power referred to in Article 27 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 27 shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

## Article 31

### Designated competent authorities and contact points

1. Member States shall inform the Commission about the authority or authorities designated to carry out the tasks pursuant to Articles 5 and 21.
2. Where a Member State has more than two authorities charged with the tasks pursuant to Articles 5 and 21, it shall nominate a maximum of two contact points **for the purpose of each of these tasks** to facilitate cooperation in cross-border cases. **Such contact points do not themselves have to be charged with the tasks pursuant to Articles 5 or 21.**
3. By [24 months after the entry into force of this Directive] at the latest, Member States shall notify the Commission of the competent authority or authorities as well as, **where relevant**, the contact points referred to in paragraphs 1 and 2 respectively.
4. By [24 months after the entry into force of this Directive] at the latest, the Commission shall set up an online register listing all competent authorities and the designated contact point for each competent authority. The Commission shall publish and regularly update on its website the list of authorities referred to in paragraph 1.

The Presidency believes the text reflects the current majority. **Member States** that are in favour of other solutions are invited to indicate this.

## 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 + 24 months ~~+year~~]. They shall forthwith transmit to the Commission the text of those provisions.
2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

The Presidency suggests returning to Article 32 (transposition) after all substantive provisions have been finalised.

## Article 33

### Reporting

1. The Commission shall, by [~~two years after the transposition period of this Directive is over date of entry into force + 3 years~~], 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 date of entry into force + 5 years~~], submit a report to the European Parliament and to the Council evaluating this Directive. The Commission shall take into account the 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.

While at least one delegation wished to see the words “including, if necessary, a legislative proposal” deleted, the Presidency believes the text reflects the current majority. **Member States** that are in favour of other solutions are invited to indicate this.

## 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<sup>48</sup>.

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<sup>48</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).

*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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