



European Economic
and Social Committee

OPINION

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Asset recovery and confiscation

Proposal for a directive of the European Parliament and of the Council on
asset recovery and confiscation
[COM(2022) 245 - final]

SOC/738

Rapporteur: Ionuț SIBIAN

EN

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Section responsible	Section for Employment, Social Affairs and Citizenship
Adopted in section	23/11/2022
Adopted at plenary	14/12/2022
Plenary session No	574
Outcome of vote (for/against/abstentions)	207/0/2

1. Conclusions and recommendations

- 1.1 The proposed Directive correctly responds to the need to broaden the scope of the confiscation mechanisms, strengthens the competences of national authorities and establishes cross-border cooperation mechanisms to increase the rate of asset recovery.
- 1.2 When expanding the scope of the confiscation mechanisms with a new set of crimes, the EESC encourages the European Commission to clarify and make sure that migrant smuggling and illicit tobacco trade fall under the scope of the proposed Directive.
- 1.3 The EESC calls on the European Commission to consider how to apply the proposed Directive to violations of EU restrictive measures and it believes that separate legislation is needed in this area. The proposed Directive should allow Asset Recovery Offices to strengthen their capacity to operate without adding additional competences.
- 1.4 Public access to information without prejudice to ongoing asset recovery proceedings should be guaranteed. The EESC suggests that the proposed Directive explicitly state that national authorities and the European Commission are obliged to regularly publish comprehensive statistics on the measures taken under the Directive and ensure public access to information.
- 1.5 The EESC calls on European Commission to ensure that the Member States adopt national strategies on asset recovery with full consideration of transparency and accessibility.
- 1.6 The EESC strongly encourages the European Commission to take all necessary precautions during the transposition process to prevent abuses in case of non-conviction-based confiscation measures in asset recovery proceedings.
- 1.7 The newly introduced mechanism ensuring the confiscation of assets not directly linked to a crime listed in the Directive, but based on a suspicion of unlawful property/resulting from criminal activities requires stronger standards for defendants' procedural rights and safeguards.
- 1.8 The EESC urges the Commission to reconsider the provision on social reuse in the proposed Directive and to encourage the Member States to devise mechanisms that would include civil society organisations as a priority in managing and disposing of confiscated assets. The Commission should set targets by including a minimum percentage for the social reuse of confiscated assets. Public interest should not be understood to mean only actions under the remit of public entities.
- 1.9 The EESC considers it very important that the Commission be more precise in laying down victims' right to compensation and giving victims priority in the ranking of creditors.
- 1.10 The EESC supports the Commission's proposal for the proposed Directive to require at least one Asset Recovery Office to be established in each Member State, which must be given the resources it needs to efficiently and effectively fulfil its role. To ensure a minimum standard for the functioning of Asset Recovery Offices throughout the EU, the European Commission should require regular reporting of the resources allotted in each Member State.

- 1.11 The EESC acknowledges the aim of increasing the use of the interlocutory sales mechanism by introducing a reference definition and specifying the conditions under which it should be used. At the same time, "non-readily available expertise" is a standard that could be improved, becoming "expertise that is unreasonably difficult to procure". The sale should remain the last resort with respect to social reuse, considering that the confiscated funds can be allocated to the compensation of the victims.
- 1.12 The EESC encourages the European Commission to complete the mandate of the Asset Recovery and Management Offices by introducing relevant provisions on asset-sharing agreements in the proposed Directive.
- 1.13 The EESC considers it necessary to include more concrete tools for assisting third countries' officials and to actively encourage Member States to develop cooperation with these countries in order to maximise the asset recovery mechanisms provided for in the proposed Directive. The same is true for the implementation of the legal tools and instruments needed to ensure that victims of criminal offences have the full right to compensation in third countries.
- 1.14 The EESC recommends that the Commission issue guidelines comparing the legislation to be replaced and the new Directive to be enacted in order to encourage the adoption of measures facilitating the forthcoming transposition of the proposed Directive in national jurisdictions, and to enable national authorities to swiftly align it with their own legislation.
- 1.15 The EESC recommends that the European Commission make use of the comparative data collection instruments introduced in the proposed Directive to establish transparent monitoring mechanisms with the participation of civil society and to conduct an evaluation process on the impact of the proposed Directive no later than three years after its adoption.

2. Background

- 2.1 Asset recovery is key to combating money laundering and terrorist financing, i.e. activities related to organised crime. Organised crime relies on obtaining profits that would be further laundered and introduced into the licit economy, hence creating more victims, distorting market rules and perpetuating the capacity to undermine financial markets and trigger losses for individuals and businesses. The asset recovery legal frameworks and the cross-border cooperation instruments need further revision and enforcement as only around 2% of criminal assets are frozen and 1% confiscated¹ in the EU.
- 2.2 The first dedicated EU Strategy to tackle Organised Crime² was adopted in April 2021 and addresses the threat that organised crime poses to European citizens, state institutions and the economy as a whole. One of the strategy's pillars is to eliminate profits generated by organised crime and prevent their infiltration into the legal economy and legal businesses (follow-the-

¹ [Europol, Does crime still pay? Criminal Asset Recovery in the EU](#) – Survey of statistical information 2010-2014, 2016.

² [Commission Communication on the EU Strategy to tackle Organised Crime 2021-2025 \(COM\(2021\) 170, 14.4.2021\)](#).

money approach), and the Commission was called on to take action upon the revision of the Confiscation Directive³ and the Council Decision on Asset Recovery Offices⁴.

- 2.3 The EESC has been fully aware of and preoccupied by the increase in organised crime and its significant economic, political and social costs for some time. The work of the EESC has been consistent with its mission and the opinions⁵ issued on topics relevant to combating organised crime have helped European lawmakers give citizens power and relevance via organised civil society. Asset recovery is part of the larger EU legislative ecosystem that is intended to contribute to the restorative justice that communities need in order to reduce the harm caused by criminal offences.
- 2.4 The evaluation⁶ of the current asset recovery legal framework mentioned that, despite a general improvement by the Member States, the overall results in terms of assets confiscated are not satisfactory and the confiscation rates in the EU remain very low. The ability to trace and identify assets is a key factor in improving the success rate and freezing and confiscating more illegal assets. The revision of the legislation should expand the scope of illegal asset recovery and increase the number of corresponding instruments, along with enhancing the capacity of national recovery offices⁷.
- 2.5 The policy options for the revision of the asset recovery framework were subject to public consultation in 2021. An inception impact assessment⁸ was published for feedback in March 2021, followed by a public consultation carried out between 21 June and 27 September 2021 to gather the views of the general public and stakeholders. Four policy options were analysed and presented in the impact assessment report⁹:
- **Option 1:** consisting of **non-legislative measures** to support the exchange of experiences, knowledge and good practices among competent authorities.
 - **Option 2:** these measures would consist primarily of **targeted amendments** to the Council Decision on Asset Recovery Offices and the Confiscation Directive to specify the scope of existing general requirements and make them more effective. These measures would include requirements for the Member States to adopt a national strategy for asset recovery and to ensure that the competent authorities have the necessary skills and resources. Furthermore, it

³ [Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union](#).

⁴ [2007 Council Decision on Asset Recovery Offices](#).

⁵ Some of the relevant EESC opinions: opinion on the Security Union Package ([OJ C 323, 26.8.2022, p. 69](#)), the series of opinions on the legislation on anti-money laundering, the most recent being the opinion on the 2021 Anti-Money Laundering Legislative Package ([OJ C 152, 6.4.2022, p. 89](#)), the opinion on the Strategy to tackle Organised Crime 2021-2025 ([OJ C 517, 22.12.2021, p. 91](#)), the opinion on Strengthening of Europol's mandate ([OJ C 341, 24.8.2021, p. 66](#)), the opinion on controls on cash entering or leaving the Union ([OJ C 246, 28.7.2017, p. 22](#)), the opinion on the European Agenda on Security ([OJ C 177, 18.5.2016, p. 51](#)) and the Opinion on An open and secure Europe ([OJ C 451, 16.12.2014, p. 96](#)).

⁶ [Report from the Commission to the European Parliament and to the Council, Asset recovery and confiscation – Ensuring that crime does not pay, COM\(2020\) 217 final, 2.6.2020](#).

⁷ In line with the *Council conclusions on enhancing financial investigations to fight serious and organised crime* [Council document 8927/20](#), 17 June 2020.

⁸ [Have your say: Fighting organised crime – strengthening the mandate of EU Asset Recovery Offices](#).

⁹ European Commission, [IMPACT ASSESSMENT REPORT Accompanying the document Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation](#), (2022).

would entail measures aimed at improving cross-border cooperation among Asset Recovery Offices, including access to databases and extended freezing powers.

- **Option 3:** would contain, in addition to the measures envisaged in option 2, more detailed requirements for the Member States for all phases of the recovery process, and the scope of the Confiscation Directive would be expanded to include a wider range of crimes.
- **Option 4:** these measures would build upon those under option 3, but the scope of the provisions would be extended to all crimes and entail more extensive requirements when it comes to the launch of investigations. Furthermore, more concrete conditions concerning urgent freezing orders and the exchange of information between Asset Recovery Offices would be set out.

- 2.5.1 The impact assessment found that option 3 was the most suitable as it provides the best balance between effectiveness, efficiency and proportionality on the one hand, and the various economic, social and environmental impacts anticipated on the other.
- 2.6 On 25 May 2022, the Commission proposed a new Directive on asset recovery and confiscation that would replace the current Confiscation Directive, the Council Decision on Asset Recovery Offices and Council Framework Decision 2005/212/JHA¹⁰. The set goal is to establish common standards for asset tracing and identification, freezing, management and confiscation in a single instrument that would further ensure a more coherent and strategic approach for all actors in the asset recovery system.

3. General and specific comments

- 3.1 The proposed Directive's general approach is consistent with its aims to strengthen competent authorities' abilities to, firstly, identify, freeze and manage illicit assets; secondly, reinforce and extend illicit asset confiscation capabilities; and, lastly, improve cooperation between all authorities involved in asset recovery.
- 3.2 The proposed Directive is likely to make asset recovery mechanisms more efficient and effective by imposing a core set of minimum rules on the tracing and identification, freezing, confiscation and management of property in criminal matters, and to facilitate the implementation of EU restrictive measures where necessary. However, additional legislation and measures on violations of EU restrictive measures should accompany the proposed Directive and the Commission should carefully assess the possibility of preventing the weakening of the Asset Recovery Offices' capacity to fulfil their core mandate.
- 3.3 The EESC believes that the proposed provision that each Member State adopt a national strategy on asset recovery will establish a more strategic approach in this area, promote greater cooperation between the relevant authorities and provide a clear overview of the results of asset recovery.
- 3.4 The broadened scope of the confiscation mechanisms will allow national judicial authorities to apply extended confiscation to a larger set of crimes than under the Confiscation Directive

¹⁰ [Council Framework Decision 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Property](#).

currently in place. The EESC welcomes the proposed Directive's broader scope as it fills a gap in the Confiscation Directive as regards a significant list of crimes, including environmental crimes, organ trafficking, trafficking of cultural goods, kidnapping, illegal restraint or hostage-taking, and trafficking in stolen vehicles to the extent that the offence is committed by a criminal organisation. At the same time, the proposed Directive does not explicitly include migrant smuggling and illicit tobacco trade despite the significant annual revenues of these criminal markets (an estimated EUR 289.4 million and EUR 8 309.3 million respectively¹¹).

- 3.5 Giving the relevant authorities immediate and direct access to the information of other national authorities such as tax and fiscal offices or national real estate registers will enhance Asset Recovery Offices' capacity to act and react effectively and in a timely manner. At the same time, public access to information should also be ensured without prejudice to ongoing proceedings at both national and EU level.
- 3.6 The proposed Directive extends the list of situations for non-conviction-based confiscation measures grounded in criminal proceedings to other cases in which a criminal conviction is not possible due to objective circumstances with immunity, amnesty and lapse of a statute of limitations. The EESC recognises the efforts made by the Commission in imposing limits on these cases as they might be abused or used for the purposes of harassment or persecution.
- 3.7 The proposed Directive includes a new confiscation mechanism ensuring the confiscation of assets not directly linked to a crime listed in the Directive but based on a suspicion of unlawful property/resulting from criminal activities. Despite the mandatory judicial procedure preceding the confiscation order and the burden of proof for the prosecution to link the asset in question to criminal activity, more guarantees are required to exclude any possible abuses during the procedure. National jurisdictions follow different routes varying from confiscation under civil law to criminal law. The proposed Directive should include standards for defendants' procedural rights and safeguards, and make sure that appropriate training is available for judges and prosecutors.
- 3.8 The limited impact of the social reuse provision in the Confiscation Directive would require more encouragement for the Member States to include adequate measures to ensure the provision's effectiveness. The EESC asks the European Commission to be more ambitious in its efforts to make the social reuse of confiscated assets effective and set a minimum percentage for social reuse for Member States. It is of paramount importance for social cohesion that affected communities get restorative damages directly and benefit from the returns from these damages. Moreover, communities need better assistance to help enhance their resilience to organised crime and civil society has to be involved in managing and disposing of confiscated assets.
- 3.9 As also stated in the Confiscation Directive, victims' right to compensation will not be affected by the confiscation measures. However, the proposed Directive still does not safeguard the prioritisation of victims' compensation in the ranking of creditors. At the same time, citizens of

¹¹ European Commission, Directorate-General for Migration and Home Affairs, [*Mapping the risk of serious and organised crime infiltrating legitimate businesses: final report*](#), Disley, E. (editor), Blondes, E. (editor), Hulme, S. (editor), Publications Office, 2021.

third countries are insufficiently protected by the proposed Directive and other EU legislation as their focus is on EU citizens.

- 3.10 The impact assessment report points out the following shortcomings: a lack of details on the roles of the Asset Recovery Offices, and insufficient human, financial and technical resources allocated to asset tracing. The proposed Directive responds to these findings and requires at least one recovery office to be established in each Member State. The explicit obligation to provide adequate resources to ensure that Asset Recovery Offices are efficient and effective is welcome. However, this obligation should be accompanied by regular reporting from the national level to the Commission regarding the resources allotted so that the Commission can evaluate whether there is any fragmentation or lack of balance between the various Asset Recovery Offices.
- 3.11 The costs associated with the management of frozen and/or confiscated assets may be significant or even exceed the value of the relevant asset. The proposed Directive includes an obligation for the competent authorities to assess the costs before issuing a freezing order. The EESC welcomes this measure as an efficient and useful instrument meant to reduce the necessary costs and maximise the subsequent value of the asset.
- 3.12 The interlocutory sales mechanism may be applied in limited cases, which are now listed in the proposed Directive, and is likely to contribute to more effective management of the frozen assets. Despite the fact that the mechanism is available in most Member States, it is used on a small scale and with great variation. The proposed Directive is likely to enhance the use of this mechanism by introducing a single definition and the conditions under which it should be used.
- 3.13 The absence of comprehensive and comparable statistics was found to be a major shortcoming in making the asset recovery system more effective. In this respect, the proposed Directive requires each Member State to establish an asset recovery registry that will collect encoded information from competent authorities throughout the asset recovery process.
- 3.14 The EESC believes that unifying all relevant legal provisions for asset recovery in a single Directive is in line with the Commission's Regulatory Fitness and Performance Programme (REFIT) and will help the relevant authorities and stakeholders understand the rules better and help improve the implementation and effectiveness of measures meant to increase the illicit asset recovery rate in national jurisdictions.
- 3.15 Asset Management Offices will be specialised bodies set up or designated in each Member State to ensure the efficient management of frozen and confiscated property, and to cooperate with other competent authorities responsible for tracing, identifying, freezing, confiscating and managing either at national level or in cross-border cases. The proposed Directive is more precise in laying down the offices' roles and tasks and provides more clarity to the Member States in defining their asset recovery infrastructure.
- 3.16 Asset disposal or return in cross-border proceedings should be subject to asset-sharing agreements to be signed by the relevant Member States. National systems may vary significantly in terms of the type of authorities and procedures needed to engage in such

agreements. The proposed Directive does not entail specific provisions in this matter. Therefore, it should explicitly give Asset Recovery and Management Offices relevant competences in this regard.

- 3.17 Cooperation with third countries is particularly important as organised crime also exists beyond the EU and poses significant risks to the EU's internal security. As organised crime has become more interconnected, international and digital, it is important to ensure that authorities in third countries are able to cooperate with their peers in the Member States. Various assistance and support instruments should be considered in order to further enforce the proposed Directive.
- 3.18 The consultation instruments used by the Commission prior to the proposed Directive were inclusive and suited to the variety of stakeholders – in particular, the relevant authorities, professionals, business organisations, civil society organisations and the general public – in terms of duration and methods. The EESC recognises the Commission's efforts to make available reliable data and information on the state of affairs and progress of the Member States and of the EU as a whole in the field of illicit asset recovery. Similar efforts are expected to be undertaken while the Directive is being transposed into national legislation and while its implementation is being evaluated.

Brussels, 14 December 2022

Christa Schweng
The president of the European Economic and Social Committee
