Asset recovery and confiscation

2022/0167(COD) - 13/03/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 598 votes to 19, with 7 abstentions, a legislative resolution on the proposal for a directive of the European Parliament and of the Council on asset recovery and confiscation.

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

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the proposal as follows:

Subject matter

This Directive will apply to a wide range of crimes, such as organised crime, terrorism, trafficking in human beings and drug trafficking

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 hostagetaking, 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.

Asset-tracing investigations

To facilitate cross-border cooperation, Member States should 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.

Asset recovery offices

Each Member State should set up at least one asset recovery office to **facilitate cross-border cooperation** in relation to asset-tracing investigations.

Asset recovery offices should also be able to trace and identify instrumentalities, proceeds or property where necessary to support other national competent authorities responsible for asset-tracing investigations or the European Public Prosecutors Office.

In order to perform their tasks, asset recovery offices should 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.

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.

Member States should 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: (i) national real-estate registers or electronic data retrieval systems and land and cadastral registers; (ii) national citizenship and population registers; (iii) national motor vehicle, aircraft and watercraft registers; (iv) commercial registers, including business and company registers; (v) national beneficial-ownership registers in accordance with Directive (EU) 2015/849; (vi) centralised bank-account registers.

Asset recovery offices should be able to **swiftly obtain, either immediately and directly or upon request**, the following information: (i) fiscal data; (ii) national social security data; (iii) information on mortgages and loans; (iv) information contained in national currency databases and currency exchange databases; (v) information on securities; (vi) customs data; (vii) information on annual financial statements by companies, on wire-transfers and account balances and on crypto-asset accounts.

Freezing and confiscation

According to the amended text, Member States need to take measures to enable the freezing of property in order to ensure an eventual confiscation and to ensure, in the event of a final conviction, the confiscation of instrumentalities and proceeds stemming from a criminal offence. Where criminal assets or property of equal value are **transferred to a third party**, it must also be possible to confiscate them, but only if the third party knew or should have known that the purpose of the transfer or acquisition was to avoid confiscation.

Confiscation of unexplained wealth linked to criminal conduct

A new rule on the confiscation of unexplained wealth will, under certain conditions, allow the confiscation of property identified in the context of an investigation in relation to criminal offences, provided that a national court is satisfied that the identified property is derived from criminal activities committed within the framework of a criminal organisation and that those activities give rise to substantial economic benefit.

Asset management

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.

Compensation of victims

Member States should 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.

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.

Legal remedies

Member States should ensure that persons affected by freezing orders and confiscation have the right to an effective remedy and to a fair trial in order to uphold their rights.