Asset recovery and confiscation

2022/0167(COD) - 25/05/2022 - Legislative proposal

PURPOSE: to establish minimum rules on tracing and identification, freezing, confiscation and management of property in criminal proceedings.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: Europol's 2021 Serious and Organised Crime Threat Assessment (SOCTA) highlighted the rising threat from organised crime and criminal infiltration. The revenues generated by organised crime are considerable. They are estimated at **EUR 139 billion every year** and are increasingly laundered through a parallel underground financial system. The availability of such proceeds from criminal activities poses a significant threat to the integrity of the economy and society, eroding the rule of law and fundamental rights.

The EU Strategy to tackle Organised Crime 2021-2025 aims at addressing these challenges by promoting cross-border cooperation, supporting effective investigations against criminal networks, eliminating proceeds from criminal activities, and making law enforcement and the judiciary fit for the digital age.

In order to **tackle the serious threat posed by organised crime**, it is necessary to provide the competent authorities with the means to effectively trace, identify, freeze, **confiscate** and manage the instruments and proceeds of crime as well as property derived from criminal activities. The **existing legal framework should therefore be updated** to facilitate and ensure the effectiveness of asset recovery and confiscation efforts throughout the Union.

In its resolution of 15 December 2021, the European Parliament called for a strengthening of the rules on asset recovery.

CONTENT: the proposed Directive aims to strengthen the capabilities of competent authorities to **identify, freeze and manage assets**, and reinforce and extend confiscation capabilities so as to cover all relevant criminal activities carried out by organised crime groups, thereby enabling confiscation for all relevant assets.

General provisions on asset recovery and confiscation

The proposed Directive includes not only rules on tracing and identification of assets and their management, but also rules on freezing and confiscation. The proposal broadens the possibilities for confiscation of assets, which will become applicable to a wider range of criminal offences, including the **violation of EU restrictive measures** such as those adopted against Russia and Belarus, once the Commission's proposal to extend the list of EU criminal offences is adopted.

Tracing and identifying assets

The proposal requires Member States to initiate **asset tracing investigations** to facilitate cross-border cooperation, to set up at least one **asset recovery office** and to make certain information directly accessible to asset recovery offices to ensure a rapid response to requests for information from other Member States.

In addition to the current rules, the proposal defines specific tasks of asset recovery offices, including the exchange of information with other asset recovery offices in other Member States. The asset recovery offices should be enabled to take immediate action to temporarily freeze the assets in question.

Freezing and confiscation of assets

The proposal requires Member States to:

- take the necessary measures to ensure that illicit assets can be frozen quickly and, where necessary, with immediate effect to avoid their dissipation;

- enable the confiscation of instrumentalities and proceeds of crime following a final conviction and to enable the confiscation of property of equivalent value to the proceeds of crime;

- enable the confiscation of properties transferred by the accused or suspected person to a third party for the purpose of avoiding confiscation;

- enable the confiscation of property of a convicted person when the national court of a Member State is convinced that that the property derives from a criminal activity;

- provide for the possibility of confiscation where all the evidence for a criminal offence is present, but a conviction is not possible due to a limited number of circumstances.

The proposal introduces a new confiscation possibility where assets are frozen based on suspicion of involvement in organised crime activities and aims to ensure that the right to compensation for victims is not affected by the confiscation measures, similar to the relevant provision in the Confiscation Directive.

Asset management

The proposal requires Member States to (i) ensure that frozen or confiscated assets are managed efficiently until their disposal; (ii) provide for the possibility to transfer or sell frozen assets before the confiscation order is issued; and (iii) establish at least one asset management office, the tasks of which are more precisely defined.

Asset recovery strategic framework

The proposal requires Member States to: (i) adopt a national strategy on asset recovery and update it every five years; (ii) ensure that asset recovery offices and asset management offices have the necessary resources to carry out their tasks; (iii) set up a centralised register containing relevant information on frozen, managed and confiscated assets; and (iv) collect and report statistical data to the Commission on an annual basis

Enhanced cooperation

The proposal aims to ensure cooperation between asset recovery offices and the European Public Prosecutor’s Office, Europol and Eurojust, for the purpose of facilitating the tracing and identification of property that may be subject to confiscation. It also provides that asset recovery offices will need to cooperate with Europol and Eurojust where necessary to prevent, detect or investigate offences related to the violation of the Union restrictive measures.