

Asset recovery and confiscation

2022/0167(COD) - 02/05/2024 - Final act

PURPOSE: to facilitate confiscation of property in proceedings in criminal matters.

LEGISLATIVE ACT: Directive (EU) 2024/1260 of the European Parliament and of the Council on asset recovery and confiscation.

CONTENT: to tackle the serious threat posed by organised crime, the Directive lays down EU-wide minimum rules on the **tracing, identification, freezing, confiscation and management of criminal property** in connection with a wide range of crimes.

Asset-tracing investigations

To facilitate cross-border cooperation, Member States will 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. Where an investigation is initiated in relation to a criminal offence that is liable to give rise to substantial economic benefit, **asset-tracing investigations should be carried out immediately by competent authorities**.

Asset recovery offices

Each Member State will set up at least one asset recovery office to facilitate cross-border cooperation in relation to asset-tracing investigations. Asset recovery offices will have the following tasks:

- to trace and identify instrumentalities, proceeds or property where necessary to support other national competent authorities responsible for asset-tracing investigations pursuant to the European Public Prosecutors Office (EPPO);
- 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;
- 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.

Recovery offices will have access to the relevant databases and registers in order to carry out these tasks (e.g. national property registers, national citizenship and population registers, national registers of motor vehicles, aircraft and watercraft, commercial registers and national registers of beneficial owners).

Freezing and confiscation

Member States will enable the freezing of property and, in the event of a final conviction, the confiscation of instrumentalities and proceeds stemming from a criminal offence. In addition, they should adopt rules allowing them to **confiscate property of a value corresponding to the proceeds of a crime**.

Member States will take the necessary measures to allow:

- the confiscation of proceeds or property the value of which corresponds to that of proceeds that have been transferred, directly or indirectly, to third parties by a suspected or accused person Where criminal

assets or property of the same value are **transferred to a third party**, it will be possible to confiscate them if the third party knew or should have known that the purpose of the transfer or acquisition was to avoid confiscation;

- the confiscation of property belonging to a person convicted of a criminal offence, where the offence committed is likely to give rise, directly or indirectly, to economic gain and where a national court is satisfied that the property was derived from criminal activity;

- confiscation of instrumentalities, proceeds or property where criminal proceedings have been initiated but **cannot be pursued** 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;

- the **confiscation of unexplained wealth** where the assets concerned are linked to activities carried out as part of a criminal organisation and generate significant economic gain;

- tracing and identifying assets to be frozen and confiscated, even after a final conviction for a criminal offence or at the end of confiscation procedures.

Compensation of victims

Member States will 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.

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 should take the necessary measures to return the property concerned to the victim.

Early sale

The new legislation also provides for the sale of frozen property, under certain conditions and even before final confiscation, for example when the property is perishable or when the costs of storing or maintaining the property are disproportionate to its market value.

Legal remedies

Member States must ensure that persons affected by freezing orders and confiscation orders have the right to an effective remedy and a fair trial in order to uphold their rights. The rights of defence, including the right of access to the file, the right to be heard on issues of law and fact and, where appropriate, the right to interpretation and translation, must be guaranteed to the persons concerned who are suspected or prosecuted.

Lastly, Member States must adopt a **national strategy** for asset recovery by 24 May 2027 at the latest, and update it at regular intervals of no longer than five years.

ENTRY INTO FORCE: 22.5.2024.

TRANSPOSITION: no later than 23.11.2026.