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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on asset recovery and confiscation – Outcome of the European Parliament's first reading (Strasbourg, 11 to 14 March 2024)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Civil Liberties, Justice and Home Affairs (LIBE) Juan Fernando LÓPEZ AGUILAR (S&D, ES) presented on behalf of LIBE a compromise amendment (amendment number 152) to the abovementioned proposal for a Directive, for which Loránt VINCZE (EPP, RO) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

¹ OJ C 145, 30.6.2007, p. 5.

II. VOTE

When it voted on 13 March 2024, the plenary adopted the compromise amendment (amendment number 152) to the abovementioned proposal for a Directive. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

P9_TA(2024)0141

Asset recovery and confiscation

European Parliament legislative resolution of 13 March 2024 on the proposal for a directive of the European Parliament and of the Council on asset recovery and confiscation (COM(2022)0245 – C9-0186/2022 – 2022/0167(COD))

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2022)0245),
 - having regard to Article 294(2) and Article 82(2), Article 83(1) and (2) and Article 87(2) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0186/2022),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 14 December 2022¹,
 - having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 18 January 2024 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the opinions of the Committee on Legal Affairs and the Committee on Budgets,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A9-0199/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 100, 16.3.2023, p. 105.

Position of the European Parliament adopted at first reading on 13 March 2024 with a view to the adoption of Directive (EU) 2024/... of the European Parliament and of the Council on asset recovery and confiscation

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 100, 16.3.2023, p. 105.

² Position of the European Parliament of 13 March 2024.

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 revenue 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 proceeds from criminal activities poses a significant threat to the integrity of the economy and society, eroding the rule of law and fundamental rights. According to the Communication from the Commission of 14 April 2021 on the EU Strategy to tackle Organised Crime 2021-2025, that strategy aims to address challenges posed by organised crime by promoting cross-border cooperation *and information exchange*, supporting effective investigations of criminal networks, eliminating proceeds from criminal activities, and making law enforcement and judiciary fit for the digital age.
- (2) The main motive for criminal organisations that operate across borders, including high-risk criminal networks, is financial gain. In order to tackle the serious threat posed by organised crime, it is important that competent authorities are, therefore, given *more operational capacity and the necessary* means to effectively trace and identify, freeze, confiscate and manage the instrumentalities and proceeds of crime or property that stem from criminal activities.

- (3) *Criminal organisations usually reinvest part of their profits from criminal activities to create a financial base enabling them to continue such activities. In addition, criminal organisations often resort to violence, threats, intimidation or corruption in order to acquire control of companies, obtain concessions, authorisations, tenders or grants, achieve illicit profits or advantages, or infiltrate key infrastructures such as logistic hubs. Such organisations therefore adversely affect the freedom of competition, or influence decisions of public authorities, threatening the rule of law and democracy. Criminal organisations have become worldwide economic operators with entrepreneurial objectives. Depriving criminals of illicit profits is essential in order to disrupt their activities and to prevent them from infiltrating legitimate economies.*
- (4) *Economic and financial crime, in particular organised crime, is often committed through legal persons, and the criminal offences included in the scope of this Directive can be committed in the interest or for the benefit of such legal persons. Therefore, freezing and confiscation orders can be issued also against legal persons in accordance with national law.*

- (5) 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 instrumentalities, proceeds or property should be frozen in order to prevent their disappearance, following which they should be confiscated upon ***the issuing of a confiscation order within the framework of*** proceedings ***in criminal matters***. An effective asset recovery system further requires the effective management of frozen and confiscated property in order to maintain the value of that property for the State or for the restitution for victims.
- (6) The current Union legal framework on tracing and identification, freezing, confiscation and management of instrumentalities, proceeds or property, and on asset recovery offices, consists of Directive 2014/42/EU of the European Parliament and of the Council³, Council Decision 2007/845/JHA⁴ and Council Framework Decision 2005/212/JHA⁵. The Commission evaluated Directive 2014/42/EU and Decision 2007/845/JHA, concluding that the current framework has not fully achieved the policy objective of fighting organised crime through recovering its profits.

³ 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).

⁴ 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).

⁵ 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).

- (7) The existing legal framework should be updated, so as to facilitate and ensure effective asset recovery and confiscation efforts across the Union. This Directive should, therefore, 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. This ***Directive is without prejudice to the procedures that Member States can use to freeze and confiscate property***. It is necessary to reinforce the capacity of competent authorities to deprive criminals of the proceeds from criminal activities. For that purpose, rules should be laid down to strengthen asset tracing and identification, as well as freezing capabilities, to improve the management of frozen and confiscated property ***until its disposal further to a final confiscation order***, to strengthen the instruments to confiscate instrumentalities and proceeds of crime and property derived from the criminal activities of criminal organisations, and to improve the overall efficiency of the asset recovery system.

- (8) This Directive should facilitate cross-border cooperation by providing the competent authorities with the necessary powers and resources to respond in a swift and effective way to requests from authorities in other Member States. Provisions laying down rules on early tracing and identification, urgent action to freeze, or efficient management contribute to improving the possibilities for asset recovery across borders. Given the global nature of organised crime, *and its capacity to transfer criminal assets quickly across borders*, cooperation with third countries should also be strengthened *within the international legal framework*.

- (9) Due to the poly-criminal nature of, and the systemic and profit-oriented cooperation among, 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 criminal offences in which organised criminal groups are active. Such offences include the areas of crime listed in Article 83(1) *of the Treaty of the Functioning of the European Union (TFEU)*. In addition to the crimes listed in Article 83(1) TFEU, the scope of this Directive should also cover all crimes that are harmonised at Union level, including fraud against the financial interests of the Union in light of the increasing involvement of organised criminal groups in such crimes. The scope of this Directive should further include environmental crimes, which are a core business for organised criminal groups and often are connected to money laundering or concern waste and residues produced in the context of drug production and trafficking. The facilitation of unauthorised entry and residence constitutes a core business for organised criminal groups and is typically connected to the trafficking in human beings.

The criminal offence of facilitating unauthorised entry and residence should be understood within the meaning of Council Directive 2002/90/EC⁶ and Council Framework Decision 2002/946/JHA⁷. Framework Decision 2002/946/JHA provides for the possibility to accompany criminal penalties with the confiscation of the means of transport used to commit the offence, while clearly setting out that its provisions apply without prejudice to the protection afforded to refugees and asylum seekers in order to provide humanitarian assistance in accordance with international law.

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⁶ *Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 17).*

⁷ *Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (OJ L 328, 5.12.2002, p. 1).*

- (10) *In addition to the offence of participation in a criminal organisation within the meaning of Article 2 of Council Framework Decision 2008/841/JHA⁸, other criminal offences as referred to in Article 1(1) of Framework Decision 2008/841/JHA and as defined in national law should be included in the scope of this Directive to the extent to which they are committed within the framework of a criminal organisation, as defined in Article 1(1) of Framework Decision 2008/841/JHA and as defined in national law, with a view to capturing illicit gains stemming from criminal activities typically carried out by criminal organisations. Member States are in particular encouraged to ensure that the crimes of counterfeiting and piracy of products, illicit trafficking in cultural goods, forgery and trafficking of administrative documents, murder or grievous bodily injury, illicit trade in human organs and tissue, kidnapping, illegal restraint or hostage-taking, organised or armed robbery, racketeering and extortion, trafficking in stolen vehicles, tax crimes relating to direct taxes and indirect taxes, arson, fraud and swindling, illicit trafficking in nuclear or radioactive materials and crimes which fall within the jurisdiction of the International Criminal Court are included in the scope of this Directive. However, this Directive does not oblige Member States to introduce or maintain any criminal offence.*

⁸ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

- (11) ■ In order to ensure the effective implementation of Union restrictive measures, it is necessary to extend the scope of this Directive to *criminal offences covered by Directive (EU) .../... of the European Parliament and of the Council*⁹ ■ .
- (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, *including in electronic or digital form*, evidencing title or interest in property subject to freezing and confiscation including, for example, financial instruments, trusts, or documents that can give rise to creditor claims and are normally found in the possession of the person affected by the relevant procedures. 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 national competent authorities or public bodies in accordance with national law. The definition of property should cover all forms of property, including crypto assets.

⁹ Directive (EU) .../... of the European Parliament and of the Council of ... on the definition of criminal offences and penalties for the violation of Union restrictive measures and amending Directive (EU) 2018/1673 (OJ L..., ELI ...).

⁺ OJ: Please insert the number of the Directive in PE-CONS .../... (2022/0398 (COD)) and insert the number, date, title and OJ reference of that Directive in the footnote.

- (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 activities and all indirect benefits, including subsequent reinvestment or transformation of direct proceeds, in line with the definitions in Regulation (EU) 2018/1805 of the European Parliament and of the Council¹⁰. Proceeds should therefore include any property, including property that has been transformed or converted, fully or in part, into other property, and property that 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.

¹⁰ Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ L 303, 28.11.2018, p. 1).

- (14) ***The*** tracing and identification of property at an early stage of a criminal investigation is of essence to ensure the prompt identification of instrumentalities, proceeds or property which might be subsequently confiscated, including property related to criminal activities located in other jurisdictions, ***thereby facilitating cross-border cooperation***. To ensure that financial investigations are sufficiently prioritised in all Member States, so as 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 activity that is liable to generate substantial economic benefit. ***When determining whether the economic benefit is liable to be substantial, Member States should be able to set minimum thresholds for the value of the expected proceeds or allow for a case-by-case assessment by competent authorities. In order to allow for sufficient flexibility in the launching of financial investigations, Member States should be able to limit the scope to investigations into criminal offences liable to have been committed within the framework of a criminal organisation. For the purpose of ensuring effective financial investigations, Member States should provide the necessary financial, technical and human resources.***

- (15) *To ensure the effective application of Union restrictive measures, the Union has established common minimum rules concerning the definitions of criminal conduct violating Union restrictive measures. In order to facilitate the detection of criminal offences related to the violation of Union restrictive measures, it is important to empower asset recovery offices to trace and identify property of persons and entities subject to those measures, upon a request by national competent authorities based on indications and reasonable grounds for believing that such criminal offences have been committed. Those powers should be without prejudice to the procedural requirements and safeguards established under national procedural law, including the rules on the initiation of criminal proceedings or, where necessary, the requirement to obtain a judicial authorisation.*
- (16) *Considering that the effective tracing and identification of property might require tracing and identifying measures necessitating intervention by other authorities, it is important that asset recovery offices are able to request the relevant authorities to cooperate. The conditions for such requests are subject to national law. Member States can include representatives from both law enforcement and judicial authorities in the staff of their asset recovery offices or establish asset recovery offices both within law enforcement authorities and the judiciary.*

- (17) Due to the transnational nature of finances used by organised criminal groups, information that can lead to the identification of instrumentalities and proceeds of crime and other property owned or controlled by criminals ■ should be exchanged rapidly between the Member States. For that purpose, it is necessary to empower asset recovery offices to trace and identify property which might be subsequently confiscated, to ensure they have access to the necessary information under clear conditions, and to establish rules on swiftly exchanging information with each other, spontaneously or upon request. In urgent cases where there is a risk of disappearance of the property, replies to requests for information should be done as soon as possible and within eight hours. *The requirement for asset recovery offices to trace and identify instrumentalities, proceeds or property which is or might become the object of a freezing or confiscation order issued by another Member State aims to facilitate 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.*

- (18) In order to perform effective asset-tracing investigations, and to swiftly respond to cross-border requests, asset recovery offices should have access to the information that *is necessary* to establish the existence, ownership or control of property that is or might become the object of a freezing or a confiscation order. Therefore, asset recovery offices should have *immediate and direct* access to **■** relevant data such as *real estate information*, national citizenship and population registers, commercial databases and *vehicle databases in addition to access to bank account information pursuant to Directive (EU) 2019/1153 of the European Parliament and of the Council¹¹ and to beneficial ownership information pursuant to Directive (EU) 2015/849 of the European Parliament and of the Council¹².*

¹¹ *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).*

¹² *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, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).*

Access and searches should be considered to be immediate and direct, inter alia, where the national authorities operating a register transmit information expeditiously by an automated mechanism to competent authorities, provided that no intermediary institution is able to interfere with the requested data or the information to be provided. Moreover, Member States should ensure that asset recovery offices have swift access, either immediately and directly or upon request, to other information which can be of value to identify relevant property, such as information on mortgages and loans, customs data or information on wire-transfers and account balances, as well as fiscal data, social security data and law enforcement information. As regards fiscal data, national social security data and law enforcement information, it should be possible for Member States to decide to give asset recovery offices access to such information on the basis of reasoned requests, and to enable the authorities holding such information to deny access to such information under certain conditions, in order to ensure the integrity of investigations, the confidentiality of information provided by another Member State or third country as well as the proportionality of the requests for information in relation to the legitimate interests of a natural or legal person.

Access to information should be subject to specific safeguards that prevent the misuse of access rights. Such safeguards *complement the requirements to provide for logs of access and search activities pursuant* to Article 25 of Directive (EU) 2016/680 of the European Parliament and of the Council¹³. Granting access to that 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 ■ procedural safeguards ■ should not affect the ability of asset recovery offices to respond to requests from other Member States, especially in the case of urgent requests. ■

¹³ 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).

- (19) To ensure the security of the information shared between asset recovery offices, ***all asset recovery offices should be able to directly access*** the Secure Information Exchange Network Application (SIENA), managed by Europol in accordance with Regulation (EU) 2016/794 of the European Parliament and of the Council¹⁴. ***SIENA or, where necessary on an exceptional basis, other secure channels*** should be ***used*** for all communication between asset recovery offices under this Directive. ***It might be necessary to use another secure channel in exceptional cases, for instance where the urgency of the request for information 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 SIENA should be read as applying also to its successor, in the event that SIENA is replaced.***

¹⁴ 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) *Considering the speed at which criminals transfer criminal assets across jurisdictions, Member States should ensure that asset recovery offices swiftly exchange information necessary for the performance of their tasks. In exceptional cases, it might be objectively justified for asset recovery offices to refuse to provide information to another requesting asset recovery office if to do so would harm national security interests of the Member State in which the asset recovery office receiving the request is located, jeopardise ongoing investigations or criminal intelligence operations, pose an imminent threat to the life or physical integrity of a person or clearly be disproportionate or irrelevant with regard to the purposes for which the information has been requested. When assessing compliance with the principles of necessity and proportionality, asset recovery offices should exercise due diligence, including with regard to the respect of fundamental rights.*
- (21) 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.

- (22) Confiscation leads to the final deprivation of property. However, preservation of property can be a prerequisite for 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 disappearance of property ■ , the competent authorities of the Member States, ***which might include*** asset recovery offices, should be empowered to take immediate action, ***which could take the form of an order***, to secure such property ***until a freezing order has been issued***. ***Given the exceptional nature of such action, Member States should limit its temporary validity.***
- (23) ***Where the competent authorities are not able to take immediate action, Member States should allow asset recovery offices to take such action. Such action might in particular be necessary where an asset recovery office has, following a request from an asset recovery office in another Member State, traced and identified assets that might disappear very quickly, such as crypto assets, and where the competent authorities of the Member State in which the asset recovery office receiving the request is located are not able to take immediate action in the absence of a criminal investigation in that Member State. Asset recovery offices should be able to secure the assets until it is possible for a European freezing order pursuant to Regulation (EU) 2018/1805 to be issued.***

- (24) Given the *interference in* the right to property *caused* by freezing orders, such provisional measures should not be maintained longer than necessary to preserve the availability of the property with a view to possible subsequent confiscation. Maintaining such provisional measures might require a review by a national court in order to ensure that the purpose of preventing the disappearance of property remains valid.
- (25) 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 can 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.

- (26) In addition to confiscation measures that allow authorities to deprive criminals of the instrumentalities or proceeds, ***subject to*** a final conviction, it is necessary to enable confiscation of property of equivalent value to such instrumentalities or proceeds in order to capture property of equivalent value to the instrumentalities and proceeds of a crime, where it is impossible to ***confiscate*** such instrumentalities and proceeds. Member States are free to define the confiscation of property of equivalent value as subsidiary or alternative to **■** confiscation ***of instrumentalities and proceeds***, as appropriate in accordance with national law.
- (27) ***When implementing this Directive with regard to the confiscation of property the value of which corresponds to instrumentalities, the relevant provisions should be applicable where, in view of the particular circumstances of the case, such a measure is proportionate, having regard in particular to the value of the instrumentalities concerned. Member States can also take into account whether and to what extent the convicted person is responsible for making the confiscation of the instrumentalities impossible.***

- (28) 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, such as through an intermediary, by the third party from a suspected or accused person, including where the criminal offence has been committed on their behalf or for their benefit, and where 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 the relevant third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation. Whether a third party had or should have had such knowledge should be assessed on the basis of concrete facts and circumstances, including that the transfer was carried out free of charge or in exchange for an amount significantly ***disproportionate to*** the market value, ***that the property was transferred to closely related parties or that it remained under the effective control of the suspected or accused person. Transfers to closely related parties to the suspected or accused person could include transfers to family members or to natural persons who have legal arrangements, or any other close business relations, with the suspected or accused person, or transfers to legal entities in which the suspected or accused person or a family member sits in the administrative, management or supervisory bodies.*** The rules on third party confiscation should extend to both natural and legal persons, without prejudice to the right of third parties to be heard, including the right to claim ownership of the property concerned. In any event, the rights of bona fide third parties should ***be protected in accordance with national law.***

- (29) Criminal organisations engage in a wide range of criminal activities. In order to effectively tackle organised criminal activities, it is possible that there are situations where it is appropriate that a criminal conviction for a criminal offence that is liable to give rise to economic benefit 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, with no requirement for a conviction for such criminal conduct. The relevant criminal conduct could consist of any type of offence. Individual criminal offences do not have to be proven, but the court must be satisfied that the property in question is derived from such criminal conduct. In this context, the court has to consider the specific circumstances of the case, including the facts and available evidence based on which a decision on extended confiscation could be issued. The fact that the property of the person is disproportionate to that person's lawful income could be among the facts giving rise to a conclusion by the court that the property derives from criminal conduct. Member States could also determine a requirement for a certain period of time during which it is possible for the property to be deemed to have originated from criminal conduct.***

- (30) Confiscation should be possible ■ where a final conviction is not possible because of the illness, absconding or death of the suspected or accused person ■ . Confiscation should also be possible where the *limitation periods* prescribed under national law *for* the relevant criminal *offences are below 15 years and have expired after the criminal proceedings have been initiated*. Confiscation in such cases should only be allowed where it would have been possible for the *criminal proceedings to lead to a final conviction for a criminal offence in the absence of such circumstances, at least for offences liable to give rise, directly or indirectly, to substantial economic benefit, and where the court is satisfied that the instrumentalities, proceeds or property to be confiscated are derived from or directly or indirectly linked to the criminal offence. In cases of illness and absconding, the existence of proceedings in absentia in Member States should be sufficient to comply with the obligation to enable such confiscation. It is important to recall that international bodies have indicated the potential of confiscation in the absence of a conviction to address the obstacles to confiscation of illicit gains due to immunity and amnesty.*

- (31) For the purposes of this Directive, illness should be understood to mean the inability of the suspected or accused person to attend the criminal proceedings for an extended period, as a result of which *there is a risk that time limits laid down in national law for criminal liability expire* and those proceedings cannot continue.

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- (32) In situations where the confiscation measures in *Articles 12 to 15 are* not applied for legal or factual reasons determined by national law, it should still be possible to confiscate property that has been identified or, where the national legal system requires freezing, frozen in the context of an investigation in relation to a criminal offence based on indications that the property could be derived from criminal conduct. Such property should be confiscated where the court is satisfied that the property is derived from criminal conduct committed within the framework of a criminal organisation and where this conduct is liable to give rise, directly or indirectly, to substantial economic benefit. When determining whether criminal conduct is liable to give rise to substantial economic benefit, Member States can take into account all relevant circumstances, including the *modus operandi*, for example if a condition of the offence is that it was committed in the context of organised crime or with the intention of generating regular profits from criminal offences. Member States should enable confiscation of such unexplained wealth when the investigation in which the property was identified concerns an offence falling within the scope of this Directive that is punishable by deprivation of liberty of a maximum of at least four years. That condition ensures that the possibility of confiscation of unexplained wealth arises in criminal investigations into criminal offences that meet a certain threshold of seriousness.

- (33) *When applying the national rules implementing this Directive, the national competent authorities can choose not to order or execute confiscation of unexplained wealth where, in the case in question, the application of the rules set out in this Directive would be manifestly unreasonable or disproportionate. Member States can also determine a requirement for a certain period of time during which the property could be deemed to have originated from such criminal conduct. Member States should ensure that the appropriate procedural rights of the affected person are respected. The rights of bona fide third parties should be protected in accordance with national law.*

- (34) While it should not be a precondition for the confiscation of unexplained wealth that individual offences be proven, there must be sufficient facts and circumstances for the court to be satisfied that the property in question is derived from criminal offences. The relevant criminal conduct could consist of any type of offence committed within the framework of a criminal organisation and liable to give rise to substantial economic benefit, thus being serious in nature. When determining whether the property should be confiscated, national courts should take into account all relevant circumstances of the case, including the available evidence and specific facts, such as that the value of the property is substantially disproportionate to the lawful income of the person. Another relevant factor might be the absence of a plausible licit source of the property, as the provenance of lawfully acquired property can normally be accounted for. The person's connection to activities of a criminal organisation could also be of relevance, as might circumstances such as the situation in which the property was found or indications of participation in criminal activities. The assessment should be made on a case-by-case basis depending on the circumstances of the case. It should be possible for Member States to decide to allow for confiscation of unexplained wealth where criminal proceedings are discontinued or for such confiscation to be ordered separately from criminal proceedings into the offence.

- (35) *This Directive does not prevent Member States from adopting measures that enable the confiscation of unexplained wealth for other crimes or circumstances. The subject matter of this Directive is limited to proceedings in criminal matters, and therefore this Directive does not apply to confiscation measures in proceedings in civil matters that Member States might have implemented.*
- (36) *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 involving non-conviction-based confiscation. That does not prevent Member States from establishing reasonable time limits after a final conviction or final decision in proceedings involving non-conviction-based confiscation, following expiration of which tracing and identification would no longer be possible.*

- (37) *Considering that criminal activities can inflict great harm on victims, it is essential to protect their rights, including the rights to compensation and restitution. Therefore, Member States should take appropriate measures to ensure that victims' claims to restitution and compensation against the person who is subject to a confiscation measure as a result of a criminal offence are taken into account in asset-tracing, freezing and confiscation proceedings, including in cross-border cases. Moreover, in order to facilitate the compensation and restitution of property to victims, it is necessary to facilitate the tracing of property that might become the object of such claims as well as the exchange of information between authorities competent for asset tracing and authorities competent for deciding upon claims by victims or executing such decisions.*

- (38) *The social reuse of confiscated property sends a visible message to society in general regarding the importance of values such as justice and legality, reaffirms the prevalence of the rule of law in communities more directly affected by organised crime, and builds the resilience of those communities against criminal infiltration in their social and economic fabric, as observed in those Member States that have already adopted such social reuse measures. Therefore, Member States are encouraged to take the necessary measures to allow for the possibility to use confiscated property for public interest or social purposes, so that it is possible to maintain confiscated property as State property for justice, law enforcement, public service, social or economic purposes or to transfer such confiscated property to the authorities from the municipality or region where it is located so that those authorities can use it for such purposes, including for assignment to organisations carrying out work of social interest. The use of confiscated property for such purposes is without prejudice to the budgetary autonomy of Member States.*

- (39) *It should also be possible for Member States to use the confiscated property to contribute to mechanisms to support third countries affected by situations in response to which Union restrictive measures have been adopted, insofar as the offence committed is directly or indirectly linked to that situation. The Commission should facilitate cooperation between Member States and with third countries and could provide guidance on the most effective procedures and financial mechanisms available to support such third countries with a view to promoting the use of confiscated instrumentalities, proceeds or property for that purpose.*
- (40) *Member States are encouraged to take appropriate measures to prevent the property from being acquired, directly or indirectly, in the course of its disposal upon a confiscation order, by persons convicted in the criminal proceedings in which the property has been frozen. Such measures can be limited to property above a certain value and can include the exclusion of certain types of entities from participating in the sale of the property, the requirement of documentation from the buyer or the assessment of any links of the buyer with the convicted person. Member States can apply such measures also for the sale of frozen property.*

- (41) To ensure that property that is or might become the object of a freezing or confiscation order maintains its economic value, Member States should put in place effective management measures. *Those measures include the efficient management of entities, such as undertakings, that should be preserved as a going concern, while taking the measures necessary to ensure that the suspect or accused person does not benefit directly or indirectly from the ongoing operations of such an entity or, where appropriate, measures of supervision regarding the control of such an entity.*
- (42) *Where justified by the nature of the property, including its value or the need for specific management conditions, an assessment of how to minimise the management costs and preserve the value of the property should be carried out when preparing, or at the latest without undue delay after, executing the freezing order. The objective of the assessment is to provide the competent authorities with the relevant considerations to be taken into account before, during or after adopting or executing the freezing order. Member States can provide guidance on how to carry out such assessment taking into account the circumstances of the property to be frozen and ensuring that the assessment does not jeopardise the timely execution of the freezing order.*

- (43) In *situations* where *it is reasonably assumed that* the property frozen is perishable or rapidly depreciating, that its maintenance costs are disproportionate to its expected value at the time of confiscation, that it is too difficult to administer or that it is easily replaceable, Member States should allow for the sale of such property *before a final confiscation order. In accordance with national law, the decision on the sale of a property of a specific nature might be subject to prior approval by a national competent authority. Before taking such a decision, Member States should ensure that the affected person, with the exception of cases where the affected person has absconded or cannot be located, is notified and, except in cases of urgency, is given the opportunity to be heard before the sale. Member States should provide for the possibility of an appeal against an order for an interlocutory sale. Member States should provide for the possibility for a court to suspend the execution of such an order, for example where necessary to safeguard the legitimate interests of the affected person, in particular where there is a risk of irreparable harm. Member States can also provide for the possibility of giving the appeal suspensory effect by law. Member States should be able to require the costs for the management of frozen property to be charged to the owner or beneficial owner of the property, for instance as an alternative to the ordering of an interlocutory sale, and in the case of a final conviction.* ■

- (44) Member States should set up *or designate one or more competent authorities to function as* asset management offices with the purpose of establishing specialised authorities tasked with the management of frozen and confiscated property in order to effectively manage the property frozen before confiscation and preserve its value, pending a final decision on the confiscation *and the disposal of the property based on such decision*. Without prejudice to the Member States' internal administrative structures, asset management offices should either be the sole authority managing frozen *and* confiscated property, or should provide support to decentralised actors according to national management set-ups, and support relevant authorities with **■** planning. *This Directive does not determine the legal or institutional nature of the asset management offices, and is without prejudice to institutional systems in the Member States.*
- (45) This Directive respects the fundamental rights and observes the principles recognised 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.

- (46) Freezing and confiscation orders substantially affect the rights of suspected and accused persons, and in certain cases the rights of third parties *or other persons* who are not being prosecuted. This Directive should provide for specific safeguards and judicial remedies in order to guarantee the protection of the fundamental rights of such persons 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.
- (47) Freezing, confiscation ■ and interlocutory sales orders should be communicated to the affected *person* without *undue* delay. *Nevertheless, Members States should be able to provide for a right for competent authorities to postpone the communication of freezing orders to the affected person due to the needs of the investigation.* The purpose of communicating such orders is, inter alia, to allow the affected person to challenge them ■ . Therefore, such communication should, as a general rule, indicate the reason or reasons for the order concerned. *Where the identity or whereabouts of an affected person is unknown or where communication to each of the affected persons would be a disproportionate burden on a competent authority, it should be possible to communicate by means of a public announcement.*

- (48) The affected **person** should have the effective possibility to challenge freezing, confiscation ■ and interlocutory sales orders. In the case of confiscation orders where all elements of the criminal offence are present but a criminal conviction is impossible, the defendant should have a possibility to be heard before the order is issued, *where possible*. *In the case of confiscation orders pursuant to provisions on extended confiscation and confiscation of unexplained wealth, circumstances that could 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.*
- (49) When implementing this Directive, ■ Member States *can provide that, in exceptional circumstances, confiscation* should *not be* ordered *or executed*, insofar as it would, in accordance with national law, represent undue hardship for the affected person, on the basis of the circumstances of the respective individual case. ■

- (50) *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 to the provision of free legal aid.*

- (51) This Directive should be implemented without prejudice to Directives 2010/64/EU¹⁵, 2012/13/EU¹⁶, 2012/29/EU¹⁷, 2013/48/EU¹⁸, **2014/60/EU¹⁹**, (EU) 2016/343²⁰, (EU) 2016/800²¹ and (EU) 2016/1919²² of the European Parliament and of the Council.

¹⁵ 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).

¹⁶ 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).

¹⁷ 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).

¹⁸ 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).

¹⁹ ***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).***

²⁰ 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).

²¹ 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).

²² 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).

- (52) It is particularly important that the protection of personal data, in accordance with Union law, is ensured in connection to the processing of data under this Directive. The provisions of this Directive should therefore 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**. Directive (EU) 2016/680 applies to the processing of personal data by national competent authorities, in particular asset recovery offices, for the purposes of this Directive.

- (53) It is particularly important that the protection of personal data, in accordance with Union law, be ensured in connection to all exchanges of information under this Directive. To that aim, insofar as the processing of personal data for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties is concerned, *the* data protection rules as set out in Directive (EU) 2016/680 are applicable in relation to measures taken under this Directive. ***Directive (EU) 2016/680 lays down the rules relating to the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, in line with a set of principles relating to the processing of personal data, in particular lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality, and accountability.*** Where relevant, in particular 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 Council²³ are applicable.

²³ Regulation (EU) 2016/679 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 and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (54) An effective recovery system requires the concerted efforts of a wide range of authorities, including law enforcement, inclusive of customs authorities, tax authorities and tax recovery authorities to the extent that they are competent in relation to asset recovery, asset recovery offices, judicial authorities and asset management authorities, including asset management offices. In order to ensure coordinated action by all competent authorities, it is necessary to establish a more strategic approach to asset recovery and promote a greater cooperation between the relevant authorities, and to obtain a clear overview of the results of asset recovery. ***It is also necessary to ensure closer and more effective cooperation between asset recovery offices and asset management offices and their counterparts in other Member States.*** For that 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, and final disposal of the relevant instrumentalities, proceeds or property. ***Member States can decide on the appropriate format of such a strategy and take into account their constitutional framework. This Directive should establish the elements to be included in such a strategy, such as a description of the roles and responsibilities of all the competent authorities involved in asset recovery, and the arrangements for coordination and cooperation among them, without determining the concrete type of information to be included in that strategy.*** Furthermore, Member States should provide competent authorities with the necessary resources to be able to fulfil their tasks effectively. Competent authorities should be understood as the authorities entrusted with the carrying out of the tasks as outlined under this Directive and in accordance with national frameworks.

- (55) *Member States should ensure that asset management offices, and where appropriate asset recovery offices and other competent authorities performing tasks pursuant to this Directive, are able to swiftly obtain information necessary for the efficient management of frozen and confiscated property. For that purpose, Member States should establish efficient tools such as one or more registers of property frozen and confiscated pursuant to this Directive.*
- (56) 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.

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

- (58) 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 enable criminals to operate. Member States should therefore ensure that both asset recovery and asset management offices cooperate, ***to the greatest extent possible***, with their counterparts in third countries to trace, identify and manage instrumentalities, proceeds or property which is or might become the object of a freezing or confiscation order within the framework of proceedings in criminal matters. It is important that ***Member States make use of existing frameworks for cooperation and are encouraged to develop or adjust existing bilateral agreements, to accede to existing multilateral conventions or, where no other arrangement is in place, to establish new bilateral agreements. The data protection rules set out in Directive (EU) 2016/680 and, where relevant, in Regulation (EU) 2016/679 are applicable in relation to measures taken in that respect.***

- (59) Asset recovery ***offices and asset management*** offices should also closely cooperate with Union bodies and agencies, including Europol, Eurojust and the EPPO, ***within their respective competences and*** in accordance with ***the applicable legal framework***, insofar as it is necessary to trace and identify property within the cross-border investigations supported by Europol and Eurojust or within the investigations undertaken by the EPPO. ***Member States should***, in accordance with their respective ***obligations under Council Regulation (EU) 2017/1939²⁴***, ***ensure that their asset recovery offices fulfil the relevant obligations set out in Regulation (EU) 2017/1939.***
- (60) In order to ensure that there is a common understanding and minimum standards for asset tracing and identification, freezing, ***confiscation*** and management, this Directive should lay down minimum rules for the relevant measures as well as related safeguards. The adoption of minimum rules does not prevent Member States from granting more extensive powers to asset recovery offices or to asset management offices, ***from providing for more extensive rules on freezing and confiscation***, or from providing for additional safeguards under national law, provided that such national measures and provisions do not undermine the objective of this Directive.

²⁴ Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') (OJ L 283, 31.10.2017, p. 1).

- (61) Since the objective of this Directive, namely facilitating confiscation of property *in proceedings* in criminal matters, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (62) 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/JHA²⁵, Council Framework Decision 2001/500/JHA²⁶, Framework Decision 2005/212/JHA, Decision 2007/845/JHA, and Directive 2014/42/EU with regard to the Member States bound by this Directive.

²⁵ 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).

²⁶ 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).

- (63) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application.
- (64) In accordance with Articles 1 and 2 and Article 4a(1) 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 TEU and to the TFEU, 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.
- (65) The European Data Protection Supervisor was consulted in accordance with Article 42(1) and (2) of Regulation (EU) 2018/1725 of the European Parliament and of the Council²⁷ and delivered an opinion on **19 July 2022**²⁸,

HAVE ADOPTED THIS DIRECTIVE:

²⁷ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

²⁸ OJ C 425, 8.11.2022, p. 2.

CHAPTER I
General provisions

Article 1
Subject matter

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

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

Article 2
Scope

1. This Directive applies to ■ criminal offences *covered by*:
 - (a) ■ Framework Decision 2008/841/JHA;

- (b) Directive (EU) 2017/541 of the European Parliament and of the Council²⁹;
- (c) Directive 2011/36/EU of the European Parliament and of the Council³⁰;
- (d) Directive 2011/93/EU of the European Parliament and of the Council³¹;
- (e) Council Framework Decision 2004/757/JHA³²;

²⁹ 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).

³⁰ 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).

³¹ 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).

³² 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).

- (f) ~~the~~ 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 Union³³ and ~~Council Framework Decision 2003/568/JHA~~³⁴;
- (g) ~~Directive (EU) 2018/1673 of the European Parliament and of the Council~~³⁵;
- (h) ~~Directive (EU) 2019/713 of the European Parliament and of the Council~~³⁶;
- (i) ~~Directive 2014/62/EU of the European Parliament and of the Council~~³⁷;

³³ ~~the~~ OJ C 195, 25.6.1997, p. 1.

³⁴ Council Framework Decision 2003/568/JHA *of 22 July 2003 on combating corruption in the private sector* ~~the~~ (OJ L 192, 31.7.2003, p. 54).

³⁵ Directive (EU) 2018/1673 of the European Parliament and of the Council *of 23 October 2018 on combating money laundering by criminal law* ~~the~~ (OJ L 284, 12.11.2018, p. 22).

³⁶ 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* ~~the~~ (OJ L 123, 10.5.2019, p. 18).

³⁷ 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, and replacing Council Framework Decision 2000/383/JHA* ~~the~~ (OJ L 151, 21.5.2014, p. 1).

- (j) ■ Directive 2013/40/EU of the European Parliament and of the Council³⁸;
- (k) ■ 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 crime³⁹;
- (l) ■ Directive (EU) 2017/1371 of the European Parliament and of the Council⁴⁰;

³⁸ 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).

³⁹ OJ L 89, 25.3.2014, p. 10.

⁴⁰ 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) **■** Directive 2008/99/EC of the European Parliament and of the Council⁴¹ *and* Directive 2005/35/EC *of the European Parliament and of the Council*⁴²;
- (n) *Framework Decision 2002/946/JHA*, and Council Directive 2002/90/EC;
- (o) *Directive 2014/57/EU of the European Parliament and of the Council*⁴³;
- (p) *Directive (EU) .../...⁺*.

⁴¹ 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).

⁴² Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements, including criminal penalties, for pollution offences ((OJ L 255, 30.9.2005, p. 11).

⁴³ *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).*

⁺ OJ: Please insert the number of the Directive in PE-CONS .../... (2022/0398 (COD))

2. This Directive applies to *criminal* offences, as *referred to in Article 1, point (1), of Framework Decision 2008/841/JHA*, committed within the framework of a criminal organisation..

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3. This Directive shall apply to any criminal offences set out in other Union legal acts where such acts provide that this Directive applies to those criminal offences.
4. The provisions in Chapter II on the tracing and identification of instrumentalities, proceeds or property shall apply to all criminal offences as defined in national law which are punishable by the deprivation of liberty or a detention order of at least one year.

Article 3

Definitions

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

- (1) ‘proceeds’ means any economic advantage derived directly or indirectly from a criminal offence consisting of any form of property, and including any subsequent reinvestment or transformation of direct proceeds and any valuable benefits;

- (2) ‘property’ means property of any description, whether corporeal or incorporeal, movable or immovable, ***including crypto-assets***, and legal documents or instruments ***in any form***, evidencing title or interest in such property;
- (3) ‘instrumentalities’ means any property used or intended to be used, in any manner, wholly or partially, to commit a criminal offence;
- (4) ‘tracing and identification’ means any investigation by competent authorities to determine instrumentalities, proceeds or property that might 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;

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- (7) ‘criminal organisation’ means a criminal organisation as defined in Article 1, point (1), of Framework Decision 2008/841/JHA;
- (8) ‘victim’ means a victim as defined in Article 2(1), point (a), of Directive 2012/29/EU, or a legal person, as defined in national law, that has suffered harm *or economic loss* as a *direct* result of any of the *offences* within the scope of this Directive;
- (9) ‘beneficial owner’ means a beneficial owner as defined in Article 3, point (6), of Directive (EU) 2015/849¹;

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- (10) *‘affected person’ means:*
- (a) *a natural or legal person against whom a freezing or confiscation order is issued;*
- (b) *a natural or legal person that owns property that is the object of a freezing or confiscation order;*
- (c) *a third party whose rights in relation to property that is the object of a freezing order or a confiscation order are directly prejudiced by that order; or*
- (d) *a natural or legal person whose property is subject to an interlocutory sale pursuant to Article 21 of this Directive.*

CHAPTER II
Tracing and identification

Article 4
Asset-tracing investigations

1. To facilitate cross-border cooperation, Member States shall take measures to enable the swift tracing and identification of instrumentalities and proceeds, or of property which is, or might become, the object of a freezing or confiscation order in the course of **■** proceedings *in criminal matters*.
2. *Property referred to in paragraph 1 shall also include property which is, or might become, the object of a freezing or confiscation order in accordance with Article 10(2) of Directive (EU) .../...⁺.*

⁺ OJ: Please insert the number of the Directive in PE-CONS .../... (2022/0398 (COD)).

3. Where an investigation is initiated in relation to a criminal offence that is liable to give rise to substantial economic benefit, asset-tracing investigations pursuant to paragraph 1 shall be carried out immediately by competent authorities. ***Member States may limit the scope of such asset-tracing investigations to investigations into offences liable to have been committed within the framework of a criminal organisation.***

Article 5

Asset recovery offices

1. Each Member State shall set up at least one asset recovery office to facilitate cross-border cooperation in relation to asset-tracing investigations.
2. Asset recovery offices shall have the following tasks:
 - (a) to trace and identify instrumentalities, proceeds or property where necessary to support other national competent authorities responsible for asset-tracing investigations pursuant to Article 4 ***or the European Public Prosecutors Office (the EPPO)***;

- (b) to trace and identify instrumentalities, proceeds or property which are or might become the object of a freezing or confiscation order issued by ***a competent authority in*** another Member State;
- (c) to cooperate and exchange information with **■** asset recovery offices in other Member States ***and the EPPO*** in the tracing and identification of instrumentalities, proceeds or property which are or might become the object of a freezing or confiscation ***order***.

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3. ***In order to perform their tasks pursuant to paragraph 2, point (b), asset recovery offices shall be entitled to request the relevant competent authorities, in accordance with national law, to cooperate with them where necessary for the tracing and identification of instrumentalities, proceeds or property;***

4. Asset recovery offices shall be empowered to trace and identify property of persons and entities subject to Union *restrictive measures* where necessary to *facilitate the detection of* criminal offences *referred to in Article 2(1), point (p), of this Directive, upon a request by national competent authorities based on indications and reasonable grounds for believing that a criminal offence pursuant to Article 3 of Directive (EU) .../...⁺ was committed. Such powers shall be without prejudice to relevant procedural requirements and safeguards established under national procedural law, including rules on the initiation of criminal proceedings or, where necessary, the requirement to obtain a judicial authorisation.*

Article 6

Access to information

1. For the purposes of performing the tasks referred to in Article 5, Member States shall ensure that asset recovery offices have ■ access to the ■ information *referred to in this Article* to the extent that such information is necessary for the tracing and identification of instrumentalities, proceeds or property ■ .

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⁺ OJ: Please insert the number of the Directive in PE-CONS .../... (2022/0398 (COD)).

2. *Member States shall ensure that asset recovery offices have immediate and direct access to the following information, provided that such information is stored in centralised or interconnected databases or registers held by public authorities:*

- (a) national real-estate registers or electronic data retrieval systems and land and cadastral registers;
- (b) national citizenship and population registers of natural persons;
- (c) national motor vehicle, aircraft and watercraft registers;
- (d) commercial *registers*, including business and company registers ■ ;

■

- (e) *national beneficial-ownership registers in accordance with Directive (EU) 2015/849 and data available through the interconnection of beneficial-ownership registers in accordance with that Directive;*

(f) centralised bank-account registers in accordance with Directive (EU) 2019/1153.

3. For the purposes of paragraph 1, Member States shall ensure that asset recovery offices can swiftly obtain, either immediately and directly or upon request, the following information:

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

(b) national social security data;

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

(d) information on mortgages and loans;

(e) information contained in national currency databases and currency exchange databases;

- (f) information on securities;*
- (g) customs data, including cross-border physical transfers of cash;*
- (h) information on annual financial statements by companies;*
- (i) information on wire-transfers and account balances;*
- (j) information on crypto-asset accounts and crypto-asset transfers as defined in Article 3 of Regulation (EU) 2023/1113 of the European Parliament and of the Council⁴⁴;*
- (k) in accordance with Union law, data stored in the Visa Information System (VIS), Schengen Information System (SIS II), Entry/Exist System (EES), European Travel Information and Authorisation System (ETIAS), and European Criminal Records Information System for Third-Country Nationals (ECRIS-TCN).*

⁴⁴ Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets and amending Directive (EU) 2015/849 (OJ L 150, 9.6.2023, p. 1).

4. Where the information referred to in *paragraphs 2 and 3* is not stored in *centralised or interconnected* databases or registers *held by public authorities*, Member States shall take the necessary measures to ensure that asset recovery offices can swiftly obtain that information *from relevant institutions* by other means *in a streamlined and standardised manner*.
5. *Member States may decide that access to the information referred to in paragraph 3, points (a), (b) and (c), requires a reasoned request, and that such a request can be denied where the provision of the requested information would:*
- (a) jeopardise the success of an ongoing investigation;*
 - (b) be clearly disproportionate to the legitimate interests of a natural or legal person with regard to the purposes for which access has been requested; or*
 - (c) comprise information provided by another Member State or third country and it is not possible to obtain consent for its further transmission.*

6. ■ Access to information referred to in *this Article* shall be without prejudice to the procedural safeguards established under national law, *including, where necessary, the requirement to obtain a judicial authorisation.*

Article 7

Conditions for access to information by asset recovery offices

1. Information referred to in Article 6 shall be accessed■ on a case-by-case basis, *only where necessary and proportionate for the performance of the tasks pursuant to Article 5 and* by staff specifically designated and authorised to access such information.
2. Member States shall ensure that staff of the asset recovery offices comply with the rules on confidentiality and professional secrecy as provided for under applicable national law *as well as the Union data protection acquis*. Member States shall ensure that staff of asset recovery offices have the necessary specialised skills and abilities to perform their roles effectively.

3. Member States shall ensure that appropriate technical and organisational measures are in place to ensure *a level of security appropriate to the risk of processing* data in order for asset recovery offices to access and search the information referred to in Article 6.

Article 8

Monitoring access and searches by asset recovery offices

■ Member States shall *provide for* logs of ■ access and search activities by asset recovery offices *under this Directive to be kept* in accordance with *Article 25 of Directive (EU) 2016/680*.

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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 in another Member State, any information that those asset recovery offices have access to, and that is necessary for the performance of the tasks pursuant to Article 5, of the asset recovery office requesting that information (the 'requesting asset recovery office'). It shall only be possible to provide those categories of personal data listed in Section B, point 2, of Annex II to Regulation (EU) 2016/794, *with the exception of forensic identification information listed in Section B, point 2(c)(v), of that Annex.*

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 (EU) 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 relevant property;
- (c) the nature of the proceedings;
- (d) the type of criminal offence to which the request relates;
- (e) the link between the proceedings and the Member State in which the asset recovery office receiving the request is located;
- (f) details on the property targeted or sought, such as bank accounts, real estate, vehicles, vessels, aircraft, companies and other high-value items;
- (g) ***where necessary for the identification of the*** natural or legal persons presumed to be involved, ***any identification documents if available, details*** such as name, ***nationality, place of residence, national identification numbers or social security numbers***, addresses, date and place of birth, date of registration, ***country of establishment***, shareholders, headquarters ***and subsidiaries, as appropriate***;
- (h) where applicable, reasons for the urgency of the request.

3. Member States shall take the necessary measures to enable their **■** asset recovery offices to provide information to an asset recovery office in another Member State, without a request to that effect, where those offices are aware of information on instrumentalities, proceeds or property that they consider necessary, for the performance of the tasks pursuant to Article 5, of the asset recovery offices ***of that other Member State***. When providing such information, asset recovery offices shall set out the reasons why the information provided is considered necessary.
4. ***Unless otherwise indicated by the asset recovery office providing information*** pursuant to paragraph 1 ***or 3, the information provided*** may be presented as evidence before a national court ***or competent authority of the*** Member State in which the asset recovery office receiving that information is located, in accordance with procedures under national law, ***including procedural rules on the admissibility of evidence in proceedings in criminal matters in line with the Charter of Fundamental Rights of the European Union and with obligations of Member States as set out in Article 6 of the Treaty on European Union.***

5. Member States shall ensure that asset recovery offices have direct access to the Secure Information Exchange Network Application (SIENA) and use *the specific fields designed for the asset recovery offices in SIENA that correspond to the information required under paragraph 2 or, where necessary on an exceptional basis, other secure channels* for exchanging information pursuant to this Article.
6. Asset recovery offices may refuse to provide information to a 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 Member State in which the asset recovery office receiving the request is located;
 - (b) jeopardise an ongoing investigation or criminal intelligence operation, or pose an imminent threat to the life or physical integrity of a person; *or*
 - (c) *be clearly disproportionate or irrelevant with regard to the purposes for which it has been requested.*

7. Where an asset recovery office refuses, pursuant to paragraph 6, to provide information to a requesting asset recovery office, the Member State where the asset recovery office receiving the request is located shall take the necessary measures to ensure that the reasons for refusal are given *and that the requesting asset recovery office is consulted in advance*. Refusals shall affect only the part of the requested information to which the reasons set out in paragraph 6 relate and shall not affect the obligation to provide other parts of that information, where applicable, in accordance with this Directive.

Article 10

Time limits for provision of information

1. Member States shall ensure that asset recovery offices respond to requests for information made pursuant to Article 9(1) as soon as possible and in any event within the following time limits:
- (a) seven calendar days, for all requests that are not urgent;

(b) *eight hours, for urgent requests relating to information referred to in Article 6 that is stored in databases and registers to which those asset recovery offices have direct access;*

(c) *three calendar days, for urgent requests relating to information ■ to ■ which those asset recovery offices do not have direct access.*

2. Where the information requested pursuant to paragraph 1, point (b), is not directly available or the request made pursuant to paragraph 1, point (a), imposes a disproportionate burden on the asset recovery office receiving the request, that asset recovery office may delay the provision of the information. In such a case, the asset recovery office receiving the request shall immediately inform the requesting asset recovery office of that delay and shall provide the requested information as soon as possible and within *seven days of the initial deadline established pursuant to paragraph 1, point (a), or* within three days of the initial deadline established pursuant to paragraph 1, *points (b) and (c).*

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

CHAPTER III
Freezing and confiscation

Article 11
Freezing

1. Member States shall take the necessary measures to enable the freezing of property necessary to ensure a possible confiscation of that property under Articles 12 *to 16*. ***The freezing measures shall consist of freezing orders and immediate action.***

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2. ***Immediate action shall be taken where necessary in order to preserve the property until a freezing order has been issued. Where immediate action does not take the form of a freezing order, Member States shall limit the temporary validity of that immediate action.***

3. *Without prejudice to the powers of other competent authorities*, Member States shall enable asset recovery offices to take immediate action pursuant to paragraph 2 *where there is an imminent risk of the disappearance of the property that those offices have traced and identified in the exercise of their tasks* pursuant to *Article 5(2), point (b)*. The validity of such *immediate action* shall not exceed seven *working* days.

4. Member States shall ensure that freezing *measures* are *taken* only by a competent authority and *that the reasons for such measures are set out in the relevant decision or recorded in the case file if the freezing measure is not ordered in writing*.
5. The freezing order **■** shall remain in force only for as long as necessary to preserve the property with a view to possible subsequent confiscation. Frozen property which is not subsequently confiscated shall be *unfrozen* without *undue* delay. The conditions or procedural rules under which such property is *unfrozen* shall be determined by national law.

Article 12
Confiscation

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

Article 13

Confiscation from a third party

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

The confiscation of proceeds or other property as referred to in the first subparagraph shall be possible where *a national court* has ■ established, ***based on the concrete facts and circumstances of a case***, that the relevant third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation. ***Such*** facts and circumstances ***include***:

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

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

Article 14

Extended confiscation

1. Member States shall take the necessary measures to enable the confiscation, either wholly or in part, of property belonging to a person convicted of a criminal offence where *the* offence *committed* is liable to give rise, directly or indirectly, to economic benefit, and where a 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 3, where such offences are punishable by deprivation of liberty of a maximum of at least four years.*

Article 15

Non-conviction-based confiscation

1. Member States shall take the necessary measures to enable, under the conditions set out in paragraph 2 of this Article, the confiscation of instrumentalities, proceeds or property as referred to in Article 12, or proceeds or property transferred to third parties as referred to in Article 13, where criminal proceedings have been initiated but could not be continued because of one or more 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) *the limitation period for the relevant criminal offence prescribed by national law is below 15 years and has expired after the initiation of criminal proceedings.*

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

Article 16

Confiscation of unexplained wealth linked to criminal *conduct*

1. Member States shall take the necessary measures to enable, *where, in accordance with national law, the confiscation measures of Articles 12 to 15 may not be applied, the confiscation of property identified in the context of an investigation in relation to a criminal offence, provided that a national court is satisfied that the identified property is derived from criminal conduct committed within the framework of a criminal organisation and that conduct is liable to give rise, directly or indirectly, to substantial economic benefit.*

2. When determining whether the **■** property *referred to in paragraph 1 should be confiscated*, account shall be taken of all the circumstances of the case, including the **■** available evidence *and specific facts, which may include:*
- (a) that the value of the property is substantially disproportionate to the lawful income of the *affected person*;
 - (b) *that there is no plausible licit source* of the property;
 - (c) *that the affected person is connected to people linked to a criminal organisation.*
3. *Paragraph 1 shall not prejudice the rights of bona fide third parties.*
4. For the purposes of this Article, the notion of ‘criminal offence’ shall include offences referred to in Article 2(1) to (3), where such offences are punishable by deprivation of liberty of a maximum of at least four years.

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5. *Member States may provide that the confiscation of unexplained wealth in accordance with this Article shall be pursued only where the property to be confiscated has been previously frozen in the context of an investigation in relation to a criminal offence committed within the framework of a criminal organisation.*

Article 17

Effective confiscation and execution

1. Member States shall take the necessary measures to enable the tracing and identification of property to be frozen and confiscated even after a final conviction for a criminal offence or following proceedings for confiscation pursuant to Articles 15 and 16.

2. *For the purpose of paragraph 1, Member States shall ensure that competent authorities are able to use tracing and identification tools that are as effective as those available for the tracing and freezing of assets under Chapter II of this Directive.*

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

Article 18

Compensation of victims

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1. *Member States shall take appropriate measures to ensure that where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Directive, such **claims are taken into account within the relevant asset-tracing, freezing and confiscation proceedings.***
2. *Member States shall enable competent authorities responsible for asset-tracing investigations pursuant to Article 4 to provide, upon request, to the authorities responsible for deciding upon restitution and compensation claims or executing such decisions, any information on assets identified that might be relevant for the purposes of such claims. Member States may also enable competent authorities responsible for asset-tracing investigations pursuant to Article 4 to provide such information without such a request being made.*

3. *Member States shall ensure that asset recovery offices may trace and identify instrumentalities and proceeds or property which is or might become the object of a decision to compensate or to restitute property to a victim, at least where asset recovery offices act in cross-border cases in accordance with Article 5(2), point (b), and where the decision is issued by a court having competence in criminal matters in another Member State in the course of the criminal proceedings.*
4. *Where a victim is entitled to the restitution of property that is or might become subject to a confiscation measure provided for under this Directive, Member States shall take the necessary measures to restitute the property concerned to the victim, under the conditions set out in Article 15 of Directive 2012/29/EU.*

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

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Article 19

Further use of the confiscated property

1. *Member States are encouraged to take the necessary measures to allow the possibility of using confiscated property, where appropriate, for public interest or social purposes.*

2. *Without prejudice to applicable international law, Member States may use the instrumentalities, proceeds or property confiscated in relation to the offences referred to in Directive (EU) .../...⁺ to contribute to mechanisms to support third countries affected by situations in response to which Union restrictive measures have been adopted, in particular in cases of war of aggression. The Commission may provide guidance on the arrangements for such contributions.*

CHAPTER IV

Management

Article 20

Asset management and planning

1. *Member States shall adopt appropriate measures to ensure the efficient management of entities, such as undertakings, that are to be preserved as a going concern.*

⁺ OJ: Please insert the number of the Directive in PE-CONS .../... (2022/0398 (COD)).

2. *Member States are encouraged to take appropriate measures to prevent property from being acquired, in the course of its disposal further to a confiscation order, by persons convicted in the criminal proceedings in which the property was frozen.*
3. *Member States shall ensure the efficient management of frozen and confiscated property until its disposal further to a final confiscation order.*
4. *Member States shall ensure that, where justified by the nature of the property, competent authorities responsible for the management of frozen property assess the specific circumstances of property that might become the object of a confiscation order in order to minimise its estimated management costs and to preserve the value of such property until its disposal. Such an assessment shall be carried out when preparing or, at the latest, without undue delay after executing the freezing order.*
5. *Member States may require the costs for the management of frozen property to be charged, at least partially, to the beneficial owner.*

Article 21
Interlocutory sales

1. Member States shall ensure that property that is the object of *a freezing order* can be transferred or sold before *a final* confiscation order in one or more of the following circumstances ■ :
 - (a) the property subject to freezing is perishable or rapidly depreciating;
 - (b) the storage or maintenance costs of the property are disproportionate to its *market* value;
 - (c) the ■ management *of the property* requires special conditions and *expertise which is* not readily available ■ .

2. Member States shall ensure that the interests of the *affected person* are taken into account when issuing an order for an interlocutory sale, including whether the property to be sold is easily replaceable. With the exception of cases *where the affected person has absconded or cannot be located*, Member States shall ensure that the *affected person* is notified and, *except in cases of urgency, given the opportunity to be* heard before the sale. The *affected person* shall be given the possibility to request the sale of the property.
3. Earnings from interlocutory sales *shall* be secured until a judicial decision on confiscation is reached.

Article 22

Asset management offices

1. Each Member State shall set up or designate at least one *competent authority to function as* an asset management office for the purpose of the management of frozen and confiscated property *until the disposal of that property further to a final confiscation order*.

2. Asset management offices shall have the following tasks:

- (a) to ensure the efficient management of frozen and confiscated property, either through directly managing frozen and confiscated property or through providing support and expertise to other competent authorities responsible for the management of frozen and confiscated property *and* planning in accordance with *Article 20(4)*;

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- (b) to cooperate with other competent authorities responsible for the tracing and identification, freezing and confiscation of property pursuant to this Directive;
- (c) to cooperate with other competent authorities responsible for the management of frozen and confiscated property in cross-border cases.

CHAPTER V

Safeguards

Article 23

Obligation to inform affected persons

Member States shall ensure that freezing orders referred to in Article 11, confiscation orders referred to in Articles 12 to 16 and sales orders referred to in Article 21 are communicated to the affected person *without undue delay. Such orders shall set* out the reasons for the measure *as well as the rights and legal remedies available to that affected person pursuant to Article 24. Member States may provide for a right for competent authorities to postpone communication of the freezing orders to the affected person for as long as is necessary to avoid jeopardising a criminal investigation.*

Article 24
Legal remedies

1. Member States shall ensure that persons affected by *freezing orders pursuant to Article 11 and confiscation orders pursuant to Articles 12 to 16* have the right to **■** an effective remedy **■** and to a fair trial in order to uphold their rights.
2. *Member States shall ensure that rights of defence, including the right of access to the file, the right to be heard on issues of law and fact and, where relevant, the right to interpretation and translation, are guaranteed to affected persons that are suspects or accused persons or to persons affected by confiscation pursuant to Article 16.*

Member States may provide that other affected persons also have the rights referred to in the first subparagraph. Member States shall provide that such other affected persons have the right of access to the file and the right to be heard on issues of law and fact, as well as any other procedural rights which are necessary to effectively exercise their right to an effective remedy. The right of access to the file may be limited to the documents related to the freezing or confiscation measure provided that the affected persons have access to the documents necessary to exercise their right to an effective remedy.

3. Member States shall provide for the effective possibility for the person whose property is affected to challenge the freezing order pursuant to *Article* 11 before a court, in accordance with procedures provided for in national law. Where the freezing order has been issued by a competent authority other than a judicial authority, national law *may* provide that such an order is first to be submitted for validation or review to a judicial authority before it can be challenged before a court.
4. 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 that person aware of such proceedings.

5. Member States shall provide for the effective possibility for the person whose property is affected to challenge the confiscation order *pursuant to Articles 12 to 16, including* the relevant circumstances of the case *and available evidence on which the findings are based*, before a court, in accordance with procedures provided for in national law.

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6. Member States shall provide for the effective possibility for ■ an affected *person* to challenge an order for an interlocutory sale pursuant to Article 21 *and shall grant the affected person all procedural rights necessary to exercise the right to an effective remedy*. Member States shall provide for the possibility that *a court can suspend the execution of such sales order, if otherwise there would be irreparable harm to the affected person*.
7. Third parties shall be entitled to claim title of ownership or other property rights, including in the cases referred to in Article 13.

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

CHAPTER VI

Asset Recovery Strategic Framework

Article 25

National strategy on asset recovery

1. Member States shall ■ by ... [*six months* from the expiry of the *transposition period* of this Directive] *adopt* a national strategy on asset recovery and update it at regular intervals of no longer than five years.

2. *The strategy referred to in paragraph 1 shall include:*
- (a) elements concerning the priorities of national policy in this area, and the objectives and measures to achieve them;*
 - (b) the role and responsibilities of the competent authorities, including arrangements for coordination and cooperation among them;*
 - (c) resources;*
 - (d) training;*
 - (e) measures to be taken, where applicable, on the use of confiscated assets for public interest or social purposes;*
 - (f) activities to be undertaken on cooperation with third countries;*
 - (g) arrangements allowing for regular evaluation of results.*

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

Article 26

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. ***Without prejudice to judicial independence and differences in the organisation of the judiciary across the Union, Member States shall ensure that specialised training and the exchange of best practices is available to staff involved in asset identification, tracing and recovery and confiscation.***

Efficient management of frozen and confiscated property

1. For the purpose of managing frozen and confiscated property, Member States ***shall ensure that*** asset management offices, and where appropriate ***asset recovery offices, and other competent authorities performing tasks pursuant to this Directive are able to swiftly obtain information on frozen and confiscated property that is to be managed under this Directive. For that purpose, Member States shall establish efficient tools of management of the frozen or confiscated property, such as one central register or other registers of property frozen and confiscated pursuant to this Directive.***

2. ***For the purposes of paragraph 1, Member States shall ensure that it is possible to obtain information regarding the following:***

- (a) the property that is the object of a freezing or ***confiscation order and which is to be managed pursuant to Article 20(3) until its disposal further to a final*** confiscation order, including details that enable the identification of the property;

- (b) the estimated or actual value, *where appropriate*, of the property at the moment of the freezing, confiscation and disposal;
- (c) the owner of the property, including the beneficial owner, where such information is available;
- (d) the national file reference of the proceeding related to the property ■ .

3. *Where Member States establish a register of frozen and confiscated property pursuant to paragraph 1, they shall ensure that authorities with access to the register are able to search and obtain information on* the name of the authority entering the information in the register *and on* the unique user identifier of the official who entered the information in the register.

4. *Where Member States establish a register of frozen and confiscated property pursuant to paragraph 1 of this Article, they shall ensure that the* information referred to in paragraph 2 *of this Article is* retained for as long as is necessary for the purposes of keeping a record and overview of the property frozen, confiscated or under management, and ■ no ■ longer than the date of disposal, or for the purposes of providing annual statistics as referred to in Article 28.

5. *Where Member States establish a register of frozen and confiscated property pursuant to paragraph 1, Member States shall ensure that any personal data stored in the register can be accessed and used for the purposes of freezing, confiscation and the management of instrumentalities, proceeds or property which is or might become the object of a confiscation order, in accordance with the applicable data protection rules.*
6. *Where Member States establish a register of frozen and confiscated property pursuant to paragraph 1, Member States shall ensure that appropriate technical and organisational measures are in place to ensure the security of the data contained in the ■ registers of frozen and confiscated property and shall designate the competent authority or authorities responsible for the management of the registers and for performing the tasks of the controller as defined in the applicable data protection rules.*

Article 28

Statistics

Member States shall *regularly* collect *from the relevant authorities* and maintain comprehensive statistics *in order to review the effectiveness of their confiscation systems*. *The* statistics ■ collected *shall be sent* to the Commission *each year by 31 December* of the following year *and shall include*:

- (a) the number of freezing orders executed;*
- (b) the number of confiscation orders executed;*
- (c) the estimated value of property frozen with a view to possible subsequent confiscation at the time of freezing;*
- (d) the estimated value of property recovered at the time of confiscation;*
- (e) the number of requests for freezing orders to be executed in another Member State;*

- (f) the number of requests for confiscation orders to be executed in another Member State;*
- (g) the value or estimated value of the property recovered following execution in another Member State;*
- (h) the value of confiscated property compared to its value at the time of freezing, where available at central level;*
- (i) the breakdown of the numbers and values relating to points (b) and (d) per type of confiscation, where available at central level;*
- (j) the number of interlocutory sales, where available at central level;*
- (k) the value of the property destined to be reused for social purposes.*

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CHAPTER VII

Cooperation

Article 29

Cooperation network on asset recovery and confiscation

- 1. The Commission shall establish a cooperation network on asset recovery and confiscation to facilitate cooperation among asset recovery offices and asset management offices and with Europol in relation to the implementation of this Directive, and to advise the Commission and enable the exchange of best practices in relation to the implementation of this Directive.*
- 2. The Commission may invite representatives from Eurojust, the EPPO and, where appropriate, the Anti-Money Laundering Authority to participate in meetings of the network referred to in paragraph 1.*

Article 30

Cooperation with *Union* bodies and agencies

1. Asset recovery offices of Member States shall, *within their respective competences and in accordance with the applicable legal framework*, closely cooperate with the EPPO for the purposes of facilitating the identification of instrumentalities, proceeds or property that is or might become the object of a freezing or confiscation order in proceedings in criminal matters, concerning criminal offences *falling within the competence of* the EPPO .
2. Asset recovery *offices and asset management* offices shall cooperate with Europol and Eurojust, in accordance with their areas of competence, for the purposes of facilitating the identification of instrumentalities, proceeds or property that is or might become the object of a freezing or confiscation order issued by a competent authority in the course of proceedings *in criminal matters, to facilitate the management of frozen and confiscated assets*.

Article 31

Cooperation with third countries

1. Member States shall ensure that asset recovery offices cooperate, ***within the international legal framework***, with their counterparts in third countries to the greatest extent possible, and subject to the applicable ***legal framework on data protection*** ■ , for the purposes of performing the tasks pursuant to Article 5 ■ .
2. Member States shall ensure that asset management offices cooperate, ***within the international legal framework***, with their counterparts in third countries to the greatest extent possible, ***and subject to the applicable legal framework on data protection***, for the purposes of performing the tasks pursuant to Article 22.

CHAPTER VIII

Final provisions

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Article 32

Designated competent authorities and contact points

1. Member States shall inform the Commission of the authority or authorities designated to carry out the tasks pursuant to Articles 5 and 22.
2. ■ Member *States* shall nominate a maximum of two contact points to facilitate cooperation in cross-border cases *among asset recovery offices and a maximum of two contact points to facilitate cooperation among asset management offices. It shall not be necessary for such contact points to themselves be charged with the tasks pursuant to Article 5 or 22.*
3. By ... [6 months from the *expiration of the transposition* period of this Directive] ■ , Member States shall notify the Commission of the competent authority or authorities and, *where relevant*, the contact points referred to in paragraphs 1 and 2 respectively.

4. By ... [6 months from the *expiration of the transposition period* of this Directive] ■ , the Commission shall set up an online register listing all competent authorities and the designated contact point for each competent authority. The Commission shall publish and regularly update on its website the list of authorities referred to in paragraph 1.

Article 33

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 of this Directive + *30 months*]. They shall immediately inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the measures of national law which they adopt in the field covered by this Directive

Article 34

Reporting

1. The Commission shall, by ... [*two years from the expiry of the transposition period of this Directive*], submit a report to the European Parliament and to the Council, assessing the implementation of this Directive.
2. The Commission shall, by ... [*five years from the expiry of the transposition period of this Directive*], 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 that evaluation, the Commission shall decide on appropriate follow-up actions, including, if necessary, a legislative proposal.

Article 35

Relation with other instruments

This Directive is without prejudice to Directive (EU) 2019/1153¹.

Article 36

Replacement of Joint Action 98/699/JHA, Framework Decisions 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 the instruments referred to in paragraph 1 shall be construed as references to this Directive.

Article 37

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 38
Addressees

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

Done at ...

For the European Parliament
The President

For the Council
The President
