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IMPACT ASSESSMENT REPORT

Accompanying the document

Proposal for a Directive of the European Parliament and of the Council

on asset recovery and confiscation

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Glossary

Term or acronym	*Meaning or definition*
AROs	Asset Recovery Offices
Asset Recovery Offices Platform	The Asset Recovery Offices Platform is an informal group set up by the European Commission gathering EU AROs, the Commission and Europol to further enhance EU cooperation and coordinate exchanges of information and best practice.
Camden Asset Recovery Inter-agency Network (CARIN)	The Camden Asset Recovery Inter-Agency Network (CARIN) is an informal network funded by the European Commission of law enforcement and judicial practitioners in the field of asset tracing, freezing, seizure and confiscation. https://www.carin.network/
Confiscation	Final deprivation of property ordered by a court in relation to a criminal offence.
FATF	Financial Action Task Force
Financial investigations	Investigative technique usually conducted by law enforcement authorities which entail the tracing and analysis of criminal money and other assets trails related to suspected crimes.
FIU	Financial Intelligence Unit
Freezing	Temporary prohibition of the transfer, destruction, conversion, disposal or movement of property or temporarily assuming custody or control of property.
Instrumentalities	Any property used or intended to be used to commit a criminal offence or criminal offences.
MONEYVAL	Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, a permanent monitoring body of the Council of Europe which assesses compliance with the FATF standards of its members (for the EU, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, the Slovak Republic and Slovenia).
Proceeds	Any economic advantage derived from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits.

1. INTRODUCTION

1.1 Political context

As acknowledged in Europol's 2021 Serious and Organised Crime Threat Assessment, organised crime is one of the greatest threats to the security of the European Union[1]. The EncroChat, Sky ECC and AN0M[2] cases have shown the extent of organised crime's transnational reach, its complex modi operandi and unprecedented degree of economic infiltration. With EUR 139 billion of annual profits at their disposal, criminals groups are able to take over vulnerable businesses to expand and cover up illegal activities[3]. Criminal infiltration, alongside organised crime's widespread use of corruption, is a threat to the Rule of Law and to the integrity of the economy. Moreover, the presence of organised crime in society threatens the Sustainable Development goals of (16), peace, justice, and strong institutions and, through its infiltration into the legal economy, (8) decent work and economic growth. In view of the economic recovery from the Covid-19 crisis, it is more important than ever to tackle the profit-based motivation behind organised crime, taking away money from the hands of criminals.

Following the announcement of the EU Security Union Strategy of July 2020[4], the need to eliminate the profits generated by organised crime was further stressed in the EU Strategy to tackle Organised Crime (2021-2025) of April 2021[5]. The latter announced a revision of **Directive 2014/42/EU**[6] (hereafter the "Confiscation Directive") and of **Council Decision 2007/845/JHA**[7] (hereafter the "ARO Council Decision"). This revision is in line with the expectations from the co-legislators. In June 2020 the Council called on the Commission to consider strengthening the legal framework on the management of property frozen and granting Asset Recovery Offices with additional powers, for instance to urgently freeze assets, and with access to a set of public registers[8].

[1] Europol, European Union Serious and Organised Crime Threat Assessment "A Corrupting Influence: The infiltration and undermining of Europe's economy and society by organised crimes" (2021).

[2] Europol, "Dismantling of an encrypted network sends shockwaves through organised crime groups across Europe", 2 July 2020; "New major interventions to block encrypted communications of criminal networks", 10 March 2021; "800 criminal arrested in biggest ever law enforcement operation against encrypted communication", 8 June 2021.

[3] 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, p. 10

[4] European Commission, Commission Communication on the EU Security Union Strategy, COM(2020) 605 final, 24 July 2020.

[5] European Commission, Commission Communication on the EU Strategy to tackle Organised Crime (2021-2025), COM/2021/170 final, 14 April 2021.

[6] 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.

[7] 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.

[8] Council Conclusions on enhancing financial investigations to fight serious and organised crime Council document 8927/20, 17 June 2020.

The European Parliament has recently called for enhanced asset recovery rules[9]. These calls complement the previous request by both co-legislators to analyse the feasibility of introducing further common rules on the confiscation of property deriving from criminal activities, also in the absence of a conviction[10].

These calls are in line with increased international efforts to improve asset tracing and confiscation capabilities globally. The United Nations Conventions on Organized Crime (UNTOC)[11] and against Corruption (UNCAC)[12], as well as the recommendations of the Financial Action Task Force (FATF) whereby countries are to adopt measures to enable their competent authorities to freeze and confiscate proceeds and instrumentalities of crime. As recently as June 2021, the FATF adopted a report for government authorities that analyses the key obstacles to asset recovery and how to overcome them. At the summit in Rome on October 2021, the G-20 endorsed the adoption of "measures to prevent corrupt actors and organized criminal groups from enjoying the proceeds of their crimes"[13].

1.2 Legal context and description of the asset recovery process

Asset recovery is a powerful tool of the criminal justice system and the anti-money laundering regime, since it enables Member States to identify, temporarily freeze and ultimately confiscate and redistribute profits originating from criminal activities. By depriving organised crime groups of their illicitly obtained profits, asset recovery is key to limit their capacity to operate, to compensate victims and to restore the damage inflicted by returning profits to affected communities. As criminals take advantage of the integrated nature of the EU's financial system to launder their proceeds, the recovery of criminal assets requires strong cross-border cooperation and adequate confication tools in all Member States.

The EU legislative framework on asset recovery is composed of three main instruments. The **ARO Council Decision** requires Member States to set up Asset Recovery Offices to facilitate the tracing of proceeds of crime, and establishes minimum requirements to facilitate their cooperation across borders. The **Confiscation Directive**, partially replacing instruments dating back to the late 90s and 2000s[14], sets minimum rules for the

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[9] European Parliament resolution of 15 December 2021 on the impact of organised crime on own resources of the EU and on the misuse of EU funds with a particular focus on shared management from an auditing and control perspective, P9_TA(2021)0501, (2020/2221(INI).

[10] Statement by the European Parliament and the Council on an analysis to be carried out by the Commission, Council doc. 7329/1/14/REV 1 ADD 1.

[11] United Nations Convention against Transnational Organized Crime, General Assembly resolution 55/25 of 15 November 2000.

[12] United Nations Convention against Corruption, General Assembly resolution 58/43 of 1 October 2003

[13] G-20 High-Level Principles on Corruption related to Organized Crime.

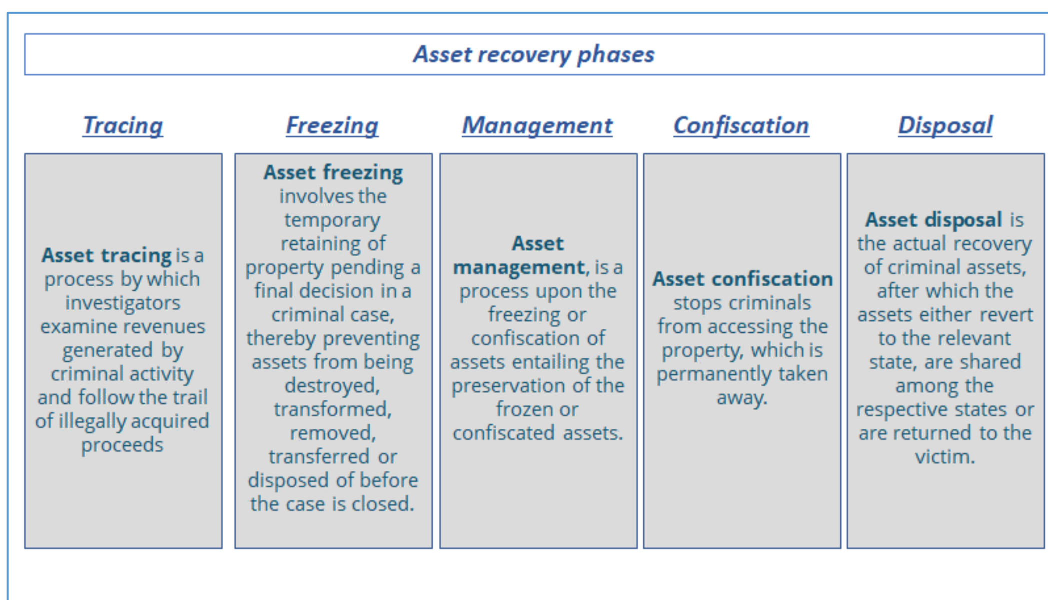
[14] Directive 2014/42/EU builds upon a framework of legislative instruments: Joint Action 98/699/JHA and the Council Framework Decisions 2001/500/JHA, 2005/212/JHA and 2006/783/JHA. Only Articles 1(4), 2, 3(4) and 4-7 of Framework Decision 2005/212/JHA are still applicable today for all Member States, requiring them to put in place effective measures to enable the ordinary confiscation of criminal instrumentalities and proceeds for all criminal offences punishable by detention of at least one year.

freezing, management and confiscation of criminal assets. The most recent legal instrument in force is **Regulation (EU) 2018/1805**[15], which facilitates the mutual recognition of freezing and confiscation orders across the EU.

Where they fall within the legal framework of the Union, freezing and confiscation powers must be exercised in full compliance with the fundamental rights enshrined in the Charter of Fundamental Rights. The Confiscation Directive provides for a number of safeguards in this respect, as clarified by a growing body of jurisprudence by the Court of Justice of the European Union, such as the right to an effective remedy before a court.

Asset recovery is a process composed of five phases:

Figure 1: Asset recovery phases



2. PROBLEM DEFINITION

2.1 Problem overview

Organised crime has never posed such a high threat to the EU and its citizens. 70% of criminal groups operating in the EU are active in more than three Member States and 65% of them are composed of members of multiple nationalities[16]. Transport routes of drugs, firearms or counterfeit products span across all continents through a global supply chain. Criminal groups engaged in property crime, migrant smuggling or trafficking in human beings carry out their crimes across multiple jurisdictions. VAT fraudsters set up

[15] 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 of 28.11.2018, p.1. It applies since 19 December 2020.

[16] Europol, European Union Serious and Organised Crime Threat Assessment "A Corrupting Influence: The infiltration and undermining of Europe's economy and society by organised crimes", (2021), p. 19

complex schemes across several Member States in order to deceive revenue authorities. Moreover, criminals carry out crimes online from anywhere on the globe, from the illegal distribution of child sexual abuse material to online fraud and cyberattacks.

While criminal groups have become increasingly sophisticated in their use of technologies such as encryption, their structures and modus operandi have also become more complex, hindering the capacity of law enforcement to tackle them. Organised crime groups cooperate with each other through ad hoc-partnerships and with providers of criminal services. At the same time, they are organised in **hierarchical or complex structures** where the managerial levels distance themselves from the "foot soldiers" executing the crimes on the ground while reaping most of the economic benefits. Therefore, "those at the **upper echelons of the criminal enterprise** remain insulated against criminal liability, with their **property beyond the reach of law enforcement**"[17].

Moreover, criminals use increasingly elaborated methods to conceal their immense profits. Organised crime is profit-driven, **generating at least EUR 139 billion per year**, or 1% of the EU's GDP, with the largest revenues deriving from fraud and illicit drugs[18]. The magnitude of criminal revenues is however likely to be significantly larger, given the intrinsically opaque nature of criminal activities and of the fact that criminals are involved in a wider range of markets than those analysed in existing studies.

Table 1 Summary of revenue estimates in the main markets (EUR million, 2019)[19]

Criminal markets	Illicit drugs	Trafficking in human beings	Migrant smuggling	Fraud	Environmental crime	Illicit firearms	Illicit tobacco	Card payment fraud	Property crimes
Annual revenue	30,688.4	7,185.9	289.4	77,425.0	9,524.67	408.1	8,309.2	1,816.4	3,369.9

Criminals do not only hide illicit assets in the name of relatives or associates, but employ a complex web of bank accounts and front companies across jurisdictions to disguise the audit trail, mixing illicit assets with legitimate property and hiding the source and ownership of funds. They do so by employing professional money launderers who have established a **parallel underground financial system** to ensure assets cannot be traced[20].

Against these challenges, and as highlighted in the Evaluation of the ARO Council Decision and of the Confiscation Directive (hereafter "the Evaluation," see Annex 7), **the EU asset recovery system is not well equipped to effectively address the complex modus operandi criminal organisations** and to deprive them of their profits. Even

[17] Council of Europe study "*The Use of Non-Conviction Based Seizure and Confiscation*", October 2020, p. 16, referencing Jennifer Hendry & Colin King (2015) *How far is too far? Theorising non-conviction-based asset forfeiture*, International Journal of Law in Context 11, 4, pages 398-411, p. 8

[18] 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, p. 10

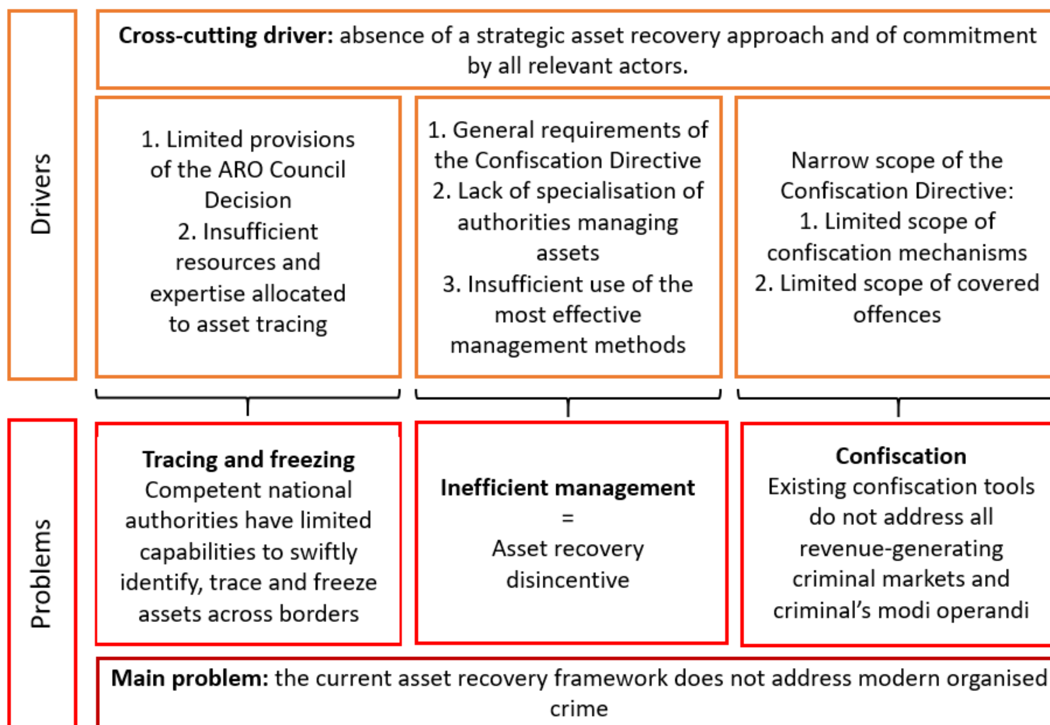
[19] *Ibid.*

[20] Europol, European Union Serious and Organised Crime Threat Assessment "A Corrupting Influence: The infiltration and undermining of Europe's economy and society by organised crimes", (2021), p. 98

though the EU has developed a legal framework promoting the establishment of asset recovery regimes and cross-border cooperation for the recovery of criminal assets, **only around 2% of criminal assets are frozen and 1% confiscated**[21]. Against this, several Member States have gone beyond the minimum standards provided in the EU rules, creating an uneven level of fight against criminal finances across the Union[22].

The ineffectiveness of the EU asset recovery system comes from **three specific problems**: (1) Competent authorities have limited capabilities to swiftly identify, trace and freeze assets; (2) Inefficient management procedures discourage authorities from launching asset recovery procedures and (3) Existing confiscation tools do not cover all high revenue-generating criminal markets and do not address criminals' complex modi operandi.

Figure 2: problem tree



2.2. Specific problem 1: Competent authorities have limited capabilities to swiftly identify, trace and freeze assets

The existing tracing and freezing framework stems from the ARO Council Decision and the Confiscation Directive, which respectively regulate, inter alia, Asset Recovery

[21] Europol, *Does Crime still pay? Criminal Asset Recovery in the EU, Survey of Statistical information 2010-2014*, 2016, https://www.europol.europa.eu/publications-events/publications/does-crime-still-pay, p. 4

[22] Report from the Commission to the European Parliament and the Council, *Asset recovery and confiscation: Ensuring that crime does not pay*, SWD COM/2020/217 final.

Offices[23] and the freezing of property which might become the object of a confiscation order.[24] The ARO Council Decision requires Member States to set up or designate at least one Asset Recovery Office for the purposes of the facilitation of the tracing and identification of proceeds of crime which may become the object of a freezing or confiscation order. Whilst Asset Recovery Offices may facilitate the tracing and identification of proceeds of any crime, the Confiscation Directive limits the scope of freezing orders only to the crimes listed in Article 3, and does not include an obligation to trace and identify property which might be subject to freezing and confiscation orders.[25]

The first step in the asset recovery process is the identification and tracing of suspected property which might become the object of a confiscation order. Without early identification of criminal property, it is not possible to subsequently freeze, confiscate and ultimately manage assets in an effective manner. Speed in tracing assets is essential, since criminals can rapidly move funds to avoid detection through the international and EU financial system. For example, one Member State, referring to the 140 requests sent to other Member States for the tracing of illegal proceeds in order to freeze them, indicated that "in almost all cases, the property (e.g. money in bank accounts) was already withdrawn or transferred elsewhere"[26]. The key actors in this phase are law enforcement authorities and Asset Recovery Offices, established in accordance to the minimum obligations of the ARO Council Decision, which tasks them with the facilitation of cross-border tracing and identification of proceeds of crime which may become the object of a freezing or confiscation order.

In the course of their investigation, law enforcement authorities may launch parallel **financial investigations** to trace the suspects' assets, from bank accounts to vehicles, high-value goods, real estate or companies. To do so, they are empowered to check databases available to police, apply investigative techniques such as observation or undercover operations, or require financial information from private parties.

Despite the acknowledgement by Member States of the need for using financial investigations when dealing with organised crime from the very start of a criminal investigation[27], many jurisdictions do not undertake pro-active parallel financial investigations in a routine and expedite manner: in the EU, **only eleven Member States**

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[23] Article 1(1) 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

[24] Article 7 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.

[25] The scope of Directive 2014/42/EU is defined by reference to certain offences harmonised at EU level in relation to corruption, counterfeiting of the euro, credit card fraud, money laundering, terrorism, illicit drug trafficking, organised crime, trafficking in human beings, sexual exploitation of children, and cyberattacks. The Confiscation Directive further applies to fraud to the Union's financial interests.

[26] Provision of statistical data in accordance with article 11 of the Confiscation Directive 2019-2020.

[27] Council Conclusions on enhancing financial investigations to fight serious and organised crime Council document 8927/20, 17 June 2020.

automatically launch parallel financial investigations for all forms of crime. Other **eight** Member States **limit this automatism** to certain crimes, while in **other eight** the decision to launch them is **left to the discretion** of the investigators or to the judicial authorities overseeing the investigation[28]. According to 72% of respondents to the public consultation, which gathered responses from EU citizens, academics, business associations, non-governmental organisations and public authorities, the fact that financial investigations are not systematically launched is one of the **main components** explaining the **low rate of identified assets**, a view shared by Asset Recovery Offices[29].

Even when law enforcement authorities launch such investigations, investigators do not always pay sufficient attention to the economic dimension of crimes. Practitioners have underlined that **competent authorities often concentrate on the collection of evidence on the criminal act rather than on their assets**[30]. This does not only create risks of criminals laundering their proceeds in those Member States where there is a lower risk of detection. It also results in missed opportunities for cross-border cooperation, since a timely financial investigation is likely to uncover assets in other jurisdictions.

As regards the role of **Asset Recovery Offices**, the Evaluation shows that their creation has increased the effectiveness in the cross-border identification of criminal assets. However, their **capacity to identify and trace assets is still suboptimal**. Whilst all EU Member States have established at least one Asset Recovery Office, with 19 Member States have designated one (AT, BE, HR, CY, CZ, DK, EE, FI, EL, HU, IE, IT, LV, LU, MT, PL, PT, RO, SK, Slovenia having designated just a contact point) and seven other Member States designated two (BG, FR, DE, LT, NL, ES, SE),[31] the Offices' legal framework, which only requires Asset Recovery Offices to be a mechanism to 'facilitate' the tracing of criminal assets (Article 1) and promote close cooperation between the authorities involved in the tracing of illicit proceeds and the "direct communication between those authorities" (recital 3), leaves a considerable degree of discretion to Member States regarding their number, legal nature, and powers.

Firstly, **Asset Recovery Offices do not have all the necessary powers** to efficiently facilitate asset recovery **across borders**. 27% of offices do not have autonomous **tracing powers**, and thus have to request and rely on the responsiveness of other competent authorities to trace criminal assets in order to answer to cross-border requests. The lack of tracing powers is more acute when a judge orders confiscation but no sufficient assets have been identified beforehand or they have lost value: 68% of Asset Recovery Offices

[28] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, p. 64

[29] Half of the Asset Recovery Offices consider the lack of financial investigations as one of the two main challenges for the identification of assets, according to information collected at the Asset Recovery Offices Platform meeting, 25th-26th June 2021.

[30] Stakeholders' consultation: bilateral meetings with Member States.

[31] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081, pp. 45-46

are not legally empowered to trace assets in the **post-trial phase** and thus not able to respond themselves to post-trial tracing requests from other offices[32].

This partly explains the fact that Asset Recovery Offices are **not able to always meet the current deadlines for cross-border information exchange** (eight hours for urgent requests and one week for non-urgent ones), especially since the number of requests has increased almost five-fold since 2013[33]. Less than half of offices considered that the deadlines are met, indicating that in almost half of the cases responses take up to two weeks non-urgent situations and 12 hours or more in urgent ones. Additional problems raised by Asset Recovery Offices are the **provision of incomplete responses** as well as the insufficient relevance of some of the requests for information. Moreover, the majority of offices usually provide **information** to other Asset Recovery Offices without granting its use for **evidence purposes**.[34] Thus, the requesting authorities need to re-send a request via judicial channels in order to obtain a freezing order, leading to delays and therefore increasing the risks of assets dissipating before they can be frozen. In addition, eight Asset Recovery Offices are still not directly connected to the Europol's Secure Information Exchange Network Application (SIENA) network[35], which should allow them not only to quickly communicate with each other, but also to benefit from Europol's analysis and operational support and cross-checking of data with other intelligence and investigations.

Moreover, only one fourth of the Asset Recovery Offices have powers to **freeze** assets themselves in **urgent cross-border cases**. In such situations, assets can dissipate before the freezing order is prepared by the requesting Member State, recognised and executed. Urgent freezing powers are particularly important in relation to moveable assets such as funds held in bank accounts or cryptocurrencies, since criminals (or their associates) can quickly transfer those assets the moment the suspect is arrested or aware of being under investigation. In the absence of such powers, many Asset Recovery Offices resort to other authorities to ensure assets are quickly frozen (e.g. the Financial Intelligence Units,

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[32] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016. p. 30

[33] Europol data.

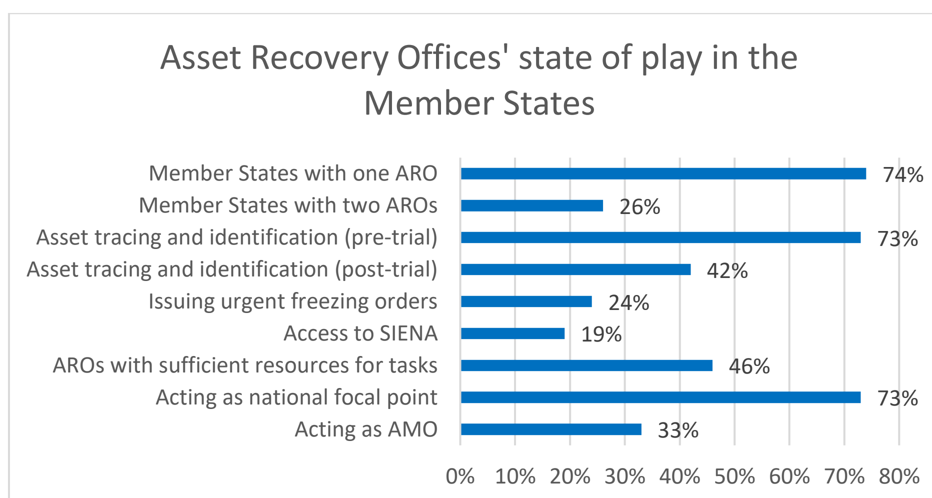
[34] The majority of Asset Recovery Offices do not provide the information for evidence purposes because the ARO Council Decision relies on Framework Decision 2006/960/JHA for the exchange of information between Asset Recovery Offices. The latter does not impose any obligation to provide information to be used as evidence before a judicial authority nor does it give any right to use such information for that purpose.

[35] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, p. 45. In the absence of any obligation in the ARO Council Decision, some Asset Recovery Offices have not been connected to SIENA, in particular due to technical obstacles, considerations of legal nature (in particular as regards judicial Asset Recovery Offices, since some Member States have considered preferably not to give them access to a law enforcement network), or organisational decisions (e.g. the Member States requiring the Asset Recovery Office to communication via the National Europol Unit).

which can temporarily suspend or withhold consent to transactions). However not all Offices have such legal possibility.

Finally, in many Member States Asset Recovery Offices do not only facilitate cross-border cooperation but have become a **central actor in the national asset recovery system**, supporting national investigations in the tracing of criminal assets, providing training on asset recovery to law enforcement authorities, judges and prosecutors, or collecting statistics. However, not all Member States have incorporated these good practices into their national frameworks. One fourth of Asset Recovery Offices do not act as asset recovery focal points, 40% of them do not have training capacity and 60% do not collect statistics. Therefore, the role of Asset Recovery Offices in national settings is uneven across Member States, with some of them providing a clear added value to national asset recovery efforts and others being merely a letter box for cross-border requests. This affects the effectiveness of the respective asset recovery systems, as Member States with weaker asset recovery provisions will be less capable to address the cross-border problem of criminal finances.

Figure 3: The competencies of Asset Recovery Offices[36]



Overall, the insufficient number and prioritisation of financial investigations, the challenges to the exchange of information among Asset Recovery Offices and insufficient powers, both in a cross-border and national context, lead to a **limited capacity of Member States to identify and trace assets**. This is reflected in the **low percentage of criminal assets frozen**, barely 2% of the estimated criminal revenues. Such limited capabilities hamper cross border cooperation and make it more difficult to confiscate assets linked to transnational crime.

The identified tracing and freezing problem has **both national and cross-border connotations**, since all cross-border cases require action to be taken on the national

[36] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081, pp. 45-46, 51, 55, 62

territory of Member States, which might then have cross-border implications. For example, information exchange and cooperation between Member States is directly affected by Asset Recovery Offices not responding sufficiently swiftly to requests from Offices in other Member States, which in turn is linked to their limited competences in tracing assets, limited resources and their limited access to the relevant databases. Similarly, the absence of parallel financial investigations directly affects the capabilities within each Member State to identify as early as possible in the process potentially illicit asset, having however negative spill over effects for cross border cooperation since it means that assets that may be present or have been moved to other Member States are not detected. Finally, the inability of Asset Recovery Offices to ensure that identified assets are temporarily frozen pending a formal freezing orders at national level has cross-border effects, as Asset Recovery Offices respond to cross-border requests for the purposes of tracing and identifying crimes of a cross-border nature.

2.2.1 Driver: limited EU level provisions and in particular of the ARO Council Decision and insufficient human, financial and technical resources allocated to asset tracing

The **lack of** systematic launching of **financial investigations** is due to legal and practical reasons. Not being regulated at EU level, the rules for carrying out financial investigations vary among Member States. In eight Member States, the legislation does not set any requirements for the automatic launching of financial investigations, leaving it to the **discretion of competent authorities**. In eight Member States, legal frameworks make the launching financial investigations **subject to different conditions**, such as the types of crime or the amount of profits generated[37]. Moreover, the reluctance of some competent authorities to carry out or prioritise financial investigations is also due to their **lack of resources and expertise**. Around half of the authorities competent for carrying out financial investigations do not have sufficient human resources to cope with their current tasks and responsibilities[38], in particular the specialised staff required to carry out complex financial enquiries.

As regards the **obstacles hampering cooperation among Asset Recovery Offices at EU level**, the main reasons are the **limited requirements of the ARO Council Decision**, which have led to a disparity in national approaches. Moreover, Asset Recovery Offices do not have sufficient human, financial and technical **resources**: against a rising number of requests for cooperation and a workload that has increased between 15% and 50% for half of the offices, and between 50 and 100% for the other half, human resources have not risen to match the increased demands and remain limited. There are also significant differences between Member States: on an average of 19 employees per office, the staff

[37] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, p. 61

[38] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081, p. 35

ranges from one employee in one of the Member States, to 91 in another Member State (despite the latter being only double the population)[39]. This **affects** notably the **capacity of Asset Recovery Offices to cooperate** with each other.

Furthermore, as underlined in the Evaluation, the current **legal framework is limited since it does not specify their role** (besides "facilitating" asset recovery) and simply establishes a **general requirement to cooperate** and exchange information. The ARO Council Decision does not explicitly require Asset Recovery Offices to be vested with **powers** to carry out asset tracing investigations to answer to requests from other Asset Recovery Offices, or to provide information to other Asset Recovery Offices for evidentiary purposes. There are **no information exchange rules** as regards the channels to be used (i.e. SIENA), the types of crimes for which requests can be made, the type of information that should be provided and, most importantly, the sources of information that should be consulted to respond to asset tracing requests. This leads to the incompleteness and irrelevance of some of the responses. There are also no rules regarding the capacity of Asset Recovery Offices to take expeditious action to ensure freezing in urgent cases. While according to the Confiscation Directive Member States need to provide for the possibility of **urgent freezing** of assets where necessary to preserve the property (see Article 7(1)), it is not specified whether Asset Recovery Offices could take action to ensure urgent freezing in cross-border cases.

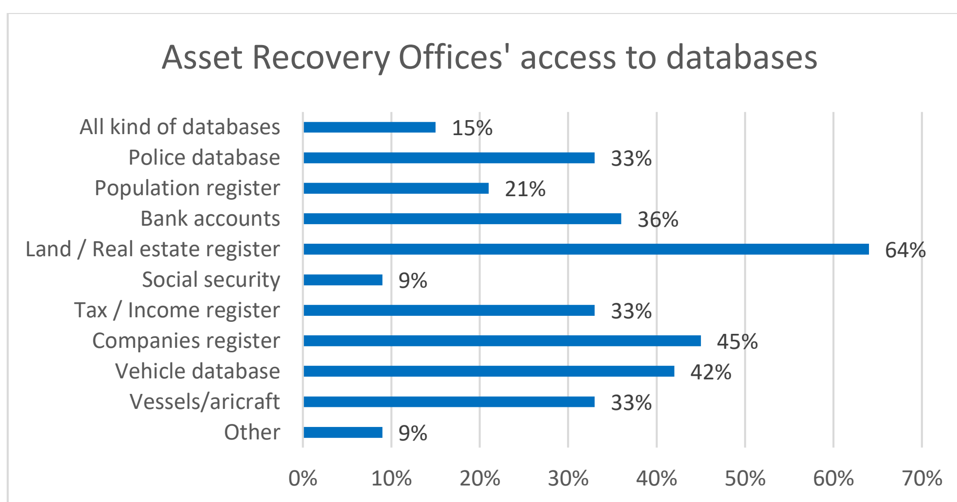
Only 15% of Asset Recovery Offices have **access to all databases**; and only one third can check police databases or tax/income registers. These limitations are mainly of legal nature, since national legislation does not foresee access to the offices for certain databases. The most relevant databases for asset tracing, real estate registers and company registers, can only be accessed by 64% and 45% of the Asset Recovery Offices respectively[40]. 66% of respondents to the public consultation considered that the limited access to databases by Asset Recovery Offices hampers the identification of criminal assets to a high or very high extent.

Figure 4: Asset Recovery Offices' access to databases[41]

[39] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, pp. 61-63

[40] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, p. 52

[41] *Ibid.*



Against the general obligations of the ARO Council Decision, Member States have applied different interpretations and provided Asset Recovery Offices with different roles, powers and information sources. This largely affects cross-border situations, but also applies to the role of Asset Recovery Offices in the national asset tracing activities, where the absence of rules at EU level have led to a considerable discrepancy of Member States approaches as to the capacity of the offices to provide training or to support investigators in identifying assets.

2.3 Specific problem 2: Inefficient management procedures discourage authorities from launching asset recovery procedures

Once property is frozen, it should be adequately managed in order to preserve its value until a judge decides to confiscate it or to return it to the defendant in case of acquittal. Once confiscated, assets also have to be well managed before they are returned to the state budget or used for compensating victims or for social reuse. Given the length of criminal proceedings, which in complex criminal cases usually take at least five years[42], **assets can easily depreciate over time or deteriorate if not adequately managed**.

While assets such as real estate or artworks are less likely to lose value, moveable assets such as vehicles, which represent a very large part of frozen assets, are more likely to depreciate. Similarly, volatile financial instruments such as cryptocurrencies also require specialised management to ensure they do not lose value over time, an issue often raised at the Asset Recovery Offices Platform meetings. Particularly challenging is the management of confiscated companies controlled by organised crime, which have to be run by the authorities in a way that they continue generating profits and the jobs are preserved.

Inadequate management discourages asset recovery as a whole. When the cost to manage assets is higher than the value of the assets that will ultimately be recovered, the

[42] European Commission of the Efficiency of Justice (CEPEJ), *Length of court proceedings in the member states of the Council of Europe based on the case law of the European Court of Human Rights*, CEPEJ(2018)26, p. 5

authorities that are charged with taking the decision of freezing or confiscating assets are less inclined, or even reluctant, to take such decisions. According to a study prepared for the United Nations, "the financial burden on the State of the cost of preserving assets […] has the potential to bankrupt a nascent asset recovery programme"[43]. The perception of this issue was shared by the respondents to the public consultation, 58% of which indicated that the inadequate management of criminal assets negatively affects asset recovery to a high or a very high extent. The inefficient management of assets also leads to **fewer returns** in the disposal phase, with fewer or no criminal assets reverted to victims, communities or Member States.

Inefficient asset management further undermines the capacity of Member States to cooperate with each other, reducing cross-border incentives to freeze assets on behalf of other Member States. Given that criminals often hold assets in other jurisdictions, cross-border cooperation is of essence for their effective management. However, given the high management costs, a Member State with inefficient management methods will be reluctant to manage freeze assets upon request of another Member State. The inefficiencies in management in one Member State become thus a disincentive for the forwarding of confiscation orders. The problem is of particular relevance in those Member States who have not established at least one Asset Management Office with specialized competences for the management of property (AT, CY, DK, EE, FI, DE, EL, HU, LV, LT, LU, PL, SK, SI, and SE).

Furthermore, asset management offices have reported **challenges in the identification of their counterparts** in other Member States to coordinate the sale of assets, which can last up to three or four months in some occasions[44]. The delays in identifying cross-border counterparts increase the time assets are to be held for management, increasing in turn management and storage costs.

2.3.1 Driver: generic requirements of the Confiscation Directive, lack of specialisation of authorities managing assets and insufficient use of the most effective management methods

The inefficient management of assets is driven by the absence of clear requirements and guidance on effective and efficient management methods, and by the fact that managing authorities lack adequate specialisation, capacities and expertise, particularly on the application of the most effective management methods.

The current legal framework requires Member States to take measures to ensure the "adequate management" of property frozen with a view to possible subsequent

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[43] United Nations Open-ended Intergovernmental Working Group on Asset Recovery, *Study prepared by the Secretariat on effective management and disposal of seized and confiscated assets*, CAC/COSP/WG.2/2017/CRP.1, 23 August 2017, p. 11

[44] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation,* 2021, HOME/2020/ISFP/FW/EVA2/0016, p. 104; *Information gathered via meeting with the Contact Committee on 1-2 June 2021.*

confiscation, including the possibility to sell or transfer property where necessary[45]. However, this provision does not provide a definition on what adequate management entails, and does not set obligations to achieve concrete effective management objectives. Similarly, Regulation (EU) 2018/1805 on mutual recognition of freezing and confiscation orders, while encouraging Member States to consider establishing an office responsible for the management of frozen property, relies on national laws for the management of property frozen in cross-border situations.

Member States have therefore entrusted different and sometimes multiple bodies with management tasks and have developed different sets of asset management measures. In most cases, Member States have attributed asset **management responsibilities to a wide range of authorities** such as prosecution services, courts, bailiffs, law enforcement authorities, tax and custom authorities or local administrations[46]. These structures **do not always have the necessary expertise, human, financial and technical resources and competences to ensure the efficient management of assets**, which often means that they do not have enough resources to efficiently manage the property they have been mandated to. As the Confiscation Directive does not oblige Member States to adopt a management set-up over another, only 13 Member States (BE, BG, CZ, IE, EL, ES, FR, HR, IT, LU, NL, PT, RO) have attributed management tasks to entities specialised in handling criminal assets, i.e. Asset Management Offices (AMOs)[47], in some cases along with other actors depending on the type of asset or confiscation procedure. Whilst this flexibility has allowed Member States to develop systems tailored to national realities, some management systems achieve very different degrees of effectiveness and efficiency. This perception is shared by the respondents to the public consultation, 76% of which considered the lack of harmonised rules on the management of frozen and confiscated assets a significant obstacle impacting to a high or very high extent effective management.

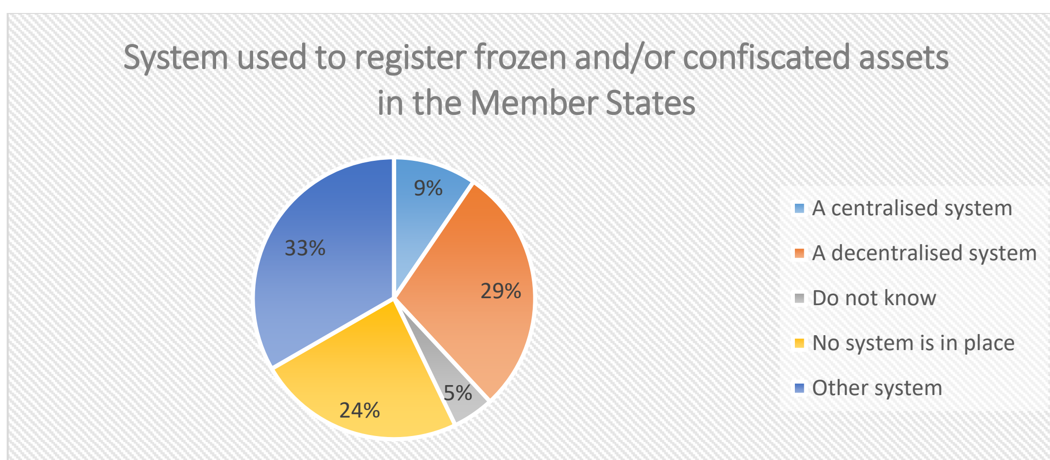
Figure 5: System used to register frozen and/or confiscated assets[48]

[45] Article 10 (1) and (2) of 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.

[46] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081 Country Chapters; European Commission, Directorate-General for Migration and Home Affairs, *Compliance assessment of measures of Member States to transpose Directive 2014/42/EU ("Confiscation Directive") and legal consultancy on this Directive, Overall Report*, 2019, HOME/2017/ISFP/FW/LECO/0084.

[47] Report from the Commission to the European Parliament and the Council, *Asset recovery and confiscation: Ensuring that crime does not pay*, SWD COM/2020/217 final, p. 12

[48] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work,* 2021, HOME/2018/ISFP/FW/EVAL/0081, p. 96



Moreover, mechanisms of proven effectiveness for managing assets such as pre-seizure planning[49] or interlocutory sales[50] are not sufficiently used.

Pre-seizure planning is a widely recognised tool to effectively manage assets, as it entails an assessment of what property is most suitable for confiscation, and of how and when it could be frozen or confiscated. Through pre-seizure planning, authorities taking control of assets limit the risks that these might be managed at a loss, since assets could easily depreciate or even become a financial liability due to their high maintenance costs. Despite the fact that the Camden Asset Recovery Inter-Agency Network (CARIN) encourages jurisdictions to implement the principle of pre-seizure planning[51], investigative and prosecution authorities in most Member States do not assess whether the management of seized assets is feasible and cost-effective before seizing them[52]. Without such planning, considerable resources are wasted on preserving assets that have little or limited value, leading to ineffective management of confiscated assets and overall discouragement of the use of asset recovery.

While the Confiscation Directive also requires Member States to allow for the selling or transfer of frozen property prior to confiscation, there are no provisions requiring Member States to use them nor a clear definition of interlocutory sales and the conditions under which it should be used, for example in cases when the asset is perishable or rapidly depreciating, or when the storage or maintenance costs are disproportionate to the asset's value. Consequently, while interlocutory sales are available in all but two Member States, this mechanism is **not applied as a rule** across the EU, despite the promising

[49] The practice of pre-seizure planning entails the assessment, before the issuing of a non-urgent freezing order, of the property which might be the object of such order, with the aim of evaluating what property to seize in the context of costs optimisation in the management phase of asset recovery. For a description of what pre-seizure planning is/comprises, see for instance United Nations Open-ended Intergovernmental Working Group on Asset Recovery, *Study prepared by the Secretariat on effective management and disposal of seized and confiscated assets*, CAC/COSP/WG.2/2017/CRP.1, 23 August 2017, p. 31
[50] Interlocutory sales refer to the selling or transfer of frozen property prior to confiscation.
[51] CARIN, CARIN 2018 Annual General Meeting, Warsaw Recommendations.
[52] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, p. 98

results achieved where it is used. For example, the Netherlands was able to reduce the cost of management of movable assets from € 23 million to € 9 million through a strategy of selling off assets when costs exceed the value of the property[53]. Moreover, cooperation concerning management of frozen assets is hampered by Member States that do not use interlocutory sale or do not have sufficient experience with it, since it discourages Member States to recover assets on behalf of (and for the benefit of) another Member State, given the high costs the former would incur.

In conclusion, the generic requirements of the Confiscation Directive lead to a patchwork of management structures in the Member States, which in turn lead to various degrees of effectiveness and efficiency of management techniques, which negatively affect the asset recovery system both overall and in cross-border cases through discouraging the use of asset recovery and cross-border requests.

2.4 Specific problem 3: Existing confiscation tools do not cover all high revenue-generating criminal markets and do not address criminals' complex modi operandi

When ordering a conviction, judges may take a decision to confiscate the assets of the offender, which are the direct proceed or the instrumentality of the specific offence for which the person is convicted (**standard confiscation**). However, criminals often convert those proceeds into other property, and mix it with property acquired from legitimate sources, or put it under the name of relatives or their associates. To address this, judicial authorities can resort to mechanisms such as **value-based confiscation**, which allows for the confiscation of any other property of the offender that is equivalent in value to the proceeds or instrumentalities of the offence, or **third-party confiscation**, to recover the assets transferred by the offender to another person.

However, these instruments only allow for the confiscation of assets linked to the concrete offence for which the person is convicted, while usually individuals involved in organised crime have perpetrated other criminal activities over a longer period. For example, a court might be able to convict a drug trafficker for one specific cargo, but not for the trafficking activities over preceding years from which they also profited. In these cases, the court can confiscate other property beyond the direct proceeds of the crime in question, if the court concludes that property is derived from criminal conduct (**extended confiscation**).

Moreover, confiscation can be ordered in the absence of a conviction (**non-conviction based confiscation or NCBC**). This can happen in situations where a conviction is impossible due to objective impediments, such as the accused being gravely ill or absconding.

[53] United Nations Open-ended Intergovernmental Working Group on Asset Recovery, *Study prepared by the Secretariat on effective management and disposal of seized and confiscated assets*, CAC/COSP/WG.2/2017/CRP.1, 23 August 2017, p. 21

<table>
<tr><th colspan="2">Categories of confiscation measures in the Confiscation Directive</th></tr>
<tr><td>Standard confiscation

Standard confiscation refers to a judicial order concerning property related to a specific crime for which the owner has been convicted.

The targeted assets are the direct proceed or the instrumentality of a crime, following a criminal conviction for that crime.</td><td>Value confiscation

Value confiscation refers to a confiscation measure targeting property of equivalent value to the proceeds or instrumentality of a crime. It is employed most often in cases where criminals convert proceeds of crime into other property to hide its illicit origin and disguise the audit trail.</td></tr>
<tr><td>Third-party confiscation

Third-party confiscation refers to a confiscation measure made to deprive someone other than the offender – the third party – of criminal property, where that third party is in possession of property transferred to him or her by the offender.

It is employed most often when criminals transfer property to a knowing third party in order to maintain its enjoyment without being the legal owner, thus attempting to avoid the confiscation of such property in case of conviction.</td><td>Extended confiscation

Extended confiscation concerns confiscation orders which go beyond the direct proceeds of a crime. The order follows a criminal conviction, targeting property "beyond the direct proceeds of the crime for which the offender was convicted, where the property seized is derived from criminal conduct."[54] A direct link between the property and the offence, such as in the case of standard confiscation measures, is not necessary if the court assesses that the offender's property was nevertheless derived from other unlawful conduct.</td></tr>
<tr><td colspan="2">Non-conviction based confiscation (NCBC)

Non-conviction based confiscation refers to a confiscation measure taken in the absence of a conviction against assets of illicit origin. In the case of Directive 2014/42/EU, it covers cases where a criminal conviction is not possible because the suspect has become ill or fled the jurisdiction, but the court is nevertheless convinced in a criminal procedure that the assets are of criminal origin, and a conviction would have been reached had it not been for the illness of absconding of the defendant.</td></tr>
</table>

Despite the wide range of mechanisms available to judicial authorities, **only one third of assets traced and frozen are ultimately taken away from the hands of criminals**. In 2019 authorities froze EUR 3 billion of estimated criminal assets, but only about EUR 1 billion were confiscated in that same year[55].

Moreover, the most employed confiscation mechanism is standard confiscation, which – despite only allowing for the confiscation of the proceeds directly resulting from the offence for which the defendant is on trial, and therefore failing to capture proceeds of previous crimes which are inherent in the context of organised crime – represents more than half of confiscation orders in the large majority of Member States[56]. This is

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[54] Final report on operational challenges associated with asset recovery, FATF/RTMG(2021)17/REV2, 4 June 2021.

[55] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016; see Annex 4, table 7.

[56] Stakeholders were consulted through a written questionnaire, with 11 Member States providing written responses. According to four of them, between 50% and 75% of assets are confiscated via this type of

remarkable considering that assets confiscated through extended confiscation – a tool adapted to organised crime groups usually operating over long time periods – only represent less than 30% of total confiscated assets, while non-conviction based confiscation is, with the exception of a few Member States, less than 15%[57].

A low use of confiscation methods such as extended and the limited scope of non-conviction based confiscation is an issue because standard confiscation fails to tackle the complex methods that criminal groups, and in particular its managerial layers, employ to cover their tracks and hide their assets. Criminals at the top of organised crime groups are often insulated from criminal liability, as they benefit from profits generated by crimes they themselves do not commit but that are carried out by others under their command, or when different organised crime groups provide services for one another without directly engaging with the predicate offence. Since existing forms of confiscation target only the proceeds of criminals for which there is enough evidence to obtain a conviction, the current confiscation frameworks fails to tackle illicit assets of criminals able to avoid criminal investigation and prosecution.

The fact that standard confiscation targets only the direct proceeds or instrumentalities of the specific offence for which the person is convicted, and extended confiscation – while allowing for the confiscation of other assets than those resulting from a specific crime – is still subject to a prior conviction leads to a situation where illicit assets of criminals able to avoid criminal investigation and prosecution will escape confiscation. Accordingly, the existing approaches are not able to "target the property of persons at the very top of the chain against whom enforcement authorities may struggle to gather sufficient evidence to bring a criminal prosecution"[58], thus failing to address a significant portion of criminal profits in the hands of the managerial levels of organised crime.

Furthermore, one of the main issues affecting confiscation in organised crime cases is proving the scope of assets that stem from criminal operations that went on for years. It is unlikely for such an operation to maintain organised records or bookkeeping exposing the full sum of assets amassed over the years and that evidence can be provided for each and every individual criminal act. Hence, the confiscation mechanisms available to the majority of Member States are **not fit to effectively disrupt criminal activities, and even less so tackle the complex nature of organised crime,** as they are not suited to deprive criminals who have successfully managed to hide the necessary evidence that would link them to the offence from their profits.

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confiscation. According to the same number of stakeholders (four out of 11), the rate is even higher and ranges between 75% and 100%. Two stakeholder referred to much lower rates, between 0% to 15 and two stakeholders had no data. *Questionnaire on the Contact Committee's experience with asset recovery – circulated to all Contact Committee members in July 2021.*

[57] *Ibid.*

[58] Council of Europe study "*The Use of Non-Conviction Based Seizure and Confiscation*", October 2020, p. 16

2.4.1 Driver: narrow scope of the Confiscation Directive

The limited capacity of Member States' confiscation mechanisms derives from the narrow scope of the existing legal tools (both in terms of offences covered and types of confiscation available) and from a lack of sufficient awareness and willingness of judicial authorities to use others beyond standard confiscation.

Limited scope in terms of offences covered

The scope of existing confiscation measures varies greatly in terms of the number of minimum offences that EU legislation requires them to cover. **Standard confiscation** is the most widely used confiscation tool because, since it stems from a legal instrument preceding the Confiscation Directive – Framework Decision 2005/212/JHA[59] – it is applicable to **all crimes having a penalty of over one year.** The majority of Member States thus follow an 'all crimes' approach, allowing for the imposition of standard conviction-based confiscation to a larger number of crime areas than the confiscation tools foreseen under the Confiscation Directive.

The same scope is however not matched in confiscation tools covered by the Confiscation Directive, particularly **value based, third party confiscation** and **NCBC**, which are better placed to address modern organised crime, where flexible yet hierarchical groups distance themselves from proceeds directly stemming from crimes. These post-Lisbon confiscation mechanisms have nonetheless a narrower scope[60] than standard confiscation as foreseen by the 2005 Framework Decision, with the Confiscation Directive based on Article 83 (1) applying to specific criminal offences related to some, but not all, of the so-called **'eurocrimes'**[61]. The minimum scope of **extended confiscation** is even further limited to a smaller set of offences: corruption, the participation in a criminal organisation, child-pornography, and IT crimes. For other crimes in scope of the Confiscation Directive but not explicitly listed in the relevant article on extended confiscation, extended confiscation is only applicable in relation to offences punishable by a custodial sentence of at least four years[62].

Table 2: crimes covered in the scope of Directive 2014/42/EU

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[59] 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. This Framework Decision, after being partially replaced by the Confiscation Directive, only applies in respect of standard confiscation with the exception of Denmark, which is not bound by the Confiscation Directive and for which the other provisions of the 2005 Framework Decision apply (notably the provisions on extended confiscation).

[60] The scope of Directive 2014/42/EU is defined by reference to certain offences harmonised at EU level in relation to corruption, counterfeiting of the euro, credit card fraud, money laundering, terrorism, illicit drug trafficking, organised crime, trafficking in human beings, sexual exploitation of children, and cyberattacks. The Confiscation Directive further applies to fraud to the Union's financial interests.

[61] 'Eurocrimes' are particularly serious crimes with a cross-border dimension: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

[62] For a visual overview of crimes covered by the current EU acquis on confiscation, see Annex 5.

Provisions of Directive 2014/42/EU	Instruments Covered	Criminal Offences covered
	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 Union (1) ('Convention on the fight against corruption involving officials')	Corruption
	Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro	Counterfeiting
	Council Framework Decision 2001/413/JHA of 28 May 2001 on combating fraud and counterfeiting on non-cash means of payment	Fraud Counterfeiting
	Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime	Money Laundering
	Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism	Terrorism
Article 3 Directive 2014/42/EU	Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector	Corruption
	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	Illicit drug trafficking
	Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime	Participation in a criminal organisation
	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 (6	Trafficking in human beings
	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	Sexual abuse and exploitation of children
	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	Cyberattacks
Article 5 Directive 2014/42/EU	Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector	Active and Passive Corruption in the private sector

Provisions of Directive 2014/42/EU	Instruments Covered	Criminal Offences covered
(extended confiscation)	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 Union	Corruption involving officials
	Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime	Participation in a criminal organisation
	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	Sexual abuse and exploitation of children
	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	Illegal system interference and illegal data interference

Consequently, the confiscation tools foreseen by the Confiscation Directive **do not cover all revenue-generating criminal markets where organised crime is active;** notably, they do not cover firearms trafficking, environmental crime, migrants smuggling, contract killing (including murder, grievous bodily harm and kidnapping), organ trafficking, organised armed robbery, trafficking in cultural goods, swindling, racketeering and extortion, counterfeiting, documents forgery, forgery of means of payment, trafficking of nuclear materials and of illicit hormonal substances, illicit tobacco trade and trafficking of stolen vehicles. Even though the aggregate value of the revenues generated from these crimes cannot be defined with precision, cautious estimates would place this value in at least **EUR 50 billion per annum** outside the scope of the Confiscation Directive[63]. The current **scope of the Confiscation Directive thus fails to capture a wide area of criminal profits** generating from offences organised crime is engaged with.

Stakeholders from law enforcement, prosecution and public authorities have identified the limited scope of application of the Confiscation Directive, in particular for extended confiscation and NCBC, as one of the underlying reasons behind the low rates of freezing and confiscation[64]. Stakeholders from Member States have referred in particular to the necessity of being able to confiscated profits stemming from environmental crimes[65] as

[63] See Annex 4 on analytical methods.

[64] *Information gathered via meeting with the Contact Committee on 1-2 June 2021.* According to six representatives, this is the greatest challenge for freezing and confiscation, whereas four representatives marked it as the second, four as the third and two as the fourth greatest challenge for ensuring high rate of freezing and confiscation

[65] As proposed by the Commission in its proposal to revise the Environmental Crime Directive: Proposal for a Directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC, COM(2021) 851 final, 15.12.2021. *Information gathered at the Contact Committee Meeting held on 1-2 June 2021.*

well as for instance firearms trafficking, illicit tobacco trade, organised property crime and cyber fraud. As modern organised crime is more and more poly-criminal and engages in a multitude of criminal areas[66], it is important that confiscation measures can counter its reach.

In conclusion, the narrow scope of the Confiscation Directive does not match with the poly-criminal nature of organised crime groups by requiring confiscation of one a minor fraction of criminal activities organised crime groups are engaged with. The absence of confiscation rules at EU level that would cover crimes such as firearms trafficking, migrant smuggling, illicit tobacco trade, or trafficking in counterfeit products, organised property crime or cyber fraud also affects the effectiveness of EU policies, including the effective implementation of harmonised rules in these areas[67]. Furthermore, the absence of confiscation measures at EU level for certain crimes is at odds with international obligations.[68]

Limited scope of existing confiscation mechanisms

The Confiscation Directive does not envisage for Member States to put in place confiscation mechanisms enabling authorities to confiscate assets where top-level criminals have successfully destroyed the evidence that would directly link them to the crime, or when they have hid the illicit origin of the property.

To address these challenges, some Member States have introduced alleviations in the burden of proof for confiscation, either shifting it to the defendant – requiring him or her to justify the origin of the property – or applying the civil standard of balance of probabilities in confiscation cases. However, to the extent that these confiscation measures are grounded in civil proceedings, they entail lower safeguards than in criminal procedures and are not covered by the EU Regulation on mutual recognition of confiscation orders[69]. Other Member States have developed **confiscation systems grounded in criminal proceedings**, with corresponding safeguards, that enable authorities to confiscate assets of suspects or offenders for which the court is sufficiently convinced that the suspect belongs to organised criminal groups or is involved in particularly serious crimes and that the assets are the proceeds of crime, since no legal origin can be demonstrated.

These systems have proven their effectiveness. In Italy, authorities are able to confiscate assets in 90% of judicial proceedings through these mechanisms, compared to 50%

[66] Europol, European Union Serious and Organised Crime Threat Assessment "A Corrupting Influence: The infiltration and undermining of Europe's economy and society by organised crimes" (2021), p. 19
[67] See for instance the 2020 Action plan against Firearms trafficking, the 2021 Action Plan against Migrant Smuggling, which stresses the importance of effective asset freezing measures, and the EU Action Plans against Cigarette Smuggling.
[68] See for instance: International instruments to which the EU is a party require the availability of confiscation measures e.g. for corruption offences as defined in Article 8 of UNTOC (which goes beyond the crime listed currently in article 3 of the Confiscation Directive).
[69] Regulation 2018/1805 "does not apply to freezing orders and confiscation orders issued within the framework of proceedings in civil or administrative matters." (Article 1(4) 4).

through the traditional confiscation mechanisms[70]. Since Germany established such a model in 2017, it has been put in practice for a considerable number of cases: 5,100 in 2018 and 5,800 in 2019, which is a significant figure considering the novelty of the model[71]. Latvia, on its part, is able to confiscate 25 times more through confiscation mechanisms not linked to a conviction than through standard forms of confiscation (EUR 105.4 million vs. EUR 4.2 million in a period of five years)[72].

2.5 Cross-cutting driver: absence of a strategic approach and of commitment to asset recovery by all relevant actors.

In addition to the drivers contributing to each of the specific problems, an overall challenge affecting the different phases and the effectiveness of the confiscation system as a whole is the **absence of a strategic approach** by Member States towards asset recovery. Even though 56% of respondents to the public consultation considered that the Confiscation Directive has contributed to fostering a culture of asset recovery, confiscation is not always pursued as a key priority, according to the in-depth assessments of Member States' frameworks carried out by FATF and Moneyval[73].

While all the 20 EU Member States that have been subject to FATF/Moneyval fourth round of **mutual evaluations** were considered as fully or largely **compliant from a legal perspective** with the FATF recommendations (which are less detailed than the Confiscation Directive), the picture is **less encouraging** when it comes to the **effectiveness of the asset recovery systems**. Only four EU Member States (CZ, ES, IT, and SE) have proven to count on asset recovery systems with a substantial level of effectiveness. The vast majority (AT, BE, CY, DK, EL, FI, HR, IE, LU, LV, LT, PT) have moderately effective systems and four others are ranked with low effectiveness.

The **four Member States** with a **substantial level of effectiveness** are generally characterised by a strong **commitment from policy makers** to a **defined set of goals** reflected in strategic documents. Such a common approach to asset recovery is also **reflected at operational level**, with authorities and officers on the ground well equipped and aware of the importance of making crime unprofitable as the most effective tool to disrupt criminal organisations, usually on the basis of written guidelines and an adequate training offer.

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[70] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081, p. 92

[71] *Ibid.*, p. 71

[72] Moneyval, Latvia's Mutual Evaluation Report, 2019. This figure refers to confiscation for money laundering offences, 2013-2017.

[73] Compliance with FATF standards and assessment of effectiveness of anti-money laundering frameworks is verified by the Financial Action Task Force (FATF) for 14 Member States and by Moneyval for 13 Member States. 20 Member States have been assessed in the current round of mutual evaluations. The evaluations are available at: https://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate).

For the other EU Member States, in many cases the mutual evaluations show that **confiscation** is **not** always considered as a **key priority** of the criminal justice system or have **not set out specific objectives** at a strategic level underpinning their confiscation policies. In other cases, the policy commitments are not followed in practice, especially in relation to the systematic undertaking financial investigations by prosecutorial and law enforcement structures, which do not count with the skills, knowledge and guidance or incentives to take a proactive approach. Asset tracing being the first step in the asset recovery chain, this affects the effectiveness of the overall system.

The **absence of shared strategic objectives and operational commitment by all parties** is of particular concern given the wide array of actors involved in the asset recovery process. **Responsibilities are spread among different bodies**, many of which do not have as their primary responsibility the recovery of criminal assets. Against conflicting priorities, and given the complexity and hurdles of asset recovery processes, those authorities are not always inclined to prioritise the financial dimension of crimes. Moreover, the mutual evaluations provide few examples of inter-agency cooperation structures in Member States, and several instances where different authorities are not aware of the role or even the existence of actors such as the Asset Recovery Offices, an issue highlighted also in the study underpinning this Impact Assessment.

A lack of effective coordination at national level can lead to duplicating efforts, or conversely to situations where assets are falling through the cracks due to a lack of information sharing. The lack of a coherent approach by all actors in relation to asset recovery is also reflected in the **absence of comprehensive and comparable statistics** on the number and value of assets frozen and confiscated, a problem that arises in all Member States to varying degrees. The Confiscation Directive requires Member States to "make reasonable efforts"[74] to collect a minimum set of statistics. Despite this, asset recovery data are not systematically collected at a central level. In many Member States, individual agencies or authorities collect certain statistical data, but without guidance at national level on the methodological aspects of data collection, it results in diverging datasets and a scant level of completeness and quality of data. **Without a clear picture** of the results in each phase of the asset recovery process and of the overall system, it is **difficult to identify** and bring political attention to the **shortcomings and necessary actions** to improve the effectiveness of the asset recovery system.

[74] Recital 37: Member States should endeavour to collect data for certain statistics at a central level, with a view to sending them to the Commission. This means that the Member States should make reasonable efforts to collect the data concerned. It does not mean, however, that the Member States are under an obligation to achieve the result of collecting the data where there is a disproportionate administrative burden or when there are high costs for the Member State concerned.

3. WHY SHOULD THE EU ACT?

3.1 Legal basis

The ARO Council Decision is based on Article 30(1)(a) and (b) TEU (now Article 87 TFEU) and Article 34(2)(c) TEU, whilst the Confiscation Directive is based on Article 82(2) and 83(1) TFEU. These articles under the TFEU are relevant for the envisaged revision of these legal acts and the measures identified in the different options.

In addition, measures aiming at the extension of the scope of the confiscation measures to crimes ares other than 'eurocrimes' (covered by Article 83(1)) would need to comply with the relevant requirements of Article 83(2).

The combination of these legal bases (Articles 82, 83 and 87 TFEU) allows for harmonising measures on freezing, confiscation and management of illicit assets, measures that directly facilitate cross-border cooperation as well as other measures that govern Member States' internal procedures to the extent necessary to ensure the effective implementation of asset recovery and confiscation measures while also contributing to cross border cooperation.

3.2 Subsidiarity

Under Article 5(3) TEU, the Union, in areas which do not fall within its exclusive competence, shall only act if the proposed action cannot be sufficiently achieved by the Member States. Article 67 TFEU provides that the Union shall provide citizens with a high level of security by preventing and combating crime. Organised criminals transfer and spread their illicit property across multiple jurisdictions, hampering the capacity of competent authorities to trace, freeze and confiscate these assets. Cross-border cooperation is therefore crucial for the effective recovery of criminal assets. This cross-border dimension of organised crime and the criminal organisations' activities and investements in more than one country justify the need for European action.

Individual efforts of Member States against organised crime's activities are insufficient as criminals take advantage of the benefits of the EU's internal market and of the speed of the financial system, as well as of organised crime's underground parallel financial system. According to Europol, 80% of organised crime groups in the EU are highly poly-criminal and active across borders, with 7 out of 10 active in more than 3 countries and 65% of organised crime groups being composed of multiple nationalities[75]. As highlighted in the Evaluation, law enforcement authorities and representatives of the Confiscation Directive Contact Committee agree that this highly international crime picture is best tackled at EU level. 97% of consulted stakeholders in the public consultation consider cross-border cooperation essential in the identification of criminal

[75] Europol, European Union Serious and Organised Crime Threat Assessment "A Corrupting Influence: The infiltration and undermining of Europe's economy and society by organised crimes" (2021), p. 19

assets and 88% believe it would be harder to freeze and confiscate the proceeds of crime without EU intervention.

The penetration of organised crime into the economy of one Member State affects the functioning of the whole EU Internal Market, with criminals reportedly targeting Member States with weaker asset recovery systems[76]. Organised crime groups often resort to intimidation and corruption of public officials, thus altering competition and the smooth functioning of the Internal Market. The resulting loss of revenues affects both national and the EU's financial interests, even when it takes place in only one Member State. The recovery of criminal profits needs to therefore be addressed at EU level in order to address the cross-border threat of organised crime.

4. OBJECTIVES: WHAT IS TO BE ACHIEVED?

4.1 General objectives

The general objective is to deprive criminals and in particular organised crime groups of their illicit property in order to disrupt the capacity of organised crime groups to maintain and further expand their criminal activities, while compensating victims and repairing damage done to society more generally.

4.2 Specific objectives

(1) Strengthen asset tracing capabilities

Strengthening the capabilities of the competent authorities to identify and trace assets aims at ensuring that competent authorities have the competences and resources, as well as sufficient access to the necessary information, to facilitate asset tracing and information exchanges in an effective and swift manner, in particular in a cross border context.

(2) Ensure efficient asset management

Ensuring efficient asset management aims at ensuring that Member States have the capacity to manage frozen and confiscated asset so that management costs remain below the benefits of asset recovery, and at ensuring that the value of assets is safeguarded for further use, thereby increasing incentives to carry out asset recovery investigations and adopt freezing/confiscation decisions.

(3) Strengthen confiscation capabilities

The objective to strengthen confiscation capabilities aims at enabling authorities to capture all relevant criminal activities, in particular those typically carried out by organised crime groups, and to confiscate all relevant assets, in particular the property

[76] Meeting with Eurojust experts in June 2016, quoted from Commission staff working document 'Impact assessment accompanying the document Proposal for a regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders', SWD(2016) 468 final.

held or controlled by those orchestrating criminal activities. Achieving this objective would contribute to the overall aim of disrupting organised crime structures, groups and networks, going beyond the mere sanctioning of individual crimes.

(4) Improve the overall efficiency of the asset recovery system

This objective aims at increasing the cooperation between the wide range of actors involved in the asset recovery phases, promoting a more strategic approach in relation to asset recovery and improving data collection and monitoring of developments, trends and progress, so as to ensure that all actors prioritise asset recovery and work in a coordinated manner.

4.3 How do the objectives relate to the sustainable development goals?

The objectives of this policy initiative relate to a number of sustainable development goals. Countering organised crime's profits primarily contributes to goals of (16), peace, justice, and strong institutions and (8), decent work and economic growth through countering organised crime's infiltration into the legal economy.

5. WHAT ARE THE AVAILABLE POLICY OPTIONS?

5.1 Baseline scenario: how will the problem evolve?

The baseline scenario or *status quo* indicates how the identified problem is likely to evolve without additional public intervention, taking into account existing and forthcoming interventions.

While the current framework would remain untouched beyond further enforcement measures, there are a number of legislative and policy initiatives that would impact the work of Asset Recovery Offices and of authorities in charge of freezing and confiscation decisions. The application of **Regulation (EU) 2018/1805** on the mutual recognition of freezing and confiscation orders will lead to greater execution by competent national authorities of freezing and confiscation orders in cross-border cases. However, while the Regulation sets the means for increased recognition of freezing and confiscation orders across the EU, the number of orders to be recognised is dependent on the capacity of authorities to identify assets, the confiscation instruments available to judicial authorities in every Member State, and their willingness to apply them. All these are areas where this Impact Assessment has identified significant deficiencies.

With the entry into force of Directive (EU) 2019/1153[77] on access to financial information on 1st August 2021, law enforcement authorities, including Asset Recovery Offices, soon should have access to bank account information once all Member States

[77] 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.

will have transposed the Directive. Once co-legislators adopt the recent Commission proposal to amend **Directive (EU) 2019/1153**[78], access could include bank account information in other Member States, granting law enforcement access to an interconnected bank account registries system across the EU. However this covers only one of the relevant databases.

The **Anti-Money Laundering package of July 2021**[79], once adopted, would facilitate a more effective detection of suspicious transactions and activities and increased dissemination of financial analysis by Financial Intelligence Units. This would increase the possibilities for law enforcement authorities to launch new investigations but, without prioritisation as well as the necessary resources and powers on the part of competence authorities responsible for tracing, freezing and confiscating assets, it is likely that authorities will not able to follow up on all the information disseminated by Financial Intelligence Units in an effective manner.

Despite progress in these areas, under the current framework, **the problems identified would remain to a large extent**. Financial investigations would continue to be carried out in a non-systematic way in most Member States and be hampered by lack of resources and prioritisation. Asset Recovery Offices would continue to gradually increase their cooperation, albeit hindered to the current limitations, including the lack of resources and insufficient access to databases or to SIENA. The exchanges in the Asset Recovery Offices platform meetings could lead to some incorporation of best practices by some Member States. As regards asset management, the number of Asset Management Offices could slightly increase, with one Member State already having foreseen its creation, as so would the use of instruments such as interlocutory sales, which another Member State is planning to facilitate[80]. Moreover, it is foreseeable that some Member States, following a 2018 Resolution of the Council of Europe Parliamentary Assembly inviting Member States to develop confiscation models that facilitate the confiscation of illegal assets[81], would develop new confiscation models adapted to the complex nature of organised crime, an issue which is already being considered in one Member State where a process to review its asset recovery framework has been launched.

These improvements that may be expected in a limited number of Member States, however, would not represent the significant change which is required to ensure an asset recovery system across the EU that is able to effectively tackle the growing complexity and scale of criminal finances, especially in view of the evolution of the threat from

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[78] Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2019/1153 of the European Parliament and of the Council, as regards access of competent authorities to centralised bank account registries through the single access point, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0429, Brussels, 20.7.2021.

[79] Available at https://ec.europa.eu/info/publications/210720-anti-money-laundering-countering-financing-terrorism_en.

[80] *Information gathered during the Asset Recovery Offices Platform meeting of 25th-26th June 2021.*

[81] Council of Europe Parliamentary Assembly Resolution 2218 (2018), 26th April 2018.

organised crime and its transnational nature. In fact, the **status quo option** would not allow authorities to catch up with the **likely increasing volume of assets owned or controlled by criminal organisations**. The economic downturn produced by the pandemic creates new business opportunities for criminal groups, including by fraudulently benefitting public funds aimed at supporting economic recovery, and for infiltrating the economy and the institutions. In the current economic context, and organised crime is expected to take advantage of the weak financial situation in many companies "to launder money through dormant companies, buy out financially affected cash-intensive businesses, or invest in property in the construction sector"[82]. This would allow criminal groups to launder their proceeds while maximising their financial benefits, and to use the legal structures under their control to further their illicit activities.

Against this bleak outlook, it is expected that **the slow increase of the amounts frozen and confiscated** that could be achieved through the application of existing or ongoing measures **would not match the foreseable ever-greater profits of criminal groups.** When asked about how the criminal finances landscape will develop in the EU in the next 5-10 years without further EU intervention, 66% of the respondents to the public consultation agreed it would worsen and that the current legal framework would not be sufficient to retrieve criminal assets. Whilst awareness raising and recent legislative instruments will have a mitigating impact on the rates of criminal profits, the existing freezing and confiscation measures will not allow to bridge the gap between recovered assets and criminal profits in the foreseeable future, thus **failing to ensure that asset recovery is an effective deterrent of criminal activity**.

5.2 Description of the policy options

The following table summarises the different options for each of the specific objectives.

Table 3: Options table

Policy option 1	Policy option 2
Tracing: increase the exchange of good practice and develop EU guidance complemented by training by Europol and CEPOL on asset tracing, financial investigations, and information exchange. **Management:** increase the exchange of good practice and develop training and guidance on asset management methods. **Confiscation:** exchange of good practices, and develop EU guidance complemented by training by Eurojust and European Judicial Training Network on confiscation. **Strategic approach:** increase the exchange of good	**Tracing:** requiring Member States to develop a national plan on asset recovery, covering tracing and financial investigations; strengthening Asset Recovery Offices powers to include urgent freezing, investigative powers, access to relevant databases, and SIENA. **Management:** establishing contact points to facilitate cooperation between management authorities in different Member States, setting out general principles for asset management, and require that all competent authorities have the necessary resources to carry out their tasks. **Confiscation:** extension of the general scope of all confiscation measures to include all 'eurocrimes', and

[82] Europol, European Union Serious and Organised Crime Threat Assessment "*A Corrupting Influence: The infiltration and undermining of Europe's economy and society by organised crimes*" (2021), p. 95

practice and develop EU guidance on increasing cooperation between the different actors responsible for the different phases of the asset recovery process (tracing, freezing, management, confiscation, disposal) and on data collection methodology.	making non-conviction based confiscation available in cases of death of the defendant. **Strategic approach:** establishing a national strategy on asset recovery covering all its phases, and setting up more comprehensive requirements on the collection of statistics on asset recovery at central level.
Policy option 3	**Policy Option 4**
Tracing: in addition to the measures foreseen in Option 2 + introducing the obligation for the systematic launch of financial investigations for set organised-crime crimes, and detailing the requirements for Asset Recovery Offices information exchanges. **Management:** in addition to the measures foreseen in Option 2 + establishing specialised Asset Management Offices to manage assets or to support and coordinate decentralised management authorities. Ensuring that Member States conduct pre-seizure planning and interlocutory sales. **Confiscation**: extension of the general scope of all confiscation measures, to include the crimes covered by Regulation (EU) 2018/1805. In addition to the existing cases of illness and absconding, allowing non-conviction based confiscation in cases of death, amnesty, immunity of the defendant, or because of expiration of statute. Introduction of a new confiscation model (unexplained wealth linked to criminal activities). **Strategic approach**: in addition to the data collection requirements of Option 2 + obligation to establish cooperation mechanisms between all asset recovery phases, and establishment of centralised asset registries accessible to Asset Recovery and Management Offices.	**Tracing**: in addition to the requirements on Asset Recovery Offices information exchange foreseen in Option 3 + introducing the obligation for the systematic launch of financial investigations for all crimes, introducing 24/7 Asset Recovery Offices contact points and ensuring that the information they exchange can be used for evidentiary purposes **Management:** in addition to the measures foreseen in Option 3 + establishing a single, centralised Office with both asset recovery and asset management tasks and responsibilities. **Confiscation:** in addition to the measures foreseen in Option 3 on non-conviction based confiscation, + extending the scope of all confiscation measures to all crimes ("all crimes approach") **Strategic approach:** in addition to the establishment of asset registries foreseen in Option 3 + ensuring the interconnection between centralised asset registries in different Member States accessible to Asset Recovery Offices and Asset Management Offices of other Member States.

5.2.1 Option 1

Under **Option 1**, the measures consist of making increased use of existing platforms and, where necessary, establish new expert or advisory groups to exchange experiences, know-how and good practice to strengthen capabilities and understanding in relation to the various phases of asset recovery. These exchanges would be further enhanced through the development of appropriate EU guidance and, where appropriate, trainings (by CEPOL, Europol, Eurojust, the European Public Prosecutor's Office (EPPO), or the European Judicial Training network, EJTN).

These non-legislative measures would help address identified shortcomings for all phases of the asset recovery process to some extent. Promoting the exchange knowledge and best practices, offering guidance and training can be expected to contribute to improved

capabilities related to asset tracing, asset management andthe use of confiscation possibilities and will to some extent improve the effectiveness and efficiency of the overall asset recovery system in Member States.

According to consulted stakeholders, (Asset Recovery Offices, Contact Committee of the Confiscation Directive, and Europol) measures under PO1 would address indirectly the policy objective to increase the rate of frozen, confiscated and recovered assets, and considered it unlikely that they would achieve the policy objective to a significant extent, given their soft nature. Training and guidelines with respect to victims' compensation and social reuse of confiscated were however considered by stakeholder as being more appropriate than legislative intervention due to the many differences between Member States on these areas.[83]

5.2.2 Option 2

Option 2 would foresee minimum legislative measures composed of targeted amendment to existing legislation and national set ups. Under Option 2, the measures would consist primarily in **specifying** the scope of existing **general requirements** and making **targeted amendments** to the ARO Council Decision and Confiscation Directive with a view of reinforcing their effectiveness. This includes obligations on Member States on a more strategic/structural level:

- to adopt an overall strategy/action plan setting out the objectives of the asset recovery system. Such a strategy would set out the indicators, identify relevant actors, their responsibilities and cooperation mechanisms, identify gaps and the necessary measures to address them, in terms of resources, training, guidance, etc. This strategy could also include objectives, indicators and measures, where appropriate, to improve victim compensation;
- to ensure that the competent authorities have the necessary skills and capabilities;
- to require more comprehensive and meaningful statistical data at central level.

Other measures would aim at improving cross border cooperation:

- enabling Asset Recovery Offices to respond swiftly to information requests within the required short deadlines (by providing access to existing databases which are of greater relevance to Asset Recovery Offices and making use of SIENA for secure communication);
- ensuring that Asset Recovery Offices have the necessary powers to facilitate asset tracing upon request from Asset Recovery Offices in other Member State;
- ensuring that assets do not dissipate (through temporary urgent freezing powers);
- allowing authorities competent for asset management to identify their counterparts in other Member States (through the establishment of contact

[83] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, pp. 162-163

points) and set out general principles of adequate asset management[84] that Member States can rely on when assets linked to an investigation in a Member State are managed in another Member State.

Existing requirements on confiscation would remain in place as they stand. Only minor adaptations would be introduced, in order to cover all eurocrimes envisaged in Article 83(1) TFEU (i.e. adding firearms trafficking as defined in EU law) and extend non-conviction based confiscation to situations comparable to illness or absconding (i.e. where conviction is not possible because the offender has passed away). All confiscation measures would remain grounded in criminal law.

The measures under option 2 would contribute considerably to the objective of a more strategic approach to asset recovery addressing identified shortcomings in terms of prioritisation, cooperation among competent authorities or available resources. The measures under option 2 are expected to make a considerable contribution to better asset tracing and securing identified illicit assets through the facilitation of cross border information exchange and cooperation as well as requirements to adopt temporary urgent freezing measures. The measures are expected to improve to some extent asset management. Similarly, due to the only limited changes compared to the status quo, the measures under option 2 are expected to only marginally improve confiscation capabilities.

According to consulted stakeholders (law enforcement, judicial authorities, Europol, Asset Recovery Offices and NGOs), harmonization on asset recovery is highly necessary at national level in order to ensure the effectiveness of the system at EU level. Option 2 was therefore considered a minimum intervention to address the problems, with margin for improvement.[85]

5.2.3 Option 3

Option 3, **builds on measures under Option 2** and incorporates measures facilitating asset tracing and management as well as requirements for a more strategic approach and more detailed data collection provisions Option 3 would foresee **more detailed requirements** for Member States for all phases of the recovery process requiring more extensive changes to the current EU legal framework. The asset recovery regime in Member States would need to comply with more specific requirements, including:

- Obligations regarding asset tracing, which is currently not covered by the Confiscation Directive or spelled out in the ARO Council Decision. This would include in particular a requirement to ensure that financial investigations are systematically launched in certain cases and under certain conditions, e.g. when

[84] See for instances general principles/framework for effective asset management by FATF

[85] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, pp. 174, 176-177

the crime under investigation is linked to organised crime and is likely to generate profits above a certain amount. This requirement is necessary to complement and steer eventual measures by Member States to provide resources, training and guidance for carrying out financial investigations as part of the overall strategy/action plan on asset recovery envisaged in Option 2.

- Additional specific requirements regarding asset management, notably:
  - mandating the use of pre-seizure planning[86], and interlocutory sales in certain cases and under certain conditions[87];
  - requiring the establishment of specialised Asset Management Offices with the necessary powers to ensure they can effectively support other authorities in charge of managing assets and, where necessary, manage frozen and confiscated assets -especially complex ones- upon request from competent authorities. The proposal would leave to Member States the freedom to choose the administrative and legal set up of the Offices to allow them to best respond to national needs.
- Requirements to facilitate a more complete statistical overview of the asset recovery process, notably the establishment of an asset recovery registry in each Member State, accessible to competent authorities, including Asset Recovery Offices and Asset Management Offices. Competent authorities would be required to encode relevant information throughout the asset recovery process, e.g. whether an asset is frozen, sold, confiscated, returned to its owner, to the State or the victim or used for social purposes.

The confiscation tools and mechanisms would be expanded to allow for the confiscation of significantly more illicit assets, in particular by:

- Expanding the scope of offences covered by the Confiscation Directive in order to cover additional crimes of particular serious nature, high profitability or linked to organised crime (e.g. firearms trafficking, migrant smuggling, trafficking of counterfeit products);
- Extending the scope of non-conviction based confiscation measures grounded in criminal proceedings to other cases in which a criminal conviction is not possible due to objective circumstances (such as immunity, amnesty, lapse of statute of limitations, because of out-of-court settlement, age-related decision not to convict);

[86] The 2020 Council Conclusions on financial investigations (document 8927/20) called on the Commission to include the principle of pre-seizure planning when assessing the review of the asset recovery framework.

[87] E.g. when assets would otherwise deteriorate in value, when costs of management are disproportionate to the value of assets, while taking into account the legitimate interests of the owner (e.g. by limiting cases of interlocutory sales to cases where the assets are easily replaceable or foreseeing other safeguards for the owner to invoke his/her interests) as well as the interests of the victims.

- Foreseeing a new confiscation mechanism ensuring the confiscation of assets not directly linked to specific crime (for which the owner or possessor was convicted) but more broadly resulting from criminal activities.

The main elements of such new confiscation mode would be inspired by models in Member States[88] while ensuring full respect of the relevant fundamental rights and the relevant jurisprudence of the European Court of Human Rights ("ECtHR") and the European Court of Justice. The new model aims at addressing the identified shortcomings with regard to the existing confiscation models, which do not allow for the recovery of all illicit assets related to criminal activities in the framework of organised crime and which go beyond the assets linked to a specific crime for which the person in question was convicted. Under this new confiscation model, it would therefore be for the prosecution to show that the assets in question are linked to criminal activities. Although a conviction of the defendant for a specific criminal offence is not required, the prosecution would have to prove the link between the assets and the criminal activities, showing that those assets could have been the proceeds of such conduct. The establishment of these facts can be based on circumstantial evidence, including in particular indications such as unexplained wealth (i.e. property without evidence of legitimate origin, when there is a significant disproportion between the value of assets and the stated income of the person) rebuttable by the defendant through a shifted burden of proof.[89]

All confiscation measures would remain grounded in criminal law.

This possibility would be subject at least to the safeguards stipulated in Article 8 of the Confiscation Directive, and in particular the right of defence, providing for effective possibilities for the defendant to rebut allegations. Further safeguards could become necessary (e.g. in relation to the required threshold to initiate such proceedings or as regards the review possibilities ensuring timely remedies) to ensure that any interference with fundamental rights remains proportionate. Ensuring overall proportionality would need to be ensured (e.g. by limiting this possibilities to certain particularly serious crimes or crimes committed within the context of organised crime activities).

Cooperation between the relevant authorities both cross-border and within each Member State would be strengthened by establishing:

- Cooperation obligations between the different competent authorities within each Member State, including Asset Recovery Offices and Asset Management

[88] For a description of the different models, see COMMISSION STAFF WORKING DOCUMENT Analysis of non-conviction based confiscation measures in the European Union, SWD(2019)1050, 12 April 2019.

[89] According to existing jurisprudence, a lower standard of proof than for a criminal conviction, including with a reversal of the burden of proof, is possible as long as a link between the assets and the criminal conduct is established (see ECtHR in Case 50705/11 *Todorov and others v. Bulgaria*, §215 and §237); see also the case regarding the Italian system in ECtHR, *Arcuri v. Italy*, N°52024/99.

Offices[90] but also other authorities such as tax authorities; the functioning of the overall recovery process including cooperation between the relevant authorities would be subject to regular monitoring coupled where appropriate with recommendations for further improvement;
- More detailed requirements facilitating information exchange across borders (including templates).

The measures under option 3 will make a significant contribution to the objectives of improving asset tracing in that it will require Member States to carry out more systematically financial investigations which are of crucial importance in this regard. The measures will significantly improve the efficiency of asset management in that it will require pre-seizure planning and the use of interlocutory sales. Setting out more detailed requirements and conditions and requiring the establishment of asset management offices that can support other competent authorities in their work will help overcome identified shortcomings that limited the use of more efficient management tools. The measures under option 3 are also expected to make a significant contribution to improving confiscation possibilities by extending possibilities of confiscation where a criminal conviction is not possible for objective reasons (while all the evidence is there to show criminal conduct) and where the assets are clearly linked to organised crime activities but cannot be linked to a specific crime; but also be significantly extending the scope of offences. Measures under option 3 will further contribute to a more effective asset recovery framework in Member States in that it provides for a better sharing of information and improved cooperation among competent authorities.

Stakeholders consulted over the course of the Policy Options Workshops (law enforcement, judicial authorities, Europol, Asset Recovery Offices and NGOs) identified Policy Option 3 as the best performing in order to ensure that the provisions of the existing instruments are properly applied. According to consulted stakeholders, the alignment of the scope of confiscation measures with the crimes covered by Regulation (EU) 2018/1805 harmonization on asset recovery is particularly necessary to ensure the effectiveness of the system. This assessment extended to measures on tracing, management, and confiscation.[91]

5.2.4 Option 4

Option 4 would foresee a maximum legislative intervention, building upon the measures under Option 3 (which includes certain measures under Option 2).

[90] Such cooperation mechanisms could identify for instance the different actors and their respective responsibilities, include requirements to provide information and feedback, require Member States to prepare regular reports on the functioning of the asset recovery system. Such reports would identify remaining obstacles and propose concrete measures to address the identified shortcomings.

[91] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, pp. 174, 176-177

Option 4 would **further strengthen** the **requirements** established under Option 3 concerning the different asset recovery processes and procedures by:

- More extensive requirement on financial investigations, which should be carried out for all crimes, without limiting to organised crimes' activities as in Option 3;
- Setting out more concrete conditions regarding urgent freezing orders (as already foreseen under Option 2). This would include requirements on the validity of such temporary orders, deadlines within which such temporary freezing orders must be issued and a requirement for establishing 24/7 contact points to ensure urgent freezing in cross-border cases;
- Requiring information exchanged among Asset Recovery Offices to be without purpose limitation e.g. for intelligence purposes only (so that information can be used also for evidentiary purposes).

At the same time, this option would aim at overcoming coordination and cooperation issues by **further streamlining of responsibilities** and ensuring greater interconnectivity:

- requirements for having asset tracing and management support functions within one single entity or under the oversight of one entity (Asset Recovery and Management Office, a model available in seven out of the thirteen Member States that have established Asset Management Offices);
- In addition to the establishment of asset registries as foreseen in Option 3, ensuring that national asset recovery registries are interconnected and that access to them is granted to all Asset Recovery and Management Offices of every Member State.

Finally, the scope of the confiscation measures would be further strengthened by expanding the scope of the new confiscation framework to all crimes, in order to align the scope with that of Framework Decision 2005/212/JHA[92] which regulates standard confiscation, the most used confiscation tool in the Member States, as opposed to the list of Regulation (EU) 2018/1805 as foreseen in Option 3. This possibility would be subject to safeguards stipulated in and going beyond Article 8 of the Confiscation Directive, and in particular the right of defence. All confiscation measures would remain grounded in criminal law.

Compared to Option 3, measures under option 4 would only marginally improve the achievement of the relevant objectives in terms of asset tracing, asset management, confiscation and overall improved strategic framework for asset recovery. The benefits of further extending the scope and providing more detailed requirements of the different

[92] See Article 3 of the Framework Decision 2005/212/JHA, which covers all criminal offences punishable by deprivation of liberty for more than one year.

measures already foreseen under Option 3 would come along with more substantive interferences with Member States' prerogatives.

According to consulted stakeholders (law enforcement, judicial authorities, Europol, Asset Recovery Offices), the policy measures under PO4 reflect the level of harmonization and cooperation Member State might reach in the long term, but go too far to address what are perceived as being the most urgent issues to address for an effective asset recovery system. Under the current circumstances, the minimal performance of the asset recovery system is strongly severed by issued such as lack of resources, insufficient access to information, and lack of minimal legislative harmonization. Therefore, PO4 measures were perceived as too demanding on Member States and the relevant asset recovery actors, too costly to implement, and with benefits visible only in the long-term.[93]

5. 3 Options discarded at an early stage

The Inception Impact Assessment on the revision of the asset recovery framework[94] informed of the intention of the Commission to assess any possible obstacles related to the use of recovered assets for social purposes and for victim compensation.

Based on the outcome of the consultations, it has been considered that measures to reinforce the current voluntary nature of the provision on social re-use could interfere with the Member States' budgetary autonomy, and would therefore be disproportionate.

In relation to victim compensation, the Commission services have not identified, based on the consultations, specific problems requiring an inclusion of victim compensation provisions in revised legislation on asset recovery. In addition to the requirement in the Confiscation Directive for Member States to ensure that confiscation measures do not prevent victims' compensation, the EU legislation in this field comprises the Victims' Rights Directive[95], which provides for a right to a decision on compensation from the offender in criminal proceedings, and the Compensation Directive[96]. The latter provides for access to compensation from the state for victims of violent and international crime, including national schemes on compensation to victims. The EU Strategy on victims' rights indicated that the Commission will monitor and assess EU legislation on compensation, and if necessary propose measures to complement this framework. Considering the existence of a specific framework focused on victim compensation, any possible measure in this regard would be better addressed therein, should there be a

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[93] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, p. 190

[94] Available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12725-Fighting-organised-crime-freezing-and-confiscating-the-proceeds-of-crime_en, Ares(2021)1720625.

[95] 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. 57–73.

[96] Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6.8.2004, p. 15–18.

revision of these instruments. Moreover, a few Member States' expressed strong reservations on strengthening existing legal provisions on social reuse, as they would infringe upon budgetary autonomy national competences.[97]

6. WHAT ARE THE IMPACTS OF THE POLICY OPTIONS?

6.1 Social impacts

Impact on security: criminal and in particular organised crime activities

All options are expected to contribute in different degrees to improving capabilities of tracing, freezing, confiscation and management and, as a consequence, the capabilities to disrupt criminal activities and in particular the activities of organised crime groups. The different options will thus – depending on the scope of the measures and the degree of harmonisation throughout the EU – contribute in different degrees to enhancing security in the EU as a whole (with the least impact for PO1 and higher impacts for PO2-4). This contribution will be even higher for options containing measures that not only address cross-border aspects but also investigations at domestic level (e.g. measures under PO3), given that illicit gains resulting from criminal activities in a domestic context can and are used for criminal activities throughout the EU. Increasing capabilities in tracing and freezing assets at national level increase the chances of identifying assets linked to criminal activities in other Member States.

PO1 is expected to **improve capabilities** necessary for effective asset recovery to a **limited extent** with the estimated increase in the number of freezing and confiscation orders being relatively marginal. Furthermore, confiscation measures remain limited in scope and will not be able to capture all relevant assets linked to organised crime activities. As a consequence, the impact on security is limited.

Measures under **PO2** will make a **positive contribution** to increasing the capabilities of asset tracing and management and strengthening cross border cooperation. Information exchange can be expected to be significantly improved and response times significantly reduced in particular by giving Asset Recovery Offices access to the relevant databases. It is expected that the number of freezing and confiscation orders could increase considerably.

The **highest impact** is to be expected from measures under **PO3 and PO4** since concrete measures are expected to significantly improve the operational capabilities at all stages of the recovery process as well as the overall effectiveness and efficiency of the asset recovery system as a whole.

The impact through significantly higher rates of freezing and confiscation orders is further increased by the extension of the scope of crimes subject to confiscation. As a result of these measures it is expected that measures under PO3 and PO4 could increase

[97] *Information gathered via meeting with the Contact Committee on 1-2 June 2021.*

the rates of freezing and confiscation in a substantial manner, so as to effectively contribute to disrupting organised crime activities.

Both **PO3 and PO4** will make a **more significant contribution** to fighting crime across borders since they foresee measures that will improve cross border information exchange and cooperation: increased access to the relevant information will not only improve asset tracing internally but also improve cross border cooperation in terms of better/more comprehensive information and shorter timeframes for replies.

Impact on citizens' perception of justice and reassurance that crime does not pay

All options contribute in different degrees to the objective of making the asset recovery system more effective. However only **PO2-4 make a substantial contribution** to increasing rates of confiscation, so as to make a positive impact on the citizens' perception of justice and the reassurance that crime does not pay. By increasing confiscation rates, all of these options would in different degrees ensure that funds are available for victim compensation or other public interest and social uses.

6.2 Economic impacts

Impact on businesses/competition

In general terms, the different options disrupt criminal activities by depriving criminals of illicit gains, thereby limiting their capabilities to reinvest such gains into the legal economy and distorting competition, re-establishing a level playing field among companies and providing increased confidence of the market that playing by the rules pays off . The **impact on businesses** would be **higher** for those options extending the scope of offences covered (**PO3 and PO4**), insofar as they could cover crimes that have a direct effect on some sectors, such as counterfeiting, or that distort competition, such as VAT fraud. While it is not possible to provide an estimate of economic impact for the different options, available data indicate the scale of the problem: imports of counterfeit and pirated goods into the EU amounted to as much as EUR 119 billion in 2019[98], while VAT fraud account for a loss of between EUR 45 to 53 billion every year[99]. The more effective the options would be in depriving criminals of their profits and therefore disrupting criminal activity, the less these illicit activities would negatively affect EU businesses.

Impact on public administrations

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[98] OECD, *Global Trade in Fakes - A worrying threat*, Organisation for Economic Co-operation and Development (OECD) and European Union Intellectual Property Office (EUIPO), June 2021.

[99] European Commission, Directorate-General for Taxation and Customs Union, Jaras, T., Whittle, E., Patel, K., et al., *Final Report, Implementing the 'destination principle' to intra-EU B2B supplies of goods, Feasibility and Economic Evaluation Study,* Publications Office 2015.

To the extent that all options contribute in different degrees to increasing the rates of confiscation while improving asset management, there is a positive impact on the public administration where increased revenues are brought back to the state budget.

These positive impacts would result from the increases in assets identified (which eventually would lead to more assets being frozen and confiscated), the measures facilitating the confiscation of assets as such, the measures aimed at reducing asset management costs and maximising the value of assets or avoiding their depreciation, or the increased number of confiscated assets that would derive from a more strategic approach to asset recovery. The **increase of revenues** and thus the impact on the public budget will depend inter alia on the scope of crimes for which confiscation can be ordered. By including a few additional crimes such as firearms trafficking (under PO2), the impact will be **relatively low** compared to the **additional criminal proceeds under PO3** resulting from the inclusion of more crime areas with (estimated at least 50 billion p.a.)[100]. **PO4** is expected to have the **highest impact** with the largest set of crimes and illicit proceeds/assets being covered.

This **positive impact is highest for PO3 and even more so for PO4**, in particular because of the need for Member States to adopt measures that will contribute in a substantial manner to identifying an increased number of assets, as well as measures against dissipation and loss in value of such assets. These requirements coupled with extended possibilities to confiscate assets beyond those directly related to a specific crime are expected to increase revenues to the State budget.

In principle the large majority of any additional revenues would accrue to the state budget, unless they are used for victim compensation, which is often given priority over confiscation, usually upon claims by the victims via civil proceedings. While estimates cannot be provided since the figures of funds returned to the victims on the basis of a civil claim are not always reflected in the statistics on confiscation, some examples indicating the order of magnitude will be provided (e.g. in one Member State victim compensation represents 8.3% of recovered assets, in another the assets returned to victims amount to 5.6% of seized property).

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[100] The indicative volume of revenues generated by organised crime not covered by the Confiscation Directive amounts to approximately EUR at least 50 billion is an approximate estimation elaborated for the purposes of this Impact Assessment. It is based on desk research analysing different data sources such as international and EU studies (including the 2021 Study for the European Commission on 'Mapping the risk of serious and organized crime infiltrating legitimate businesses'), government information or Eurostat statistics, and applying informed assumptions such as the depreciation of counterfeited and stolen property. This figure relates to approximate estimated revenues for illicit firearms, migrant smuggling, some forms of organised property crime (cargo theft, ATM physical attacks, burglary, robberies and vehicle thefts), the illicit cigarette market, Missing Trader Intra-Community (MTIC) fraud causing a total damage of less than EUR 10 million (above this figure being covered by the PIF Directive), the illicit trafficking of cultural goods, counterfeiting and forged documents. The figure does not cover other forms of crime or criminal markets where organised crime is active, such as other forms of fraud other than MTIC fraud, contract killing (including murder, grievous bodily harm and kidnapping), swindling, racketeering and extortion, trafficking of nuclear materials and of illicit hormonal substances, given the lack of reliable data sources on which to base any estimation. For more information, see Annex 4 on analytical methods.

These benefits however can only be achieved through additional investment. There will be **additional costs** for public administrations under **PO2 – 4** requiring Member States to provide Asset Recovery Offices and Asset Management Offices with sufficient resources to fulfil their tasks. These costs for Member States to implement these measures are estimated to be of at least EUR 8.6 million for PO2, a figure which would considerably increase in PO3, with costs estimated in a range of EUR 31.6 and 38.4 million. PO4 would account for a slightly higher figure ranging from EUR 41.3 to 45.7 million[101]. However the **additional costs are more than offset** by measures that improve the efficiency of asset management and more generally the efficiency of the entire asset recovery process. Such measures would increase the amounts of **criminal assets recovered** in diverging degrees, in a range that could be on the order a few hundred million for PO2 or even double the current volume of confiscated assets for PO3 and PO4, which currently stands at one billion every year across the EU[102]. While the amounts that Member States would be able to allocate to the State budget would depend on their prioritisation of other aims such as victim compensation and social re-use, overall the costs for public administrations are expected to be lower than the additional resources obtained through a reinforced asset recovery system.

6.3 Environmental impact

Options PO2 – 4 can be expected to have a **positive impact on the environment** to the extent that these options will contribute in different degrees to recover illicit gains related to environmental crimes and therefore to deter and disrupt illicit activities that have a harmful impact on the environment. This impact will be **highest for PO3 and PO4** given that confiscation possibilities (and other measures to improve the overall efficiency of the asset recovery regime as a whole) are the most extensive.

6.4 Fundamental rights impacts

All proposed Policy Options but PO1 will increase the scope of confiscation measures and **degree of potential interference with fundamental rights**, particularly the right to property, procedural rights and data protection. Stronger freezing and confiscation measures under each of the legislative options will cover a greater number of offences and facilitate confiscation and therefore will affect a greater number of people and assets

[101] Information on the costs for the preferred option are found in Annex 3. Information on the costs for the other options are based on the Impact Assessment study, with the costs presented herein adapted to the measures as considered in this Impact Assessment.
The estimations of costs of the policy measures envisaged in the different options considered are mainly based on the study underpinning this Impact Assessment (e.g. data on training, costs of meetings, the costs of establishing Asset Management Offices, the establishment of asset registries, etc.). For other measures, additional estimations were elaborated by adjusting the data provided in the study through an informed assumption of the additional resources needed to carry out certain tasks, using where available proxies such as number of investigations supported by Europol or information from previous Impact Assessments.

[102] The approximate figures on the additional volume of confiscated assets provided are indicative estimations elaborated on the basis of the current confiscation rates and through a qualitative assessment of the benefits of the measures in terms of improved asset tracing, management, confiscation methods and overall improvement in the efficiency of the asset recovery system.

than the baseline, having therefore a greater impact on fundamental rights. The impact is **lowest for PO2**, which only extends the scope of confiscation measures to a very limited extent, and **highest for PO3 and PO4**, which foresee a significant extension to crimes not currently covered by the Confiscation Directive, as well as to assets not directly linked to a limited number of specific crimes. However, all options would be accompanied by appropriate safeguards and would meet the legal and procedural requirements as enshrined in existing case law.

Right to property

Article 17 of the Charter of Fundamental Rights of the European Union ("the Charter") guarantees the right to property. Whilst it can be argued that property of illicit origin is not protected under the right to property, such right is not absolute but can be subject to interference. According to the established case-law of the ECtHR, an interference with property rights must be prescribed by law (**legality**) and pursue one or more **legitimate aims**[103]. In addition, there must be a reasonable relationship of **proportionality** between the means and the aims. A balance has to be struck between the demands of general interest and the interest of the individual concerned.

Regarding the proportionality of proposed confiscation measures, case law requires that a "fair balance must be struck between the demands of the general interest of the community and the requirement of the protection of the individual's fundamental rights. The requisite balance will not be found if the persons concerned have had to bear an excessive burden" (*Todorov and others v. Bulgaria)*[104]. For example, in *Phillips v. UK* and *Butler v. UK* held that the use of confiscation measures can be proportionate to the aims of a policy objective when *"the making of a confiscation order operates in the way of a **deterrent**" and as a mean to **deprive** a person of illicit profits, as well "to **remove** the value of the proceedings from **possible future** use"*.[105] In cases of preventive confiscation, States are further allowed a wide margin of appreciation on the balance of the seriousness of the threat posed by particular offences such as, in the case of cited case law, drugs trafficking[106].

Under this wide latitude, PO2 and PO3 would fully meet the legality, public objective and proportionality tests since they all aim at deterring crime, deprive an offender of illicitly acquired property, prevent future use of proceeds of crime, and are to be paired with adequate safeguards. Established ECtHR case-law states that all proposed confiscation measures are generally perceived to be a legitimate restriction to the right to property as long as adequate **procedural safeguards**, such as the right of **fair hearing** and **right to a remedy**, are in place: this applies to simple conviction-based

[103] See, for example, ECtHR, *Agosi v. UK*, N°9118/80; *Raimondo v. Italy*, N°12954/87.
[104] ECtHR*, Todorov and others v. Bulgaria,* N°50705/11 at §187.
[105] ECtHR, *Phillips v. UK*, N°41087/98.
[106] ECtHR, *Butler v. UK*, N°41661/98.

confiscation[107], extended confiscation[108], and non-conviction based confiscation measures[109]. To the extent that PO2 extends the scope of confiscation measures only in a marginal manner, both in terms of crimes covered and additional possibilities to confiscate assets without conviction for a specific offence, the impact is limited. PO3 has a higher impact given that confiscation would be foreseen for a larger number of crimes (while still being limited to those of a serious nature or linked to organised crime activities). In addition, confiscation measures would also extend to more assets, given that confiscation would be possible for assets that are related to criminal activities but not necessarily to a specific crime for which the person in question was convicted. In addition, the requirement to make use of interlocutory sales will affect the right to property. The limited conditions under which such sales would be possible as well as the availability of effective remedies (see below) ensure however overall proportionality of the measure. PO4 has the highest impact in that extended confiscation as well as confiscation without prior conviction for a specific offence would be possible for all crimes. Whilst it would meet the legality test, an all crimes approach for far reaching confiscation measures would have a high impact on citizens and increase the risk of confiscation not meeting the public objective test and go beyond what is necessary to fight organised crime.

Procedural safeguards: right to a fair trial, presumption of innocence and right to an effective remedy

The right to a fair trial, the right to an effective remedy and the presumption of innocence are enshrined in Articles 47 and 48 of the Charter as well as in Articles 6 and 13 of the European Convention of Human Rights ("ECHR"). All these rights apply to confiscation measures which are considered to amount to a criminal charge[110].

All options foresee the possibility to challenge decisions of confiscation, as currently foreseen in Article 8 of the Confiscation Directive. This includes the effective possibility to challenge the circumstances of the case, including specific facts and available evidence on the basis of which the property concerned is considered to be property that is derived from criminal conduct[111]. The impact is lowest for PO2 to the extent that possibilities for non-conviction based confiscation remain limited. The potential impact is highest where confiscation can be ordered in relation to assets that are linked to criminal activities but without a conviction in relation to a specific crime (as foreseen under PO3 and 4). The absence of a criminal conviction raises issues related to the right to fair trial, effective judicial remedy, the presumption of innocence as well as the right to property. The extension of possibilities to confiscation assets without prior conviction for a specific

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[107] ECtHR, *Van Offeren v. the Netherlands*, N°19581/04.
[108] ECtHR, *Phillips v. UK*, N°41087/98.
[109] ECtHR, *M. v. Italy*, N°12386/86.
[110] See European Agency for Fundamental Rights, *FRA Opinion 03/2012 on the Confiscation of proceeds of crime*.
[111] Judgement of the Court of Justice of 21 October 2021 in Joined Cases C-845/19 and C-863/19, see in particular para 67.

offence would therefore need to be paired with equally strong safeguards. The respect of rights of defense and the presumption of innocence will be ensured where the following safeguards are put in place: confiscation without a conviction for a specific crime is subject to the requirement to prove that the assets in questions are linked to criminal activities and that the affected person has the effective possibility to rebut allegations[112]. In addition, it is recalled that confiscation does not necessarily have a punitive character: confiscation aims at taking away criminal profits, and thereby limiting the incentives for and capacity of criminals to continue their activities. It also has the restorative goal of ensuring that victims of crime are compensated and that the money taken away from organised crime can be used for public interest and social purposes.

When looking at the overall proportionality of the measures, full compliance with the European Union directives on procedural rights[113], notably Directive 2012/13/EU on the right to information in criminal proceedings[114] and Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings[115] must be ensured.

Data protection

Access to SIENA and databases would increase the amount and rate of data exchanged between relevant authorities. This increase will require the adequate data protection provisions to be in place, including existing safeguards in relation to protection of personal data at national and European level, which would apply. The human rights impact should be offset with the alignment of the new legislative measure with Directive 2016/68[116] on data protection, since the revision of the ARO Council Decision will allow clarifying that the processing of personal data is subject to the Law enforcement Data Protection Directive. Currently, Article 5 of this Council Decision refers explicitly only to the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data, and the Additional Protocol of 8 November 2001 to that Convention, regarding Supervisory Authorities and Transborder Data Flows. This will allow to specify more precisely the categories of personal data that can be exchanged, taking due account of the operational needs of the authorities

[112] These are, inter alia, ECtHR in Case 50705/11 *Todorov and others v. Bulgaria*, §215, and §237.

[113] Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, Directive 2012/13/EU on the right to information in criminal proceedings, Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings, Directive (EU) 2016/343 on the presumption of innocence, Directive (EU) 2016/800 on procedural safeguards for children in criminal proceedings, Directive (EU) 2016/1919 on legal aid in criminal proceedings.

[114] 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. 1–10.

[115] 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. 1–11.

[116] 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. 89–131.

concerned. Appropriate protocols should equally be in place when authorities are granted access to additional databases to ensure the safeguards are applicable to all.

6.5 Sustainable development goals impacts

All policy options aim at improving the existing asset recovery systems. As such, all would have an impact on the sustainable development goal of (16), peace, justice, and strong institutions through contributing to countering organised crime through its profits. Similarly, all options would impact the sustainable development goal of (8), decent work and economic growth through countering organised crime's infiltration into the legal economy. PO1 and PO2 would have a more limited impact, proportionate to their softer nature, whilst PO3 and PO 4 would have the greater impact given the stronger obligations that a legislative intervention would bring.

7. HOW DO THE OPTIONS COMPARE?

***Summary of the findings**: each criterion is qualified by a score from -3 to +3 (-3 indicating the most negative impact and +3 the most positive impact). The assessment is made in comparison to the baseline scenario as a benchmark.*

Table 4: comparison of policy options

Assessment criteria	**Policy option 1**	**Policy option 2**	**Policy option 3**	**Policy option 4**
Effectiveness	0,5	1	2,5	3
Efficiency	1	2,5	3	2,5[117]
Proportionality (including impacts)	1	1	1	-1
Coherence	0	1	3	3
Total	**2,5**	**5,5**	**9,5**	**7,5**

7.1 Effectiveness

7.1.1 Strengthen asset tracing capabilities

PO1 contributes to a **limited extent** to the objective of strengthening the asset tracing capabilities in Member States as it relies primarily on the voluntary exchange of best

[117] The scoring for efficiency of PO4 is lower than for PO3 because, even if the overall expected benefits do outweigh additional costs, the relative increase of benefits is lower than the relative higher costs. See section 7.2 for further details.

practices and the development of further guidance. Such measures are certainly useful and necessary, but would not be sufficient to overcome in a comprehensive manner and for all Member States the deficiencies in terms of lack of financial investigations and Asset Recovery Offices competences and access to and exchange of information. Given that these obstacles derive from regulatory shortcomings and lack of resources, the integration of best practices and guidance would depend on the willingness from policy-makers at national level to address these issues. Therefore, further voluntary exchanges are not expected to change this situation in a significant manner.

PO 2-4 would overcome such regulatory shortcomings to different degrees. By ensuring that Member States take a more strategic approach to asset tracing and financial investigations and that competent authorities have the necessary resources, additional powers and access to the most relevant information, **PO2** would strengthen to a **considerable extent** the capabilities of law enforcement authorities and in particular Asset Recovery Offices to identify and trace criminal assets. The large majority of stakeholders confirmed through interviews, workshops and the public consultation that reinforcing the powers and resources of Asset Recovery Offices will improve asset recovery to a very high extent. These measures will also facilitate the cross border exchange of relevant information to a considerable degree. **PO3** would **increase substantially** these capabilities in particular by ensuring that asset are systematically traced for the most proceed-generating criminal activities. **PO4** would **further increase to some extent** these capabilities by strengthening the effectiveness of temporary freezing orders and information exchange as well as by extending the requirement to trace assets through financial investigations in all crimes related to organised crime activities. However, the latter obligation could stretch the capacity of law enforcement to investigate the financial dimension of criminal activities, since it might hamper their capacity to focus efforts on cases where profits are higher.

7.1.2 Ensure efficient asset management

PO1 would contribute in a **limited manner** to the objective of ensuring efficient asset management. While improvements can be expected through the exchange of good practices and the development of possible guidance, such improvements are not expected to be significant in terms of ensuring that the value of confiscated assets outweighs the costs of asset recovery and maximises the revenues that can be used to repair the damage caused. **PO2** would **contribute to a higher (even if still relatively limited) extent** to ensure efficient asset management by setting out higher minimum management obligations and facilitating cross-border coordination. **PO3** would contribute **significantly** to the effectiveness of the management objective, in particular through the mandatory use of pre-seizure planning and interlocutory sales. These tools are best practices identified by stakeholders having a large potential for bringing down management costs on the one hand and maintaining and even maximising the value of

confiscated assets[118]. The creation under PO3 of a **specialised body** responsible for asset **management or Asset Management Office** would **equally contribute to a high extent** to improving management of criminal assets, since a specialised body pooling expertise and capable of supporting and advising decentralised management structures (in the Member States where it is more beneficial for structures to be decentralised) would increase the efficiency of asset management, which in turn would lead to costs reductions and the overall increase of the final value of confiscated property. This is confirmed by a large majority of stakeholders consulted in workshops (Asset Recovery Offices, representatives from Justice Ministries), interviews, and the public consultation[119]. This effective instrument would be maintained in **PO4** while merging it with the **Asset Recovery Office**, which could provide **certain improvements** in the managing of assets since it would ensure that good practices such as pre-seizure planning are systematically applied when Asset Recovery Offices are responsible for the tracing of assets.

7.1.3 Strengthen confiscation capabilities

PO1 would contribute only to a **limited degree** to strengthen to confiscation capabilities. The exchange of good practices and possible guidance or training are expected to improve the capabilities of individual stakeholders, within the legal framework as it exists in the different Member States. However, to the extent that not all Member States have confiscation measures in place that would allow for a more comprehensive ability to capture the proceeds from organised crime activities, these improvements are expected to be limited.

PO 2 – 4 are more effective in that they require Member States to put in place a number of legally binding measures that extend confiscation possibilities compared to the status quo. These options would foresee in different degrees an extension of the **scope**, with **PO4** being the **most effective** in that it would capture all crimes and **PO2** being the **least effective** in that the scope of existing confiscation measures would only be marginally increased. **PO3** would contribute in a **very substantial manner** to the objective of disrupting organised crime. It would allow capturing at least those crimes of a serious nature or crimes linked to organised crime activities and foresee the **possibility for new confiscation measures** that are able to recover illicit assets linked to criminal activities more broadly. This tool has proven its **effectiveness** and is a common feature in countries that were rated by the FATF as high performing.

PO3 would therefore be **instrumental** in addressing the threat of **powerful poly-crime groups** and address a common challenge encountered in relation to organised criminal activities carried out over a longer period of time.

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[118] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, pp. 99, 109-110

[119] *Ibid*.

7.1.4 *Improve the overall efficiency of the asset recovery system*

PO1 will contribute to the overall efficiency of the asset recovery system to a **low extent** since it promotes the exchange of best practices and further guidance on a number of relevant aspects such as financial investigations or asset management. **PO2** will contribute to the efficiency of the recovery system as whole **in a more substantial manner** in that it obliges Member States to adopt concrete measures to promote asset recovery as part of a more strategic and coordinated approach, thereby giving asset recovery more prominence while at the same time ensuring that progress can be better monitored through more specific data collection requirements. **PO3** will **further increase** the efficiency by requiring Member States to set up coordination and cooperation mechanisms among the multitude of actors and more stringent rules on monitoring the functioning of asset recovery measures, the identification of possible gaps and measures to remedy identified shortcomings. The requirement to establish asset registries would allow the relevant actors and in particular Asset Recovery Offices and Asset Management Offices to have real time information about the relevant assets and measures taken to ensure adequate feedback and coordination between relevant actors responsible for the different asset recovery phases. **PO4** would allow for **better steer** of asset recovery measures taken during different phases and by different actors by establishing one single body responsible for the general oversight as well as data collection. Better information about identified assets and their status – provided through asset registries would be available also for Asset Recovery Offices and Asset Management Offices in other Member States further strengthening asset recovery in a cross border context.

Conclusion

All policy options would contribute to different degree to the effectiveness criterion, being interlinked and mutually reinforcing. However, certain individual measures carry a greater weight in the assessment than others. On the **tracing** policy objective, measures which would ensure the systematic tracing of assets and financial investigations are to be considered particularly effective. On the **management** policy objective, measures which would include the effective implementation of efficient management rules would lead to a higher effectiveness score. On **confiscation**, a broader scope would be the most effective in order to ensure the capturing of a higher percentage of criminal proceeds.

PO1 is therefore the **least effective** in that it relies exclusively on **voluntary actions** by the different actors in Member States within the current legal framework, and does not guarantee the effective implementation of the measures which would meet the tracing, management, and confiscation objectives. While some of the shortcomings in the application of the rules can be expected through increased awareness, guidance and improved skills this option will **not overcome regulatory shortcomings** identified and as a consequence not solve the problems caused by large criminal activities conducted by organised crime groups in Europe.

PO2 is **moderately effective**: it strengthens **asset tracing capabilities to some degree** and contributes to an overall **improvement** of asset tracing and management planning, thus efficiently achieving to a moderate degree the policy objectives of tracing and management. The effectiveness is however limited because these measures do not provide sufficiently strong safeguards against the dispersion or depreciation of identified assets and because **confiscation measures remain limited** in scope, achievining the confiscation policy objective only to a limited extent.

PO3 is **very effective**: it significantly strengthens the **capabilities and powers** of the competent authorities and in particular Asset Recovery Offices and Asset Management Offices as part of a more strategic and systematic **use of financial investigations** and on the basis of clear standards and requirements regarding asset tracing and management. These measures achieve the tracing and management policy objectives to a high extent by equipping relevant authorities with the tools necessary to achieve the policy goal and establishing stronger obligations on Member States. Moreover, the main aspect contributing to the effectiveness of PO3 is however the requirement for Member States to allow for **confiscation of criminal assets which cannot be directly linked to a specific offence** and this in relation to an extended list of criminal offences, which would broaden confiscation possibilities to meet the confiscation policy objective to a high extent. Compared to PO2, measures under PO3 are significantly more effective because of the particular importance and impact of more systematic financial investigations and the significantly broadened confiscation possibilities.

While contributing to all specific policy objectives **PO4** is only **slightly more effective** than the previous option insofar as it sets out in **further detail certain powers and obligations** providing the competent authorities with the most extensive tools and competences and ensuring swifter cooperation between the different actors (also cross border).

7.2 Efficiency

All envisaged policy options would lead to positive results from a cost-benefit analysis[120] (i.e. analysis of potential benefits as compared to the estimated costs of the different options), considering that the costs of the different measures are offset by the benefits for the State budget of a higher asset recovery rate, and by the benefit of society as a whole, which would benefit from increased safety and economic health derived from a reduced criminal activity. Even though the measures are interlinked and mutually reinforcing, certain individual measures carry a greater weight in the assessment than others, with the

[120] Information on the costs for the preferred option are found in Annex 3. Information on the costs for the other options are based on the Impact Assessment study, with the costs presented herein adapted to the measures as considered in this Impact Assessment. Estimations on the benefits of every option in terms of potential increase of confiscated assets are based on the estimation in the Impact Assessment study of confiscated assets in 2019 (see Annex 4, table 7) and a qualitative assessment of the benefits of the measures in terms of improved asset tracing, management, confiscation methods and overall improvement in the efficiency of the asset recovery system.

overall efficiency score depending on the costs and benefits of certain individual measures and their weight in achieving the policy objectives.

On the **tracing** policy objective, the costs of implementation of existing measures are to be balanced with the benefits which would arise from a greater number of identified assets. On the **management** policy objective, the efficiency criterion would fundamentally depend on whether the proposed measures would lead to a cost-efficient management system, with the costs of putting in place management structures and more stringent management provisions to be compared and balanced with the benefits stemming from overall lower management costs and higher returns regarding the final value of confiscated property. On the **confiscation** policy objective, the costs of establishing further confiscation measures are to be compared and balanced with the benefits stemming from confiscating a greater number of assets, both in terms of revenues and in terms of impacts on organised crime. On the policy objective to **increase the overall efficiency of the asset recovery system**, the costs stemming from developing a coherent national strategy on asset recovery and setting up the structures necessary to implement it are to be compared and balanced with the overall benefits stemming from improving the asset recovery system as a whole.

PO1 presents the **lowest costs** of all options considered: approximately EUR 1.53 million devoted annually to holding meetings for exchanging best practices, developing guidelines and delivering training activities (with costs being shared between Member States and the Commission or EU agencies). Such limited costs would certainly be **compensated by the slightly higher rate of assets** returned to the State resulting from the improvements in the capacity of authorities to detect, confiscate and manage criminal assets. However, such financial benefits would be relative low compared to other options and very much depend on the willingness of Member States to incorporate best practices in their national frameworks. The **benefits** in terms of remedies to harm inflicted by organised crime (including victim compensation or reuse for public interest or social purposes) would be **relatively small**, given the expected **moderate increase** in the rates of asset recovery. Likewise, the impact in fighting criminality would result in limited benefits for companies and for the society as a whole.

The **costs** are **considerably higher** for **PO2**, estimated to be in the order of at least EUR 8.6-million. The main expenses derive from the investments required to provide Asset Recovery Offices with access to databases, to ensure that the competent authorities including in particular Asset Recovery Offices have the necessary resources and skills and to implement the requirements on data collection[121]. Most of these costs would span over time, with the majority of the expenses to be provided in the first years of implementation.

Such costs are however **proportionate to the benefits** resulting from in particular reinforced capacities to identify and thereafter freeze criminal assets (including through

[121] See annex 3 for a more detailed break-out, insofar as these measures are also included in PO3.

improved access to information and strengthened cooperation) and efficiency gains related to both the identification and management of assets. Some additional benefits can be expected from the targeted improvements of the confiscation instruments. The number (and value) of confiscation orders is estimated to increase to a considerable extent. Should this increase range between 10% and 20% compared to the baseline –a plausible range when considering the measures envisaged-, it would represent an additional amount of recovered assets of approximately EUR 100-200 million per annum across the EU.

In addition to these direct economic benefits, which outweigh the estimated costs considerably, the latter should be seen against the overall impact that such a higher confiscation rate and the corresponding reduction in criminal activities would have on the economy and the society. Illicit activities would be expected to decrease to a certain extent, and therefore citizens would benefit from higher levels of safety against crimes and companies would be less affected by fraud and distortions to competition.

For the above reasons and in particular the significant benefits that can be expected from measures under PO3, the efficiency rating for PO3 is significantly higher than for PO2.

The **costs** for **PO3** are **significantly higher** than for the previous options, since they comprise one-off costs estimated to be between EUR 31.6 and 38.4 million, with an approximate range of EUR 12 to 19 million every year derived from recurrent expenses. Besides costs derived from the measures in PO2 which are included in this option and those related to the establishment of a specialised Asset Management Offices with additional tasks, new costs of significant importance relate to the additional resources to develop expertise needed to carry out interlocutory sales and pre-seizure planning, the additional training required for law enforcement to systematically trace assets and on the new confiscation model as well as the establishment of asset registries.

However, similar to PO2, the **costs of PO3 would be largely offset** by the **higher confiscation rates**. It is conceivable that the measures could lead to an increase that could even double the current confiscation rate, which could mean one billion euros more in recovered assets every year. An increase of such an approximate magnitude is due to the significant extension of the confiscation possibilities and potential criminal assets covered, but also due to better identification of illicit assets and more efficient management (ensuring that illicit assets maintain or even increase in value). While the measures in PO3 imply additional costs, they are also expected to generate efficiency gains, e.g. through closer cooperation between the different stakeholders both cross border and internally.

More importantly, by **increasing in such a substantial manner the amount of funds taken away from the hands of criminals** (deriving from the much-increased capacity to trace assets and especially to confiscate them through the application of extended confiscation and the new confiscation model to a large set of crimes), the measures would contribute significantly to disrupt criminal activity. This would in turn positively

impact the competitiveness of companies and the economy as a whole and increase significantly the safety of citizens, who would also benefit from greater opportunities for compensation (when falling victims to organised crime) and from social activities funded through confiscated assets.

PO4 presents **costs similar** to the ones expected for PO3, in particular for one-off costs, which would be in the range of EUR 41.3 to 45.7 million. These **considerable costs** derive from the costs of the measures in PO3 and the additional costs resulting from establishing new bodies and interconnecting asset registries. Such costs would **only be partially offset by the efficiencies gained** from joining the functions of asset management and asset tracing under one roof, as well as further (marginal) improvements when it comes to cross border cooperation and safeguarding identified illicit assets.

However, additional measures such as the extension of financial investigations and more efficient cross-border asset management would only bring relative gains compared to PO3. As a result of these measures, the asset recovery rate would increase to a certain extent compared with PO3, although the growth would be minor in relation to PO3 and the indicative volume of additional assets confiscated would be on the range of EUR 50-100 million. While such an increase would most certainly offset the additional costs of this option, overall the **qualitative leap observed in PO3** as regards deterring criminal activity would be **maintained but only marginally increased in PO4**, and so would the positive impacts on the economy and the society as a whole.

Table 5: Summary of costs and benefits

Options	Costs	Benefits
PO1	Approximately EUR 1.53 million	Moderate increase in the rates of asset recovery
PO2	At least EUR 8.6-million	Reinforced capacities to identify and freeze criminal assets; Increased efficiency in the identification and management of assets; Minor additional benefits from the targeted improvements of the confiscation instruments; Approximate additional amount of recovered assets in a range of EUR 100-200 million every year.
PO3	Between EUR 31.6 and 38.4 million	Better identification of illicit assets; More efficient management; Increased capacity to confiscate assets through the application of extended confiscation and the new confiscation model to a large set of crimes;

		Approximate additional amount of recovered assets in an order of magnitude of EUR one billion more every year.
PO4	Between EUR 41.3 and 45.7 million	Minor efficiency gains as compared to PO3 from joining the functions of asset management and asset tracing; Marginal improvements as compared to PO3 to cross border cooperation; Approximate additional amount of recovered assets in an order of magnitude of EUR 1.05-1.10 billion more every year as compared to the baseline.

Overall, **PO3 is considered to be the most efficient option** when comparing the additional costs with the increased effectiveness of the asset recovery system and the positive impacts on security and therefore on the economy and the society.

7.3 Coherence

As indicated in the Evaluation, the main deficiencies as regards the coherence with other EU legal acts and policies relate to:

- The **scope** of the Confiscation Directive is narrower than the one of the Asset Recovery Offices Council Decision but also of other recent legislative instruments (the Regulation on Mutual Recognition of freezing and confiscation orders, the Directive on Countering Money Laundering by means of criminal law and the Anti-Money Laundering Directive)[122] that cover a much larger range of illicit activities generating huge profits. Moreover, the scope of the Confiscation Directive is narrower than the EMPACT priorities for the cycle 2021-2025, agreed by the Council on 12th May 2021 and including high-risk criminal networks (looking at organised crime but also at their use of corruption), cyber-attacks, trafficking in human beings, child sexual exploitation, migrant smuggling, drugs trafficking, fraud, economic and financial crimes (including online fraud schemes, excise fraud, MTIC fraud, intellectual property crime, counterfeiting of goods and currencies and money laundering), organised property crime (including the trafficking of cultural goods), environmental crime and firearms trafficking.

- the **confiscation tools** which are narrower to some extent in the Confiscation Directive than in the Mutual Recognition Regulation. The latter does not only

[122] 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; Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law, OJ L 284, 12.11.2018, p. 22-30; 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, OJ L 141, 5.6.2015, p. 73–117.

enable the recognition of orders covered by the Confiscation Directive, but it covers all types of freezing orders and confiscation orders issued following proceedings in relation to a criminal offence. This includes other types of orders issued without a final conviction;

- the **level of EU intervention** on the **repressive and preventative dimension of anti-money laundering** policies. As highlighted in the Evaluation, there is a stark contrast between the high level of details of the roles and powers of different actors contained in the asset recovery framework and the Anti-Money Laundering Directive, which results in a more strategic approach and better cooperation in the preventative dimension of anti-money laundering policies. This is reflected in the higher effectiveness that Member States have achieved on the preventative side than on the repressive angle, as reflected in evaluations by the FATF or Moneyval.

The scoring of the coherence criterion would therefore depend on the extent to which the policy option would address the above-outline policy incoherence. In relation to the scope, all legislative options (PO2, PO3 and PO4) would increase the coherence of rules governing Asset Recovery Offices and confiscation instruments. **PO2** would increase the **coherence in scope** only to a very **limited** degree. **PO3** would increase such coherence to a **greater level**, by adding a wider range of offences covered by the Mutual Recognition Regulation, the Directive on Countering Money Laundering by means of criminal law and the Anti-Money Laundering Directive, a coherence that would be achieved **in its entirety under PO4**.

As regards the **confiscation tools covered, PO3 (and PO4**, insofar as the measures of PO3 also apply in PO4) would ensure a **greater coherence** with the Mutual Recognition Regulation. PO3 would enlarge the situations where non-conviction based confiscation would apply and introduce confiscation models that enable authorities to confiscate assets of suspects or offenders for which the court is sufficiently convinced that the suspect belongs to organised criminal groups or is involved in particularly serious crimes and that the assets are the proceeds of crime. By doing so, PO3 would ensure that the different confiscation tools for which mutual recognition is enabled would be available to all Member States.

Finally, the various options would ensure that Member States develop a strategic approach to asset recovery (PO2), set the cases where assets should be traced through financial investigations (PO3) and regulate to increasing degrees the powers and information available to Asset Recovery Offices and the cooperation among them. In doing so, the different legislative options would increase the **coherence with the preventative side** of the Anti-Money Laundering regime, which requires Member States and private entities to adopt a risk-based approach and regulates the powers, accessible information and cooperation of relevant actors such as Financial Intelligence Units. **PO2 and to a larger extent PO3** would ensure a more structured approach to asset recovery

and to the roles of and cooperation among different actors, equating it to the preventative dimension. Therefore, while coherence with EU policies would be achieved to some extent by PO2 and to a large extent by PO3 and PO4, the non-legislative intervention (PO1) would only improve coherence to a negligible extent.

7.4 Proportionality (including impacts)

The analysis of proportionality focuses on the extent to which the measures are proportionate to the administrative burden on Member States and the interference on their discretion to organize themselves and balancing impacts in terms of in particular effectiveness with interferences with fundamental rights.

Measures that may be similar in terms of efficiency or effectiveness may nevertheless have a different proportionality score depending on the "costs" at which such otherwise efficient and effective measures come in terms of impact on fundamental rights or Member States' prerogatives. Similarly, impacts in terms of either interference with fundamental rights or Member States prerogatives can be different depending on the kind of measures that contribute to the efficiency or effectiveness of asset tracing, management, confiscation as well as overall strategic framework. The proportionality assessment weighs these different considerations when coming to the overall proportionality rating.

All options, especially PO2-4, **increase the administrative burden** on Member States, especially in relation to measures that promote a more systematic asset tracing, access by Asset Recovery Offices to the relevant data, or urgent freezing powers. Regarding confiscation and management, the administrative burden is **higher in PO3 and PO4**, in particular in relation to the incorporation of additional confiscation instruments and measures to maintain the value of assets (e.g. through interlocutory sales) as well as in relation to the creation (and interconnection) of asset registries. However, **in all cases** the additional administrative burden is **proportionate to the benefits**.

As regards the **interference with Member States organisational discretion**, **PO1** has **no impact**, while **PO2 interferes** in relation to aspects such as the development of a plan on asset recovery or the establishment of asset management contact points. This **interference is higher in PO3**, since it establishes concrete obligations on financial investigations –albeit limited to certain crimes and situations- or the establishment of an entity specialised in managing assets that would support existing managing authorities and have the possibility of managing assets. However, given the deficiencies identified in those areas and the need to achieve progress in relation to asset tracing and management, **the level of interference is justified**.

This is **not necessarily the case in PO4**. The limited effectiveness gains of measures such as the automatic launch of financial investigations for all crimes or the concentration of asset tracing and management tasks in one entity (Asset Recovery and Management Offices) could be considered as going **beyond what is necessary** to

achieve the objective of improving the efficiency of the asset recovery system. Such measures would risk representing an excessive interference with the freedom of Member States to organise their national set-ups as they see best. This goal is achieved in a more proportionate manner through requirements for an action plan or coordination mechanisms (PO2 and PO3). Moreover, the extension of the scope as foreseen in PO4 would mean that powerful confiscation tools such as extended confiscation or the new confiscation model would be applicable to all crimes. However, such tools are designed to counter the complex nature of modern organised crime. Therefore, by allowing its application to all crimes -even those not necessarily linked to organised crime activities- **PO4 could be considered as less proportionate**.

When balancing relevant impacts including in particular **fundamental rights impacts**, proportionality must be ensured between the objective justification and need for the measures in question (e.g. in terms of combating organised crime) and the potential interference with fundamental rights that asset recovery measures could have, in line with the assessment undertaken section 6.4. Where the impact on fundamental rights (including in particular property right or fair trial)/rights of defence) is **highest (as under PO3 and PO4,** where the fundamental rights impact is the highest but outweighed by expected benefits**)** the resulting interference with fundamental rights is not only justified by the need to effectively deprive criminals and in particular organised crime from their illicit assets e.g. through extended confiscation possibilities (capturing more illicit gains from criminal activities going beyond the proceeds from a specific crime), or measures to prevent asset flight (e.g. through urgent freezing powers). The higher impact on fundamental rights will also need to be paired with stronger safeguards, including effective remedies available to the person affected.

In light of all the above, PO1-3 would be entirely proportionate, while PO4 would be considered partially proportionate. The main reason for the different proportionality rating of PO3 and PO4 is the interference with Member State prerogatives by regulating in more detail procedures at national level without such interference being compensated by additional efficiency or effectiveness gains.

8. PREFERRED OPTION

8.1 Policy Option 3

In a situation where only 1% of criminal proceeds are confiscated, criminals are not deprived of the entirety of their illegal gains and damage generated by criminal activities is not sufficiently remedied. Ambitious measures are needed to substantially increase the capabilities of the relevant authorities to swiftly and effectively identify, manage and confiscate illicit assets. However, each policy option also includes necessary trade-offs between, on the one hand, the level of impact on organised crime and the ability to disrupt such activities through the recovery of assets, and the potential interference with fundamental rights and Member States' prerogatives and budgetary burdens on the other.

While measures under **PO1** can indeed make a valuable contribution to improving the situation within the existing legal framework, it would only marginally contribute to overcome the scale and nature of the problem. As shown in the Evaluation, it is precisely the large margin of discretion of the current legal framework that is at the origin of many of the problems identified. Therefore, it is difficult to address them through non-legislative measures. Issues such as the lack of prioritisation of asset tracing or the inefficiency in asset management can only be overcome if there is a legal obligation. PO1 would have little interference with fundamental rights and Member States prerogatives and budgetary burdens, but would as a trade-off have low effectiveness in addressing the problem. Measures under PO1 could and should, however, be taken to complement legislative changes.

Similarly, **PO2** would contribute only to a limited extent to improving the current situation in that the measures taken would maintain a relatively large margin of discretion for Member States and add only few additional requirements compared to the status quo. PO2 would have limited interference with fundamental rights and Member States prerogatives and budgetary burdens, but would as a trade-off have low effectiveness in addressing the problem.

PO4 can be expected to be **more effective in some respects** (e.g. more specific requirements on urgent freezing powers or information exchange, further extension of the scope of confiscation measures compared to PO3, requirements to centralise expertise and competences) but not necessarily in others (e.g. on financial investigations for all crimes). However, the trade-off of PO4 is that expected **gains in effectiveness are expected to be limited** compared to the extra costs and potential fundamental rights impacts. Moreover, this option would have significant drawbacks, as it would imply more significant and to some extent **excessive interference** with Member States' freedom to organise asset recovery according to their choices and national preferences without the additional gains in terms of effectiveness and efficiency fully counterbalancing this interference. Furthermore, an all crimes approach for far reaching confiscation measures would have a high impact on citizens and increase the risk of confiscation not meeting the public objective test and go beyond what is necessary to fight organised crime.

As regards **PO3**, the measures to ensure asset tracing in the more proceed-generating cases, to reinforce Asset Recovery Offices' powers and roles, to ensure the adoption of effective asset management mechanisms and confiscation models would raise the **effectiveness** of the asset recovery system to a **significant** extent. Stakeholders (law enforcement, judicial authorities, Europol, Asset Recovery Offices and NGOs) recognise the effectiveness of the measures under PO3. Despite the costs and potential fundamental rights impacts of confiscation measures, these measures are considered as **efficient** given the **qualitative leap in the rate of assets** taken away from criminals, and **proportionate** in relation to the administrative burden and interference with Member States organisational set-ups. In terms of **fundamental rights**, the **impacts** of PO3 and in

particular of the new confiscation model are **balanced** against safeguards and policy objective sought, given the scale of the problem. The trade-offs of PO3 are therefore a higher effectiveness and efficiency of the asset recovery system, and the potential interference with fundamental rights, and Member States' prerogatives and budgetary burdens on the other.

The overall impact of PO3 will differ on Member States, given the heterogeneity of the asset recovery set-ups between jurisdictions. While all the 20 EU Member States that have been subject to FATF/Moneyval fourth round of **mutual evaluations** were considered as fully or largely **compliant from a legal perspective** with the FATF recommendations (which are less detailed than the Confiscation Directive), **effectiveness of the asset recovery systems varied**. Member States whose asset recovery system was evaluated to be of low effectiveness (HU, MT, PL, SK) are therefore likely to be impacted by the reform of PO3 to a high extent. The majority of Member States whose asset recovery system was evaluated to be moderately effective (AT, BE, CY, DK, EL, FI, HR, IE, LU, LV, LT, PT) will be equally moderately affected by the measures of PO3. On the other hand, the countries with a higher effectiveness ratings (CZ, ES, IT, SE) are likely to be less affected by the new measures, although they would have to introduce some changes to their national frameworks.

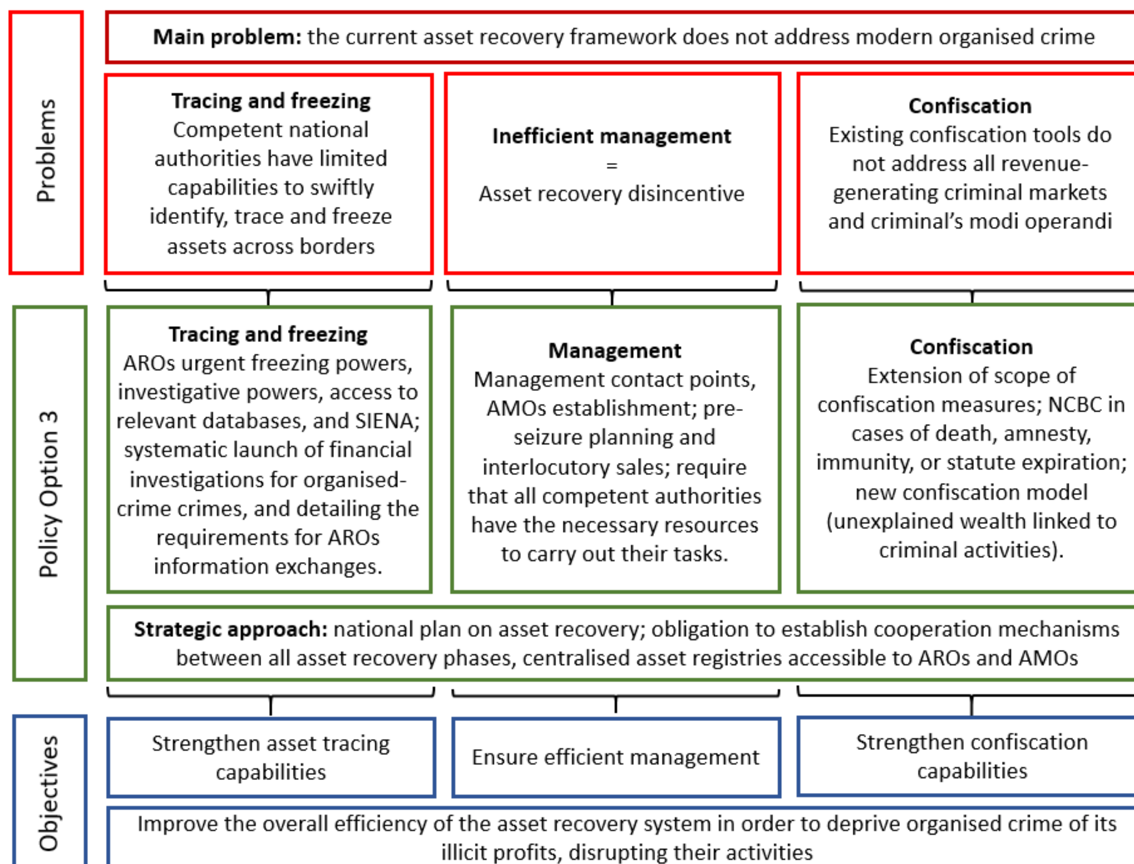
At the same time, the resources that Member States would have to devote would not only depend on the regulatory changes foreseen in the preferred option, but also on the level of threat they face, since some Member States have higher levels of criminal activity than others or present certain characteristics (the size of the real estate market, the importance of the financial system) that make them more attractive to criminal investments. This will affect the impact of PO3 on different Member States. The extent to which Member States have complied or gone beyond current requirements also provides a picture of the countries most significantly affected. However, all Member States would be positively impacted by lowering the presence of organised crime in their territory which affects all layers of society in all the Member States.

In conclusion, **PO3 strikes the best balance** between effectiveness, cost efficiency and impact on fundamental rights and is overall proportionate to the scale of the problem.

The effective implementation of the new rules, including softer options such as the availability of necessary resources, will be ensured through monitoring Member States' national strategies on asset recovery (which the preferred option would require Member States to undertake) which will ensure that the required measures, in all phases of asset recovery, are implemented and assessed nationally as a whole. This will ensure that Member States themselves assess their own situation on the ground, whilst viewing the main asset recovery problem in all its phases and not in silos, and design how to best implement rules of softer nature in a manner tailored to their national specificity. Moreover, the Commission will monitor the implementation of the new rules through a combination of monitoring transposition measures by Member States and dialogue with

stakeholders at European and international level. Data such as availability of the necessary resources will be collected through consultation of the Asset Recovery Offices Platform and the Contact Committee of the Confiscation Directive, as well as agencies such as Europol and Eurojust.

Figure 6: intervention logic PO3



8.2 REFIT (simplification and improved efficiency)

Per the Commission's Regulatory Fitness and Performance Programme (REFIT), all initiatives aimed at changing existing EU legislation should aim to simplify and deliver stated policy objectives more efficiently (i.e. by reducing unnecessary regulatory costs). The analysis of impacts suggests that the preferred option is anticipated to have a limited and at times positive impact in terms of burden on Member States.

To the extent that the measures foresee a more strategic approach to asset recovery (including the requirement to ensure a more systematic identification of assets by law enforcement authorities), and provide for more effective tools of confiscating assets (including the possibility to confiscate illicit asset related to criminal activities without requiring the conviction for a specific crime) and foresee the establishment of "centres of expertise" with the competent authorities having the necessary resources, skills and powers, the asset recovery process as a whole as well as cross border cooperation will become significantly more efficient.

Regulatory burden related to these measures will be – as shown in the sections above – more than offset by the benefits in terms of being able to identify freeze and confiscate more illicit assets and maintain or even maximise their value.

While ensuring that judicial authorities get acquainted with the new confiscation model would require important efforts in terms of training and guidance in the first place, in the long term the availability of such an effective tool would reduce the current burden on authorities to confiscate criminal assets.

Requirements to facilitate Asset Recovery Offices' exchange of information, such as facilitating their access to relevant databases, would reduce the current burden in cross-border cooperation among Asset Recovery Offices. Given the specialised expertise of Asset Recovery Offices, ensuring they can support investigators in tracing assets would increase the overall efficiency of asset tracing and reduce the burden on non-specialised law enforcement units. Similarly, requirements for the establishment of an Asset Management Office would reduce the overall burden compared to the current situation, where in many Member States asset management is carried out by a wide array of authorities without the sufficient expertise or support, in particular to manage complex assets such as companies.

8.3 Application of the "one in, one out" approach

This initiative would not entail neither administrative costs nor savings for the private sector, and, as to adjustment costs, it would mostly concern public authorities.

9. HOW WILL ACTUAL IMPACTS BE MONITORED AND EVALUATED?

To monitor the effective implementation of the revised legislation, the Commission will publish implementation reports. In addition, it is essential that the implementation of the preferred policy option and the achievement of the objectives is closely monitored. A robust monitoring and evaluation mechanism is crucial to ensure that the envisaged beneficial effects of the improvements to the asset recovery regime materialise in practice.

The Commission should also evaluate the implementation of the new legal framework, no sooner than four years after the date of transposition of the instrument to ensure that there is enough data relating to the functioning of the instrument. The Evaluation shall include stakeholders' consultation to collect feedback on the effects of the legislative changes. The Commission will present a Report to the European Parliament and to the Council on the functioning of the legislative instrument. The report shall also include an evaluation of how fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union have been respected.

To ensure the effective implementation of the measures foreseen and to monitors their results, the Commission will closely work with relevant stakeholders from national authorities in the Member States.

The proposed, not exhaustive list of indicators will be based on the operational objectives pursued by the measures identified under the preferred option:

Table 6: Monitoring indicators based on the operational objectives

Main objectives	Monitoring indicators	Data Sources
Strengthen asset tracing capabilities	▪ Number of financial investigations launched ▪ Number of SIENA exchanges among Asset Recovery Offices ▪ Speed and completeness of Asset Recovery Offices' answers in information exchanges	• Member States • National Strategies on Asset Recovery • Europol • FATF Mutual Evaluation Reports • Stakeholders' consultation • Monitoring of transposition
Ensure efficient asset management	▪ Value of assets at the time of freezing vs. value of assets confiscated (including proceeds from interlocutory sales) ▪ Value of assets when finally disposed of ▪ Number and proceeds from interlocutory sales ▪ Number of pre-seizure planning assessments undertaken ▪ Management costs vs value of assets disposed	▪ Member States ▪ Statistics on interlocutory sales ▪ National Strategies on Asset Recovery ▪ Stakeholders' consultation ▪ Monitoring of transposition
Strengthen confiscation capabilities	▪ Number and value of assets confiscated ▪ Number and value of standard confiscation orders ▪ Number and value of value confiscation orders ▪ Number and value of third-party confiscation orders ▪ Number and value of extended confiscation orders ▪ Number and value of non-conviction based confiscation orders ▪ Number and value of unexplained wealth linked to criminal activities confiscation orders	▪ Member States ▪ National Strategies on Asset Recovery ▪ Monitoring of transposition (incl data including in the asset registry) ▪ Stakeholders' consultation ▪ Eurojust
Improve the overall efficiency of the asset recovery system	▪ achievements of priorities and objectives under national strategies ▪ Cooperation between different national authorities ▪ Training made available ▪ Resources made available ▪ Establishment and use of asset registries	▪ National Strategies on Asset Recovery including data on its implementation ▪ FATF Mutual Evaluation Reports ▪ Stakeholders' consultation ▪ Monitoring of transposition

ANNEX 1: PROCEDURAL INFORMATION

LEAD DG, DECIDE PLANNING/CWP REFERENCES

The lead DG is the Directorate-General for Migration and Home Affairs (DG HOME) for the preparation of the initiative and the work on the Evaluation and Impact Assessment. The agenda planning reference are PLAN/2020/8718 (freezing and confiscation of proceeds of crime) and PLAN/2020/8719 (Asset Recovery Offices).

ORGANISATION AND TIMING

The Inception Impact Assessment was published on 9 March 2021. Within this framework, the Impact Assessment and the Evaluation were subsequently prepared.

The Inter-Service Group set up by the Secretariat-General to assist with the implementation of measures related to the Security Union was consulted within the framework of the preparation of this policy initiative. The Inter-Service Group was composed of the following Commission Directorates-General and services: Secretariat-General (SG); Legal Service (LS); Justice and Consumers (JUST); Financial Stability, Financial Services and Capital Markets Union (FISMA); European Anti-Fraud Office (OLAF); Taxation and Customs Union (TAXUD); Informatics (DIGIT); Education, Youth, Sport and Culture (EAC); European Civil Protection and Humanitarian Aid Operations (ECHO); European External Action Service (EEAS); Employment, Social Affairs and Inclusion (EMPL); Energy (ENER); Environment (ENV); Foreign Policy Instruments (FPI); Internal Market, Industry, Entrepreneurship and SMEs (GROW); Human Resources and Security (HR DS), Joint Research Centre (JRC); Maritime Affairs and Fisheries (MARE); Mobility and Transport (MOVE), Neighbourhood and Enlargement Negotiations (NEAR); Regional and Urban Policy (REGIO); Research and Innovation (RTD); Health and Food Safety (SANTE); TRADE; Structural Reform Support (REFORM); International Partnerships (INPTA); Eurostat (ESTAT).

The Inter-Service Group was consulted on the following: (1) the Inception Impact Assessment, (2) the terms of reference of the study to support the preparation of the Impact Assessment, (3) the consultation strategy, public consultation questionnaire, draft problem tree, (4) the Evaluation intervention logic and Evaluation questions, (5) the Inception Report of the study to support the preparation of the Impact Assessment, (6) the Interim Report and (7) Final Report for review of the same study, the (8) first and (9) second draft Impact Assessment. The Inter-Service Group met 2 times, during (1) the kick off meeting of the study to support the preparation of the Impact Assessment, and (2) to discuss the draft Impact Assessment report.

CONSULTATION OF THE RSB

The Directorate-General for Migration and Home Affairs submitted the present Impact Assessment report to the Regulatory Scrutiny Board (RSB) on 2 February 2022. The Regulatory Scrutiny Board reviewed the draft impact assessment at its meeting of 2

March 2022 and delivered a positive opinion without reservations on 4 March 2022, following which the impact assessment was revised to strengthen the presentation and comparison of the policy options, including their costs, benefits, and impacts. The impact assessment was further revised to better reflect the views of different stakeholder and how the identified problems differ in the Member States. Finally, the revision outlines a first monitoring and evaluation programme of the envisaged proposal.

EVIDENCE, SOURCES AND QUALITY

The Impact Assessment is notably based on the 'Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation'[123] and on the stakeholder consultation (see Annex 2) and on the results of the Evaluation (see Annex 7). The Commission applied a variety of methods and forms of consultation, ranging from consultation on the Inception Impact Assessment and a public consultation, which sought views from all interested parties, to targeted stakeholders' consultation by way of questionnaires, experts' interviews and targeted thematic technical workshops, which focused on subject matter experts, including practitioners at national level. In particular, the Commission organised two workshops in 2021 on asset recovery: the Asset Recovery Offices Platform Meeting[124] of 25-26 May 2021 and the Contact Committee meeting of the Confiscation Directive[125] of 1-2 June 2021, where additional data was collected among the participants also for the preparation of the Evaluation.

In this context, the Commission also took into account the findings of the study on 'Asset recovery and confiscation: what works and what doesn't work'[126] and the study on the transposition of Directive 2014/42/EU[127], which were commissioned by DG HOME and developed by the contractor based on desk research and the following stakeholder consultation methods: surveys, interviews with subject matter experts, questionnaires, and expert workshops.

[123] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016.

[124] The Asset Recovery Offices Platform is an informal group set up by the European Commission gathering EU AROs, the Commission and Europol to further enhance EU cooperation regarding asset tracing and coordinate exchanges of information and best practices.

[125] The Contact Committee of the Confiscation Directive is an informal group of experts that support the Commission in the implementation of the Directive 2014/45/EU and in the exchange of best practices among Member States.

[126] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081.

[127] European Commission, Directorate-General for Migration and Home Affairs, *Compliance assessment of measures of Member States to transpose Directive 2014/42/EU ("Confiscation Directive") and legal consultancy on this Directive, Overall Report*, 2019, HOME/2017/ISFP/FW/LECO/0084.

ANNEX 2: STAKEHOLDER CONSULTATION (SYNOPSIS REPORT)

This Annex provides a synopsis report of all stakeholder consultation activities undertaken in the context of this Impact Assessment.

1. Consultation Strategy

To ensure that the general public interest of the EU in relation to asset recovery and confiscation was properly considered in the Commission's approach, a wide consultation of stakeholders was undertaken. The aim of the stakeholder consultation was:

- To identify the problems in relation to asset recovery and confiscation
- To identify the effectiveness, efficiency, relevance, coherence and EU added value of the current instruments
- To identify the roles of different actors in the actions to be taken and the level of action needed, in accordance with the principle of subsidiarity
- To identify the possible options to tackle the problems identified and the impact of such options.

Views were sought from a range of stakeholders, through different consultation tools. These stakeholders related to Asset Recovery Offices, National Authorities (Judicial and Law Enforcement), EU Agencies (Europol, Eurojust, CEPOL), international organisations, the European Institutions, civil society organisations and from members of the public. During the consultation process, a variety of methods and forms of consultations were applied. They included:

- Consultation on the Inception Impact Assessment, which sought views from all interested parties
- Targeted stakeholder consultations in the form of Workshops
- Targeted stakeholder consultations in the form of written responses
- Targeted stakeholder consultations in the form of semi-structured interviews
- A public consultation

In this context, the Commission also took into account the findings of the *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation,*[128] which was commissioned by the Commission's Directorate-General for Migration and Home Affairs in March 2021 and prepared by a contractor based on desk research and the following stakeholder consultation methods: written questionnaires, semi-structured interviews and Policy Option Workshops. The

[128] HOME/2020/ISFP/FW/EVA2/0016

Commission also considered the findings of the *Study on freezing, confiscation and asset recovery – what works, what does not work*[129]*'*, commissioned in 2020.

The diversity of perspectives proved valuable in supporting the Commission to ensure that its proposal addressed the needs and took into account the concerns of a wide range of stakeholders, at both European, national and international level. Taking into account the COVID-19 pandemic, the consultation activities focused on virtual interviews and Workshops through video conference. This has no impact on the overall quality of the consultations.

2. Consultation activities

2.1. Feedback on the Inception Impact Assessment

A call for feedback, seeking views from any interested stakeholders, on the basis of the Inception Impact Assessment[130] was issued by the Commission. The consultation sought feedback from EU citizens, public authorities and non-governmental organisations. The call for feedback period was between 9 March 2021 and 6 April 2021. Participants of the consultation were able to provide online comments and submit short position papers, if they wished, to provide more background on their views.

2.2. Stakeholder events

Over the course of the consultation, the Commission organised two Workshops that were held with Asset Recovery Offices representatives (25-26 May 2021) and the Contact Committee of the Confiscation Directive (1 – 2 June 2021). Background documents were shared to the participants to the Workshops presenting the initial problem tree, with key questions steering the discussions in relation to the stakeholders' practical experiences relating to the problems existing.

Workshop with Asset Recovery Offices representatives and Contact Committee of the Confiscation Directive

On 25 and 26 May 2021, a Workshop was held with Asset Recovery Offices representatives at an Asset Recovery Offices Platform meeting. The objective of this Workshop was to gain Asset Recovery Offices' views in relation to the effectiveness, efficiency, relevance, coherence and EU Added Value of Directive 2014/42/EU and Council Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices. The Workshop also enabled the contractor to gain viewpoints regarding the problem definition and potential Policy Options.

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[129] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081

[130] Available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12725-Fighting-organised-crime-freezing-and-confiscating-the-proceeds-of-crime_en, Ares(2021)1720625.

On 1 – 2 June 2021, a Workshop was held with members of the Contact Committee of the Confiscation Directive, composed of Member States' representatives. The aims of this Workshop were the same as those for the Workshop with Asset Recovery Offices representatives.

For both Workshops, the use of digital online tools such as Slido and Mentimeter were used to measure stakeholders' viewpoints in relation to the different elements of the Evaluation and the Impact Assessment.

2.3. Targeted consultation by way of written responses

Following the Workshops held in May and June 2021, stakeholders were invited to provide their additional comments to the Commission in the form of written questionnaires.

2.4. Public consultation

A public consultation[131] was also launched for the purposes of this Impact Assessment to offer citizens and other stakeholders the opportunity to express their opinions on current problems and the future of EU asset recovery and confiscation, and on the Evaluation of the asset recovery and confiscation framework composed of Directive 2014/42/EU and Council Decision 2007/845/JHA. The public consultation was launched on 21 June 2021, with the Consultation closing on 27 September 2021.

2.5. Study to support the preparation of an Impact Assessment on EU Policy Initiatives on Asset Recovery and Confiscation

The Commission also contracted an external consultant to conduct a Study to support the preparation of an Impact Assessment on EU Policy Initiatives on Asset Recovery and Confiscation. The work on the Study took place between March 2021 and December 2021 and involved desk research, stakeholder consultations by way of written questionnaires, semi-structured interviews and Policy Option Workshops.

2.5.1 Semi-structured interviews

Almost 40 semi-structured interviews were undertaken over the course of the contracted Study. The consultation included targeted interviews with stakeholder groups on the basis of formalised and open-ended questions allowing for open and in-depth discussions. These interviews were conducted from April to July 2021 via video conference. The stakeholder groups targeted for these interviews included:

- European Commission
- Europol
- CEPOL

[131] Available at: https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12856-Fighting-organised-crime-strengthening-the-mandate-of-EU-Asset-Recovery-Offices/public-consultation_en

- Eurojust
- Member State National Prosecution Services
- Member State Law Enforcement Authorities
- Asset Recovery Offices
- Asset Management Offices
- NGOs (Libera/CHANCE, Transparency International, WWF Central and Eastern Europe)
- Council of Europe

The interviews aimed at (i) gathering information related to the implementation of the current legislative framework at EU level including the problems existing (ii) deepening the understanding of current practice in relation to the asset recovery phases (iii) gathering points of view relating to potential measures for improvement. The results of these interviews were presented in the Final Report of the Study to support .

2.5.2 Targeted consultation by way of a questionnaire

A written questionnaire was submitted to both Asset Recovery Offices and members of the Contact Committee of the Confiscation Directive in July 2021 to fill missing gaps in relation to the problem definition and the assessment, as well as to gather quantitative data relating to effectiveness and efficiency, necessary for the Commission's Evaluation. Responses to the Asset Recovery Offices questionnaire were received from the following Member States: Austria, Bulgaria, Czech Republic, Denmark, Finland, Germany, Greece, Ireland, Italy, Latvia, Netherlands, Romania, Spain (Judicial Asset Recovery Office), Spain (Police Asset Recovery Office), Sweden. Responses to the Contact Committee questionnaire were received from the following Member States: Bulgaria, Cyprus, Estonia, Germany, Italy, Latvia, Lithuania, Netherlands, Portugal, Slovakia, Slovenia.

2.5.3 Policy Option Workshops

Four Policy Option Workshops were held with stakeholder groups in September 2021 with a view to presenting the problem assessment undertaken by the contractor and presenting the potential policy options. The aim of these Workshops, via videoconference, was to gather the views of the stakeholders on the policy options and identify the potential impacts of the Policy Options in relation to key impacts measured for the Study i.e. impact on confidence in justice in the EU, impact on law enforcement, impact on policy objectives and impact on costs associated with the measures. The Workshops were held with Europol, Law Enforcement and Prosecution Authorities, Disposal and Management Authorities and the World Bank and non-governmental organisations.

3. Stakeholder participation

Stakeholders consulted included:

- EU Institutions and Agencies

- Asset Recovery Offices
- Law enforcement authorities in the Member States
- Judicial authorities in the Member States
- Non-governmental organisations and civil society (Libera/CHANCE, Transparency International, WWF Central and Eastern Europe)
- International organisations (World Bank, Council of Europe)

The feedback on the Inception Impact Assessment and the public consultation included responses from members of the public, non-governmental organisation and associations with an interest in this field. This diversity in responses and perspectives has been valuable in assisting the Commission in drawing up its proposal.

4. Methodology and tools

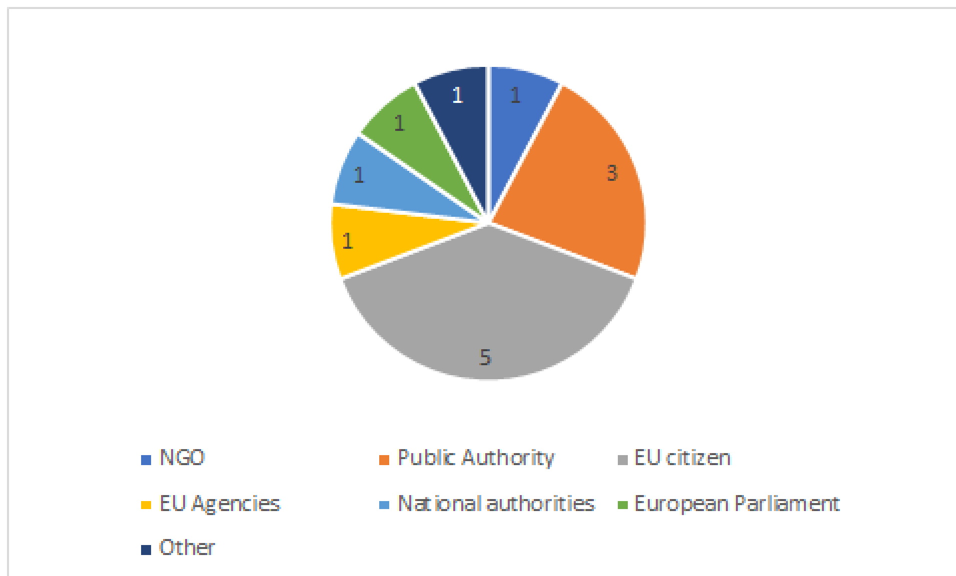
The processing of responses was undertaken manually due to the written responses received from a vast variety of stakeholders. The results from stakeholder interviews and written questionnaires for the Study was inputted into an Evidence Grid by the contractor in order to be in a position to triangulate the results of primary research with secondary research conducted through desk review.

5. Results

5.1. Consultation on the Inception Impact Assessment

This Inception Impact Assessment received 13 responses from a variety of stakeholders, ranging from members of the public and public authorities to EU Agencies and the European Parliament.

Figure 1 Overview of responses to Inception Impact Assessment



The Inception Impact Assessment was welcomed by responding stakeholders. A diversity existed regarding the Policy Options supported. NGOs and national authorities supported Policy Option 3 focussing on legislative measures. Some stakeholders (NGO) welcomed the introduction of additional measures in relation to extended confiscation and non-conviction-based confiscation. While Policy Option 3 was supported by stakeholders, Policy Option 2 (the non-legislative option) was identified by one national authority as the best solution due to the time lapsing since the adoption of the Confiscation Directive. A combination of both legislative and non-legislative intervention was supported by a public authority responding to the Inception Impact Assessment, with suggestions also made in relation to expanding the scope of Asset Recovery Offices in each Member State and introducing a legal framework for cooperation between judicial authorities to execute out of court confiscation decisions. The Inception Impact Assessment also provided the Commission with useful feedback from citizens. A past victim of crime responded welcoming the provisions in relation to greater victim protection and victim compensation.

5.2 Stakeholder events

The workshops held by the Commission were attended by Asset Recovery Offices representing all Member States as well as contact points in EU Agencies. The workshop with the Contact Committee of the Confiscation Directive also ensured Member State representativeness.

During the Workshops undertaken with both Asset Recovery Offices and the Contact Committee of the Confiscation Directive, the contribution of both Council Decision 2007/845/JHA and of Directive 2014/42/EU towards their respective specific objectives was discussed. Regarding Council Decision 2007/845/JHA, these Workshops confirmed that the legislative instruments in place contributed to the specific objectives in relation to (i) improving cooperation and communication of information and data between Asset Recovery Offices (ii) reinforcing the Offices' asset freezing and tracing ability through the enhancement of Asset Recovery Offices' powers (iii) increasing the rate of frozen, confiscated and recovered assets (iv) improving the management and disposal of frozen and/or confiscated assets (v) improving the consistency of statistical data on asset recovery.

The workshops also confirmed the problem tree presented in relation to the key drivers impacting effective asset recovery and confiscation. Asset Recovery Offices were asked to rate the drivers that cause the greatest problem in identifying assets. The first rated driver related to insufficient operational powers of the Offices, with the second driver identified as the limited resources allocated to Asset Recovery Offices. Limited access to information at national level was identified as the third most important driver, the lack of automatic launch and standardised rules on financial investigation as the fourth and finally, challenges for the exchange of information were identified as the last driver.

In relation to management and disposal of assets, this was also discussed with the Contact Committee. Eighteen respondents out of 25 representatives marked that the limited resources allocated to management causes the greatest problem in the management and disposal of assets, whereas two representatives marked it as the second, four as the third, and one as the fourth greatest challenge. As to the necessity of exchange of information between Asset Management Offices in cross-border cases, it was suggested that communication between requesting and executing state about the management of asset could be improved.

The discussions at the Workshop highlighted the position of stakeholders to ensure that intervention included non-legislative measures relating to greater coordination, cooperation and training. Some Member State representatives at both Workshops highlighted the benefits brought at national level by such non-legislative measures. Moreover, the issue of limited resources was highlighted as a key point by all stakeholders, with participants indicating that legislative measures would not have a considerable impact if resources did not accompany such new measures.

Following the workshops held in May and June 2021, a number of written responses were received from Member States. These written responses followed on from the Background Documents submitted to the participants prior to the Workshop. Written responses were received from national authority representatives in the Netherlands, Czech Republic, Germany, Poland, France and Finland.

The responses confirmed the overall relevance of the ARO Council Decision and the Confiscation Directive to respond to the needs existing in relation to asset recovery and confiscation. In relation to the envisaged revision of the asset recovery framework, Member States stressed the need to ensure effective implementation of existing acquis and the need for raising awareness and further increasing expertise and experience in the application of the relevant rules. Member States also highlighted specific aspects of particular importance from their specific point of view including the need for strengthened cooperation, more systematic asset tracing, and increased capabilities and powers for asset recovery offices as well as measures to improve asset management. Extended confiscation possibilities implemented in several Member States have yielded good results; a replication at EU level would require a careful assessment of the fundamental rights implications and necessary safeguards. Member States cautioned against legislative changes that would interfere with Member organisational prerogatives or budgetary autonomy or which would result in disproportionate administrative burden.

The responses also highlighted the need for greater coherence between the instruments in place in relation to asset recovery and confiscation and other EU legislative instruments in place such as Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders.

5.4 Public consultation

50 responses to the public consultation were received in total (n=50). When interpreting the results of the consultation, responses received cannot be understood as representing the views of any particular population or group of stakeholders. The questionnaire was publicly available on the Internet, and no one was precluded from providing a response. Information on the demographic profile of respondents is based on self-reported values and the survey design did not allow for any verification of received data.

The sample include 30 responses (60%) submitted on behalf of EU citizens. Public authorities were the next largest group, accounting for eight responses (16%), followed by companies/business organisations (n=4, 8%), non-governmental organisations (NGO) (n=3, 6%), business associations (n=2, 4%), 'other' (n=2, 4%) and academic/research institutions (n=1, 2%). The overview of contribution types is presented in the Table below.

Table 1 Overview of contribution types

I am giving my contribution as a/an	Count	Per cent
Academic/research institution	1	2%
Business association	2	4%
Company/business organization	4	8%
EU citizen	30	60%
Non-governmental organisation (NGO)	3	6%
Other	2	4%
Public authority	8	16%
Total	**50**	**100%**

Regarding the geographical distribution of respondents (see Figure), most contributions came from EU Member States. By far, the largest group of contributions (n=17, 37%) was submitted by respondents based in Italy, followed by Bulgaria (n=5, 10%), France (n=5, 10%), Spain (n=5, 10%) and Belgium (n=3, 6%). Respondents based in nine other Member States submitted contributions to the public consultation, with no responses received from 13 Member States. Responses were also submitted by respondents in third countries, respectively located in Brazil (n=1, 2%) and the United States (n=1, 2%).

Table 2 Geographical distribution of contribution types

Country of origin	Count	Per cent
EU Member States		
Belgium	3	6%

Bulgaria	5	10%
Czech Republic	1	2%
Finland	1	2%
France	5	10 %
Germany	2	4 %
Italy	17	34%
Malta	1	2%
Netherlands	2	4%
Poland	1	2%
Portugal	2	4%
Romania	2	4 %
Spain	5	10%
Sweden	1	2%
Third countries		
Brazil	1	2%
United States	1	2%
Total	**50**	**100%**

Respondents agreed that **law enforcement authorities cooperating at EU level in the fight against serious and organised crime was 'very important'** (n=49, 98%), though one respondent stated that this was 'moderately important' (n=1, 2%). Contributors unanimously concurred that freezing and confiscating criminal profits could help make serious and organised crime less attractive (n=50, 100%). Most respondents (n=49, 98%) also believed that the rates of asset freezing, and confiscation could increase compared to current estimated rates. Nevertheless, one participant stressed the importance of considering fundamental rights throughout the asset recovery process (1 response).

Respondents considered that **cross-border cooperation was negatively affected** by the i) low rates of identification of criminal assets, ii) failure to freeze and/or confiscate all identified assets, iii) inadequate management and disposal of frozen and confiscated assets; and iv) relatively poor quality of data collected above frozen and confiscated assets. The misalignment of the Asset Recovery Data Offices data protection framework with the Data Protection Policy Directive (Directive 2016/680) was not identified as a considerable obstacle to cross-border cooperation, though many respondents (n=20, 40%) stated that they did not know whether this had a negative effect.

When asked about the **challenges hampering the identification of criminal assets**, most respondents agreed that these practices are significantly limited by Asset Recovery Offices' i) lack of operational powers to trace and identify assets, ii) limited human, financial and technical resources, and ii) limited access to databases at the national level and inability to share information. Respondents also considered that financial investigations not automatically being launched in all cases and the lack of standardised rules on how to conduct financial investigations could hamper the identification of criminal assets to a 'high' or 'very high extent'.

In terms of **elements hindering the freezing and confiscation of assets**, most respondents considered that i) Asset Recovery Offices' lack of involvement in the confiscation process, ii) the limited scope of the Confiscation Directive, iii) Member States' distinct approaches to asset recovery, as they developed additional rules on top of the Confiscation Directive, and iv) challenges in identifying cross-border EU counterparts and exchanging information considerably affected the asset freezing and confiscation process.

Finally, when assessing the **challenges hampering the management and disposal of criminal assets**, most respondents agreed that i) the lack of human financial and technical resources allocated to the management of frozen and confiscated assets, ii) the lack of harmonised rules on the management and disposal of frozen and confiscated assets, iii) the limited involvement of Asset Recovery Offices and judicial authorities in post-conviction tracing and freezing cases, iv) the lack of harmonised rules on victim compensation, v) the lack of clarify on cost-sharing rules between Member States and vi) the communication breakdowns between counterparts involved in previous asset recovery phases, contributed to a 'high' or 'very high' extent to hampering the management and disposal of criminal assets.

Overall, **respondents agreed that increasing the levels of freezing and confiscation of criminal profits could help prevent future serious and organised crime** (n=44, 88%). The vast majority of respondents called for EU intervention to improve the fight and prevention of serious and organised crime and to increase EU asset recovery rates (n=48, 96%).

Most respondents considered that a future EU intervention should focus on revising and updating existing legislative measures (n=23, 46%), though some considered that both legislative and non-legislative measures should be revised and updated (n=16, 32%). Those who favoured only the revision and update of non-legislative measures represented a minority (n=9, 18%). Other respondents did not know (n=2, 4%). According to most stakeholders, an EU intervention would add significant value in i) fighting serious and organised crime (n=42, 84%) and ii) increasing asset recovery assets (n=38, 66%) compared to what Member States can achieve under the existing EU Framework. When asked to explain why, some respondents suggested that an EU

intervention would add value in further harmonising Member States' practices and promote cooperation on asset recovery (7 responses).

Respondents were asked to assess the extent to which given **options could contribute to improving EU asset recovery and confiscation**. The option that seemed most valued by respondents was granting Asset Recovery Offices direct access to a minimum set of data and databases (e.g., land registries, vehicle registries, company registries, criminal records, maritime and aviation registries). Other options that were significantly valued by participants include i) systematically launching financial investigations and ensuring powers to conduct post-conviction financial investigations, ii) equipping Asset Recovery Offices with urgent freezing power, iii) reinforcing Asset Recovery Offices' status and powers, iv) expanding the scope of non-conviction based and extended confiscation provisions, v) expanding the set of minimum information to be included in cases of cross-border information sharing between Asset Recovery Offices, vi) mandating Asset Recovery Offices to exchange information through the Europol Secure Information Exchange Network Application (SIENA), vii) gathering statistical data of higher quality and in an harmonised manner, and viii) establishing Asset Management Offices in all EU Member States. Respondents also considered that broadening the scope of the Confiscation Directive to cover additional criminal offences and aligning the Asset Recovery Offices data protection framework with the Data Protection Police Directive (Directive 2016/680) could help enhance EU asset recovery and confiscation, though to a lesser extent than the aforementioned options.

6. How the results have been taken into account

The results of the consultation activities have been incorporated throughout the Impact Assessment in each of the sections for which feedback was received. The consultation activities were designed to follow the same logical sequence as the Impact Assessment, starting with the problem definition and then moving on to possible options and their impacts.

ANNEX 3: WHO IS AFFECTED AND HOW?

3.1 Practical implications of the initiative

The key obligations that will have to be fulfilled by Member States and the European Commission are summarised below:

National authorities:

- Elaborate a strategy/action plan on asset recovery, establish cooperation mechanisms among relevant asset recovery authorities and regularly report on the results of the asset recovery system.
- Establish rules and measures for ensuring the identification of assets through the launching of financial investigations for certain organised crime certain crimes committed in the context of organised crime activities and under certain conditions, including training of staff from law enforcement authorities.
- Equip competent authorities with sufficient technical and human resources, including for Asset Recovery Offices to carry out tracing of criminal assets whenever this is not possible yet.
- Provide Asset Recovery Offices with access to a set of databases and ensure their access to SIENA (for those for which it is not available yet).
- Establish mechanisms allowing Asset Recovery Offices to ensure the swift freezing of assets in urgent cases.
- Establish Asset Management Offices (wherever these do not exist yet), which would be set out as contact points for cooperation with other Member States and support national authorities in the managing of assets (and ensure their management whenever necessary).
- Establish measures to ensure the systematic use of pre-seizure planning by law enforcement and judicial authorities, including the development of guidelines, provision of support by the Asset Management Office, etc.
- Develop measures to enable the application of interlocutory sales for frozen assets.
- Adopt measures to ensure the application of the confiscation mechanisms, including the new confiscation model, to the new scope of criminal offences. This would include the provision, as necessary, of guidance, training, etc.
- Improve the collection of statistics at central level
- Establishment of asset registries

European Commission

- Elaborate, where necessary, implementing acts on the collection of statistical data
- Set out a programme for the monitoring of outputs and results of the new legislative framework.

- Organise meeting among Asset Recovery Offices and other relevant authorities to facilitate the application of the new regulatory provisions, including through the exchange of best practices.

Europol

- Assist, where necessary, in the connection of additional Asset Recovery Offices to SIENA

3.2 Summary of costs and benefits

The table below presents the overview of benefits for the preferred option.

Table 1. Overview of benefits for the preferred option

Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
Direct benefits		
Asset tracing: The requirement for law enforcement authorities, to trace assets in a wider range of criminal activities, including with the support of Asset Recovery Offices, will lead to a greater identification of assets, including in other Member States since it will allow to identify cases where criminals have transferred or acquired assets in other jurisdictions. Similarly, the reinforced powers and access to information of Asset Recovery Offices will facilitate asset tracing across the Union, leading to a considerable increase in cross-border identification of assets.	Besides the reinforced capacities of competent authorities, including Asset Recovery Offices, to trace assets, such reinforcement is expected to lead to an increase in frozen and ultimately confiscated assets. While the increase directly stemming from these measures cannot be quantified, some figures are indicative of the improvements the preferred option would bring. In at least eight Member States financial investigations would be carried out in a more systematic manner. Asset Recovery Offices would obtain a more adequate access to information (currently only 15% of them have access to all relevant databases) and more adequate resources that would address the considerable divergence between them, e.g. one Asset Recovery Office counting with only one employee compared to 91 in another one (despite the latter being in a Member State only double the population of the first one).	
Asset Management: The establishment of Asset Management Offices and the generalised application of efficient asset management techniques such as pre-seizure planning or interlocutory sales would ensure a more efficient asset management , including assets frozen and confiscated on behalf of other Member States, and overall support cross-border cooperation in the management of assets.	The improved capacity to manage frozen and confiscated assets would increase the value of such assets considerably. While such an increase cannot be quantified, examples such as those the Netherlands (which reduced the cost of management of movable assets from EUR 23 million to EUR 9 million through interlocutory sales) demonstrate the ample room for improvement. The establishment of Asset Management Offices will also lead to improved management of assets in the 14 Member States which do not have them yet. More generally, by removing some of the disincentives to asset recovery, an efficient management of assets would incentivise competent authorities to trace more assets of taking freezing and confiscation decisions.	
Confiscation measures: The broader scope of confiscation mechanisms, which would be available to judicial authorities in respect of a broader set of crimes, and especially the establishment of a new confiscation	The greater gains of these measures in terms of volume of confiscated assets would derive in particular from the enlarged possibilities to apply extended confiscation in a larger set of crimes, and in particular	

Overview of Benefits (total for all provisions) – Preferred Option		
Description	***Amount***	***Comments***
model designed to tackle the complex nature of modern organised crime will significantly reinforce the capabilities of judicial authorities to confiscate assets.	from the availability of a very effective new confiscation model. Overall these measures would enable to recover additional criminal assets in a significant manner. It is not possible to estimate exact figures on the increased confiscation rates directly resulting from these measures, although some examples are representative of their potential. In Italy, authorities are able to confiscate assets in 90% of judicial proceedings through a confiscation mechanism similar to the new confiscation model envisaged in the preferred option, compared to 50% through the traditional confiscation mechanisms, while Latvia is able to confiscate 25 times more through such mechanisms than through standard forms of confiscation (EUR 105,4 million vs. EUR 4,2 million between 2013 and 2017). The last Member State putting in place such model, Germany in 2017, has applied it successfully in a considerably high number of cases: 5,100 in 2018 and 5,800 in 2019.	
Strategic approach to asset recovery: In addition to measures specific to each phase of the asset recovery process, other provisions requiring the establishment of an asset recovery plan and coordination measures as well as requirements to improve statistical data collection (including the asset registry) would considerably improve the overall efficiency of the asset recovery regime.	Concrete figures that would give an indication of the quantitative benefits of this set of measures cannot be provided, given the systemic and strategic nature of the measures.	
Indirect benefits		
The improved possibilities to confiscate illicit assets contribute to a reduction of the attractiveness of criminal activities, the reduction of assets available for further criminal activities and possibilities to infiltrate the legal economy thereby contributing to a level playing field in the EU market	This indirect impact on disrupting criminal activities and possibilities to infiltrate the legal economy and the consequences for competition is not measurable.	
Administrative cost savings related to the 'one in, one out' approach		
By creating more detailed requirements for information exchange between Asset Recovery Offices, including the creation of templates and the introduction of asset registries, the current costs associated with informal lines of communication would be reduced. In addition, the creation of Asset Management Offices in all Member States and the application of efficient asset management practices would reduce overall management costs.	No data available. For asset management the cost savings can be significant, with one Member State being able to reduce the costs by more than half by selling off assets when costs exceed the value of property.	

The costs associated with the preferred option are presented in the Table below.

No costs are identified for citizens/consumers and businesses since the costs associated with the policy measures are directly impacting administrations at national level.

Table 2. Costs for the preferred option

II. Overview of costs – Preferred option

		Citizens/Consumers		Business		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Adoption of a national plan on asset recovery	**Direct costs**	NA	NA	NA	NA	EUR 600,000€	
	Indirect costs	NA	NA	NA	NA		EUR 100,000€
Additional resources for Asset Recovery Offices	**Direct costs**	NA	NA	NA	NA	NA	EUR 4.39 million
	Indirect costs	NA	NA	NA	NA	NA	NA
Asset Recovery Offices' access to relevant databases	**Direct costs**	NA	NA	NA	NA	EUR 2.43 million	NA
	Indirect costs	NA	NA	NA	NA	NA	NA
Requirements on asset tracing - financial investigations	**Direct costs**	NA	NA	NA	NA	EUR 585,000 – EUR 1.75 million[132]	EUR 2.8 million - EUR 5.54 million
	Indirect costs	NA	NA	NA	NA	NA	NA
Establishment of a specialised Asset Management Office	**Direct costs**	NA	NA	NA	NA	NA	EUR 2.8 million – EUR 7 million
	Indirect costs	NA	NA	NA	NA	NA	NA
Implementation of pre-seizure planning and interlocutory sales	**Direct costs**	NA	NA	NA	NA	EUR 585,000	NA
	Indirect costs	NA	NA	NA	NA	NA	NA
Implementation of new confiscation measures	**Direct costs**	NA	NA	NA	NA	EUR 1.17 million	
	Indirect costs	NA	NA	NA	NA	NA	NA
Implementation of requirements on the collection of	**Direct costs**	NA	NA	NA	NA	1.05 million	NA
	Indirect costs	NA	NA	NA	NA	NA	NA

[132] Related to the development of guidelines and provision of training

II. Overview of costs – Preferred option							
		Citizens/Consumers		**Business**		**Administrations**	
		One-off	**Recurrent**	**One-off**	**Recurrent**	**One-off**	**Recurrent**
statistics							
Establishment of asset registries	**Direct costs**	NA	NA	NA	NA	EUR 13.5 million	EUR 2.16 million
	Indirect costs	NA	NA	NA	NA	NA	
Total Costs	**Direct costs**					EUR 19.32 million	EUR 12.15 million – EUR 19.09 million
	Indirect costs						EUR 100,000
	Direct + indirect					EUR 31.57 million – 38.42 million	
Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs	NA	NA	NA	NA		
	Indirect adjustment costs	NA	NA	NA	NA		
	Administrative costs (for offsetting)	NA	NA	NA	NA		

3.3 Relevant sustainable development goals

III. Overview of relevant Sustainable Development Goals – Preferred Option(s)		
Relevant SDG	**Expected progress towards the Goal**	**Comments**
SDG no. 16, peace, justice, and strong institutions	Contribute to fight serious and organised crime, strengthening public institutions and safeguarding the rule of law	
SDG no. 8, decent work and economic growth	Countering organised crime's infiltration into the legal economy, contributing to the efforts towards for fair work free of exploitation and intimidation, fair competition, and a healthier economy.	

ANNEX 4: ANALYTICAL METHODS

The Impact Assessment report and the Evaluation draw from a multitude of sources, which were triangulated with objective evidence (e.g. databases accessible to Asset Recovery Offices), a targeted consultation (meetings of the Asset Recovery Offices Platform and the Confiscation Committee) as well as the public consultation. These sources of information and opinions have been triangulated with an own analysis of reports from international organisations (notably the mutual evaluation reports of the Financial Action Task Force) as well as academics, which overall point to similar conclusions. The European Commission relied in particular on three studies and two reports: the Commission report "Asset Recovery and confiscation, ensuring that crime does not pay,"[133] the staff working document "Analysis of non-conviction based confiscation measures in the European Union,"[134] and the studies on the transposition of Directive 2014/42/EU[135], on "Asset recovery and confiscation: what works and what doesn't work"[136] and the "Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation"[137].

1. Analysis of Member State Data – Freezing and Confiscation

The Impact Assessment drew upon the freezing and confiscation data submitted by Member States' to the European Commission in accordance with Article 11 of Directive 2014/42/EU. The level of completeness of this data varied between Member States, with some Member States not providing data for the years 2017, 2018, 2019 and 2020.

Table 1 Data provided by Member States per annum (2017 – 2020)

2017	2018	2019	2020
Austria	Austria	Austria	Austria
Croatia	Bulgaria	Croatia	Croatia
Cyprus	Croatia	Cyprus	Estonia
Czech Republic	Cyprus	Czech Republic	Finland
Estonia	Denmark	Estonia	Greece
Finland	Estonia	Finland	Ireland
France	Finland	France	Latvia
Germany	France	Germany	Lithuania
Greece	Germany	Greece	Luxembourg
Ireland	Greece	Ireland	Netherlands
Latvia	Hungary	Latvia	Romania
Lithuania	Ireland	Lithuania	Spain
Luxembourg	Italy	Luxembourg	Sweden

[133] Report from the Commission to the European Parliament and the Council, *Asset recovery and confiscation: Ensuring that crime does not pay*, SWD COM/2020/217 final
[134] SWD (2019), 1050 final.
[135] HOME/2017/ISFP/FW/LECO/0084
[136] HOME/2018/ISFP/FW/EVAL/0081, https://data.europa.eu/doi/10.2837/649661
[137] HOME/2020/ISFP/FW/EVA2/0016

Netherlands Portugal Romania Spain Sweden	Lithuania Luxembourg Malta Netherlands Portugal Romania Slovakia Slovenia Spain Sweden	Netherlands Portugal Romania Spain Sweden	
Total: 18 Member States	Total: 23 Member States	Total: 18 Member States	Total: 13 Member States

Based on the number of Member States providing data, the reference years 2017, 2018 and 2019 were selected for analysis. 2020 was not selected due to the low level of data provided by Member States, with only 13 Member States providing data in September 2021.

Where possible and reasonable in relation to the level of data provided by Member States,[138] data was extrapolated for those Member States where no data was provided in order to provide an estimation of data for all EU-27 Member States in relation to:

- The number of freezing orders executed
- The number of confiscation orders executed
- The estimated value of property frozen
- The estimated value of property recovered at the time of confiscation.

Data was estimated, in some cases, for Member States[139] where no data was provided based on reference data received from other Member States. This extrapolation was

[138] No extrapolation was undertaken where Member States provided data for other indicators falling under Article 11 which were inconclusive regarding the scale

[139] Note: For 2017: No data for Belgium – Application of Czech Republic data based on population size; No data for Denmark – application of FI data; No data for Greece – application of 2018 data received; No data for Italy – application of 2018 data received; No data for Malta – application of 2018 data received; No data for Romania - application of 2018 data received; No data for Latvia – application of 2019 data. For 2018: No data for Belgium – Application of CZ data 2018; No data for Denmark – Application of FI data 2018; No data for Latvia – application of LV data 2019; no data for Poland – application of 2017 data. For 2019: No data for Belgium - Application of CZ data; No data for Bulgaria - application of BG data 2018; No data for Denmark - application of FI data 2019; No data for Hungary - application of HU data 2018; No data for Italy - application of IT data 2018; No data for Malta - application of MT data 2018; No data for Poland - application of PL data 2017; No data for Slovak Republic - application of SK data 2018; No data for Slovenia - application of SI data 2018; No data provided for Ireland due to data provided by Ireland on other indicators in reference periods; No data provided for Luxembourg due to data provided by Luxembourg on other indicators in reference periods; No data provided for Portugal due to data provided by Portugal on other indicators in reference periods

based on 2 criterion: (i) the population size and (ii) trends of the Member State in question. This allowed for an estimation of data for the EU-27.

Table 2 Extrapolation of data for number of freezing orders executed 2017 – 2019

	2017	**2018**	**2019**
Member State	**Number of freezing orders executed**		
Austria	3601	3704	3 063
Belgium	573	*31*	47
Bulgaria	41	272	272
Croatia	319	323	489
Cyprus	5	4	15
Czech Republic	573	31	47
Denmark	*204*	*160*	243
Estonia	193	171	165
Finland	204	160	243
France	19	20142	46 607
Germany	9596	9281	11 764
Greece	223	223	194
Hungary	50	18	18
Ireland	N/A		
Italy	*3857*	3857	3857
Latvia	312	312	312
Lithuania	2409	2803	2 757
Luxembourg	N/A	119	89
Malta	88	88	88
Netherlands	6	13	28
Poland	46226	*46226*	46226
Portugal	N/A	124	94
Romania	45931	45931	49 838
Slovakia	82	61	61
Slovenia	102	292	292
Spain	14	13	40
Sweden	8804	42581	10
TOTAL	**123 432**	**176 940**	**166 859**

Methodological note[140]

[140] For 2017: No data for Belgium – Application of Czech Republic data based on population size; No data for Denmark – application of FI data; No data for Greece – application of 2018 data received; No data for Italy – application of 2018 data received; No data for Malta – application of 2018 data received; No data for Romania - application of 2018 data received; No data for Latvia – application of 2019 data. For 2018: No data for Belgium – Application of CZ data 2018; No data for Denmark – Application of FI data 2018; No data for Latvia – application of LV data 2019; no data for Poland – application of 2017 data. For 2019:

The same approach was applied in relation to the estimated value of property frozen.

Table 3 Extrapolation of data for estimated value of property frozen 2017 and 2019

	2017	2019
Member State	**Estimated value of property frozen***	**Estimated value of property frozen***
Austria	25 903 378 €	186 057 740 €
Belgium	43 416 949 €	NA
Bulgaria	140 552 814 €	149 388 683 €
Croatia	5 229 120 €	6 377 572 €
Cyprus	3 224 569 €	1 039 280 €
Czech Republic	43 416 949 €	NA
Denmark	*15 700 000 €*	44 900 000 €
Estonia	9 013 824 €	12 193 762 €
Finland	15 700 000 €	44 900 000 €
France	5 016 007 €	709 738 872 €
Germany	646 809 000 €	347 539 000 €
Greece	433 703 008 €	87 983 240 €
Hungary	3 272 928 €	12 570 316 €
Ireland	NA	NA
Italy	NA	NA
Latvia	358 482 727 €	358 482 727 €
Lithuania	2 260 000 €	28 201 434 €
Luxembourg	NA	231 148 557 €
Malta	593 464 €	593 464 €
Netherlands	NA	2 846 864 €
Poland	312 242 072 €	312 242 072 €
Portugal	20 804 000 €	26 695 055 €
Romania	498 394 208 €	273 590 738 €
Slovakia	20 602 185 €	83 902 979 €
Slovenia	5 381 505 €	23 313 391 €
Spain	NA	NA
Sweden	11 757 530 €	14 133 058,00 €
TOTAL	**2 621 476 237 €**	**2 957 838 804 €**

No data for Belgium - Application of CZ data; No data for Bulgaria - application of BG data 2018; No data for Denmark - application of FI data 2019; No data for Hungary - application of HU data 2018; No data for Italy - application of IT data 2018; No data for Malta - application of MT data 2018; No data for Poland - application of PL data 2017; No data for Slovak Republic - application of SK data 2018; No data for Slovenia - application of SI data 2018; No data provided for Ireland due to data provided by Ireland on other indicators in reference periods; No data provided for Luxembourg due to data provided by Luxembourg on other indicators in reference periods; No data provided for Portugal due to data provided by Portugal on other indicators in reference periods.

Methodological note[141]

In relation to the number of confiscation orders executed, the same approach was taken, with the following estimates provided for 2017 – 2019.

Table 4 Extrapolation of data for number of confiscation orders executed 2017 – 2019

	2017	**2018**	**2019**
Member State	**Number of confiscation orders executed**	**Number of confiscation orders executed**	**Number of confiscation orders executed**
Austria	10443	8239	
Belgium	4509	*4459*	4 563
Bulgaria	41	2109	2109
Croatia	31	223	233
Cyprus	8	1	9
Czech Republic	4509	4459	4 563
Denmark	*1509*	*1882*	3 613
Estonia	180	174	334
Finland	1509	1882	3 613
France	1	5517	5 736
Germany	19484	49910	61 681
Greece	0	0	3
Hungary	4924	5798	5798
Ireland	41	65	50
Latvia	234	234	234
Lithuania	2085	3463	688

[141] In relation to the estimated value of property frozen, the reference periods 2017 and 2019 were taken due to considerable divergences in data for 2018. This enables for the provision of estimates within the Study regarding the increase over 2 years. The data for some Member States was not provided due to data being provided by that Member State for other indicators. For 2017: No data for Belgium – Application of Czech Republic data based on population size; No data for Denmark – application of FI data; No data for Greece – application of 2018 data received; No data for Italy – application of 2018 data received; No data for Malta – application of 2018 data received; No data for Romania - application of 2018 data received; No data for Latvia – application of 2019 data. For 2018: No data for Belgium – Application of CZ data 2018; No data for Denmark – Application of FI data 2018; No data for Latvia – application of LV data 2019; no data for Poland – application of 2017 data. For 2019: No data for Belgium - Application of CZ data; No data for Bulgaria - application of BG data 2018; No data for Denmark - application of FI data 2019; No data for Hungary - application of HU data 2018; No data for Italy - application of IT data 2018; No data for Malta - application of MT data 2018; No data for Poland - application of PL data 2017; No data for Slovak Republic - application of SK data 2018; No data for Slovenia - application of SI data 2018; No data provided for Ireland due to data provided by Ireland on other indicators in reference periods; No data provided for Luxembourg due to data provided by Luxembourg on other indicators in reference periods; No data provided for Portugal due to data provided by Portugal on other indicators in reference periods

Luxembourg	47	674	624
Malta	13	13	13
Netherlands	22	15	11
Poland		N/A	N/A
Portugal		117	
Romania	8440	8440	13 294
Slovenia	55		
Spain		5	7
Sweden	24	36	60
TOTAL	**58109**	**97715**	**107236**

Note: For Member States where data was provided for other indicators, no extrapolation was undertaken since unclear whether this represented an absence of confiscation orders. The table below presents the estimated value of confiscation orders for the years 2017 and 2019.

Table 5 Extrapolation of data for estimated value of assets confiscated 2017 and 2019

	2017	**2019**
Member State	**Estimated value of property recovered at the time of confiscation***	**Estimated value of property recovered at the time of confiscation***
Austria	3 225 488,09 €	
Bulgaria	7 307 493,60 €	12 529 219 €
Croatia	5 173 646,73 €	1 746 910 €
Cyprus	1 262 627,73 €	530 974 €
Denmark	*3 990 098 €*	11 368 414 €
Estonia	3 507 388 €	3 962 163 €
Finland	3 990 098 €	11 368 414 €
France	453 005 €	**65 766 827 €**
Germany	198 646 000 €	796 255 000 €
Ireland	988 297 €	2 814 890 €
Latvia	49 348 178 €	49 348 178 €
Luxembourg	N/A	20 637 €
Malta	283 470 €	283 470 €
Netherlands	126 666 €	513 435 €
Poland	N/A	N/A
Portugal	N/A	
Romania	2 443 926 €	40 476 319 €
Slovakia	123 342 €	

Slovenia	N/A	
Spain	N/A	
Sweden	1 107 492 €	5 667 976 €
TOTAL	281 977 216 €	1 002 652 826 €

Note: For Member States where data was provided for other indicators, no extrapolation was undertaken.

Estimation of value of property recovered

In relation to the estimated value of property frozen and the estimated value of property recovered, an average value per order was identified. This was estimated based only on those Member States providing data. The data extrapolated for other Member States was not applied in this regard due to the inaccuracies associated with this approach. This enabled for the identification of an average value of assets frozen or recovered per order in the Member States.

Cross-border freezing and recovery

While data provided by the Member States was scarce in relation to the following indicators (i) number of requests for freezing orders to be executed in another Member State, (ii) number of requests for confiscation orders to be executed in another Member States, (iii) value or estimated value of property recovered following execution in another Member State, data could be extrapolated for those Member States where no data was provided with a view to providing a global figure for the EU-27. This exercise was only undertake for the reference years 2017, 2018 and 2019. Based on those Member States where data was provided on the value or estimated value of property recovered, an estimation of the average value per request was provided. This allowed for the estimation of increases foreseen on the basis on the Policy Options.

2. Estimation of revenues generated by organised crime

It is estimated that the indicative volume of revenues generated by organised crime which are not covered by the Confiscation Directive amounts to approximately EUR at least 50 billion. This approximate estimation is based on desk research analyzing different data sources such as international and EU studies, government information or Eurostat statistics,[142] and applying informed assumptions such as the depreciation of counterfeited and stolen property.

The first data source is the 2021 Study for the European Commission on 'Mapping the risk of serious and organized crime infiltrating legitimate businesses',[143] which estimates

[142] Available at Eurostat statistics explained

[143] 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, https://data.europa.eu/doi/10.2837/64101.

that in 2019 criminal proceeds from serious and organized crime in nine of the most important criminal markets ranged from €92,000 to €188,000 million, with a mid-point estimation of €139,000.

These estimates cover both offences included in the scope of Articles 3 and 5 of *Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union*[144] as well as offences that currently fall outside the scope of this Directive. The latter concern notably revenues for illicit firearms, migrant smuggling, some forms of organised property crime (cargo theft and ATM physical attacks) as well as the illicit cigarette market. The mid-point estimations for these crime markets provided in the above-mentioned study have been used to develop an indicative approximate estimate of the criminal revenues not covered by the Confiscation Directive. Similarly, the study provided a mid-point estimate of the revenues generated by Missing Trader Intra-Community (MTIC) fraud, the most common form of VAT fraud. This is a highly complex form of fraud which is typically carried out by organised crime groups. MTIC fraud is partially covered by the Confiscation Directive insofar as the PIF Directive (which refers to the Confiscation Directive) covers offences against the common VAT system causing a total damage of at least EUR 10 million. Based on a sample of investigations of MTIC fraud schemes supported by Europol, an indicative proportion of the figure provided in the study for MTIC fraud was considered to be outside the scope of the Confiscation Directive.

Additional approximate estimations have been elaborated for other crime areas where organised crime is active, taking into account different information sources and adjusting the data available taking into account different parameters. Such estimations have been carried out for other forms of organised crime such as burglary, robberies and vehicle thefts (based on EU figures of reported crimes published by Eurostat, factoring in international figures on the average value stolen in these crimes adjusted to the GDP per capita in the EU[145]), the illicit trafficking of cultural goods (adjusting global estimates from an international study to the EU's GDP), counterfeiting (adjusting available data of direct lost sales for EU companies of counterfeiting according to assumptions of lower prices for counterfeited products), or forged documents (based on an evaluation of average prices in the market of fake documents carried out by law enforcement authorities in Member States and an estimation of the number of forged documents elaborated on the basis of forged documents detected in the EU's external borders).

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[144] 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, Article 3 refers to criminal offences related to corruption involving officials, counterfeiting in connection with the introduction of the euro, combating fraud and counterfeiting on non-cash means of payment, money laundering, combating terrorism, corruption in the private sector, illicit drug trafficking, organised crme, trafficking in human beings, abuse and sexual exploitation of children and child pornography, attacks against information systems. Article 5 refers to criminal offences including active and passive corruption in the private sector as well as corruption involving officials of institutions of the EU or Member States, participation in a criminal organisation, child pornography, illegal system and data interferences.

[145] Available at Eurostat statistics explained

The figure does not cover other forms of crime or criminal markets where organised crime is active, such as other forms of fraud other than MTIC fraud, contract killing (including murder, grievous bodily harm and kidnapping), swindling, racketeering and extortion, trafficking of nuclear materials and of illicit hormonal substances, given the lack of reliable data sources on which to base any estimation. Another crime area where organised crime is active, organ trafficking, is also not included insofar as the Directive 2011/36/EU on combating trafficking in human beings and protecting its victims covers trafficking in human beings for the purpose of organ removal.

3. Costs of policy measures

The estimations of costs of the policy measures envisaged in the different options considered are mainly based on the study underpinning this Impact Assessment. The study applied different methodological techniques to develop these estimates and used different data sources, such as the costs of training based on data provided in the CEPOL Annual Report 2020[146], the costs related to the organization of previous meetings of the Asset Recovery Offices Platform, the costs of establishing Asset Management Offices in a number of Member States where these bodies already exist, or the average costs of Full Time Equivalents within public administration in the Member States. For the latter, the study applied the quantitative estimates in the Commission Impact Assessment for a Proposal for a Directive of the European Parliament and of the Council on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA[147] was applied. Where no data was available, estimates were made by the contractor based on market experience (i.e. in the preparation of digital registries etc.).

These figures were included as such for certain cost categories (e.g. on the costs of establishing Asset Management Offices or asset registries) or were used the basis for further estimations elaborated by the Commission services in order to reflect the difference in the measures considered in this Impact Assessment as compared to the ones envisaged in the study. The additional estimations were elaborated by adjusting the data provided in the study through an informed guess of the additional resources needed to carry out certain tasks, using where available proxies such as number of investigations supported by Europol, information from previous Impact Assessments, etc.

4. Estimation of benefits

Section 7.1 of this Impact Assessment related to the efficiency of the different includes approximate figures of the indicative volume of additional assets confiscated as a result of the measures contained in the legislative options. These figures indicate a plausible range of additional amount of recovered assets of approximately EUR 100-200 million

[146] Available at Publications - Annual Report | CEPOL (europa.eu)

[147] SWD(2017) 298 final, available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017SC0298&from=EN

per annum across the EU for PO2, EUR 1 billion for PO3 and an additional EUR 50-100 million for PO4.

These figures are aimed at providing an approximate order of magnitude and are based on the estimations in the Impact Assessment study, a qualitative assessment of the measures in each option and its expected impact in terms of additional asset recovered, based on an informed appraisal as to the impact of these measures in the asset recovery rates and the experiences of Member States on the effectiveness of different measures, considering for example the importance of financial investigations, the data from Member States with more ambitious confiscation models or the contribution of Asset Recovery Offices and Asset Management Offices in promoting and facilitating the recovery of assets.

The indicative nature of such approximations is due to the lack of comprehensive statistical data in current asset recovery systems, a problem highlighted in this Impact Assessment, as well as external factors outside the scope of this Impact Assessment which would have an impact on the asset recovery rates, such as the level of criminal activities, the sophistication of organised crime groups in applying new methods and technologies to avoid detection, or the number of criminal investigations launched in relation to organised crime activities.

METHODOLOGY APPLIED FOR THE EVALUATION

For the Evaluation the Commission relied on findings gathered in the reports "Asset Recovery and confiscation, ensuring that crime does not pay,"[148] and the staff working document "Analysis of non-conviction based confiscation measures in the European Union."[149] These reports are complemented by the evidence gathered of three studies,[150] which were paired with a public consultation and evaluation-specific stakeholders consultation. The Commission organised, in particular, the 20th Meeting of the EU Asset Recovery Offices' Platform to test previous findings and to develop the Evaluation and Impact Assessment that underpin the revision of the ARO Council Decision and the Confiscation Directive. In addition, the Fifth meeting of the Contact Committee of the Confiscation Directive was organised in the context of the preparation of the Evaluation as well.

[148] Report from the Commission to the European Parliament and the Council, *Asset recovery and confiscation: Ensuring that crime does not pay*, SWD COM/2020/217 final
[149] SWD (2019), 1050 final.
[150] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081;
European Commission, Directorate-General for Migration and Home Affairs, *Compliance assessment of measures of Member States to transpose Directive 2014/42/EU ("Confiscation Directive") and legal consultancy on this Directive, Overall Report*, 2019HOME/2017/ISFP/FW/LECO/0084; Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation, HOME/2020/ISFP/FW/EVA2/0016

Evaluation-specific stakeholders' consultation sought to complement and add upon the data gathered in previous studies and reports, which relate to the asset recovery system but were not tailored towards an evaluation. The consultation aimed at addressing the tailored needs of an evaluation, without gathering further factual data which had already been gathered in the transposition study of Directive 2014/42/EU[151] and the study 'Asset recovery and confiscation: what works and what doesn't work'[152]. The 'Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation'[153] further gathered evaluation-specific data, which informs the Evaluation report.

[151] HOME/2017/ISFP/FW/LECO/0084
[152] HOME/2018/ISFP/FW/EVAL/0081
[153] HOME/2020/ISFP/FW/EVA2/0016

ANNEX 5: CATEGORIES AND SCOPE OF CONFISCATION MEASURES

Different legal traditions of EU Member States have over the years given rise to a wide range of existing confiscation measures. EU legislation, such as Framework Decision 2005/212/JHA and Directive 2014/42/EU, have laid down minimum rules on the following confiscation measures:

- Standard confiscation
- Value confiscation
- Third party confiscation
- Extended confiscation
- Non-conviction based confiscation

Standard confiscation

Standard confiscation refers to a judicial order concerning property related to a specific crime for which the owner has been convicted. The targeted assets are the direct proceed or the instrumentality of a crime, following a criminal conviction for that crime.

Standard confiscation is regulated by Article 2(1) of Framework Decision 2005/212/JHA. It applies to all offences punishable by deprivation of liberty for more than one year.[155]

Value confiscation

Value confiscation refers to a type of confiscation measure targeting property of equivalent value to the proceeds or instrumentality of a crime. The confiscation order is realizable against any property of the individual charged. It is employed most often in cases where criminals convert proceeds of crime into other property to hide its illicit origin and disguise the audit trail.

Value confiscation is regulated by Article 2(1) of Framework Decision 20015/212/JHA and Article 4(1) of Directive 2014/42/EU.[156] It applies to all offences punishable by deprivation of liberty for more than one year[157] and to the crimes listed and cross-referenced in article 3 of the Directive, covering certain offences in relation to corruption,[158] counterfeiting of the euro,[159]

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[155] Article 2(1) Directive 2014/42/EU: "Each Member State shall take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds."

[156] Article 4 Directive 2014/42/EU: "Member States shall take the necessary measures to enable the confiscation, either in whole or in part, of instrumentalities and proceeds or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence, which may also result from proceedings in absentia."

[157] Article 2(1) Directive 2014/42/EU: "Each Member State shall take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds."

[158]Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, OJ L 192, 31.7.2003, p. 54. Convention drawn up on the basis of Article K.3(2)(c) of the Treaty on European Union on

credit card fraud,[160] money laundering,[161] terrorism,[162] illicit drug trafficking,[163] organised crime,[164] trafficking in human beings,[165] sexual exploitation of children,[166] cyberattacks,[167] and fraud to the Union's financial interests[168].

Third-party confiscation

Third-party confiscation refers to a confiscation measure made to deprive someone other than the offender – the third party – of criminal property, where that third party is in possession of property transferred to him or her by the offender. It is regulated by Article 6 of Directive 2014/42/EU[169]. It applies to the same list of offences to which value confiscation is applicable to, listed in Article 3 of the Directive.

Extended confiscation

Extended confiscation concerns confiscation orders which go beyond the direct proceeds of a crime. The order follows a criminal conviction, targeting property "beyond the direct proceeds of the crime for which the offender was convicted, where the property seized is derived from

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the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union, OJ C 195, 25.6.1997, p. 1. ('Convention on the fight against corruption involving officials');

[159] Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro, OJ L 140, 14.6.2000, p. 1.

[160] Council Framework Decision 2001/413/JHA of 28 May 2001 on combating fraud and counterfeiting on non-cash means of payment, OJ L 149, 2.6.2001, p. 1.

[161] Council Framework Decision 2001/500/JHA 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.

[162] Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism, OJ L 164, 22.6.2002, p. 3.

[163] 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

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

[165] 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

[166] 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.

[167] 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.

[168] 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. 29–41. The PIF Directive makes a reference to the Confiscation Directive so that the provisions of the latter apply to the offences harmonised by the PIF Directive.

[169] Article 6 Directive 2014/42/EU: "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, at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value. 2. Paragraph 1 shall not prejudice the rights of bona fide third parties."

criminal conduct."[170] A direct link between the property and the offence, such as in the case of standard confiscation measures, is not necessary if the court assesses that the offender's property was nevertheless derived for other unlawful conduct.

This confiscation measure is particularly applicable in cases where the court assesses that the offender will have perpetrated a greater number of offences than those they are directly on trial for, such as in the case of organised crime members. For example, a court might be able to convict a drug trafficker for one specific cargo, but not for the trafficking activities over preceding years from which they also profited. In these cases, the court can confiscate other property beyond the direct proceeds of the crime in question, if the court concludes that property is derived from criminal conduct.

Extended confiscation is regulated by Article 5 of Directive 2014/42/EU.[171] It applies to corruption,[172] the participation in a criminal organisation,[173] child-pornography,[174] and IT crimes.[175] For other crimes in scope of the Directive but not explicitly listed in the relevant article on extended confiscation, extended confiscation is applicable in relation to offences punishable by a custodial sentence of at least four years.[176]

Non-conviction based confiscation (NCBC)

[170] Final report on operational challenges associated with asset recovery, FATF/RTMG(2021)17/REV2, 4 June 2021.

[171] Article 5(1) Directive 2014/42/EU: "Member States shall adopt the necessary measures to enable the confiscation, either in whole or in part, of property belonging to a person convicted of a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, where a court, on the basis of 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, is satisfied that the property in question is derived from criminal conduct."

[172] Article 5(2)(a) Directive 2014/42/EU: "active and passive corruption in the private sector, as provided for in Article 2 of Framework Decision 2003/568/JHA, as well as active and passive corruption involving officials of institutions of the Union or of the Member States, as provided for in Articles 2 and 3 respectively of the Convention on the fight against corruption involving officials"

[173] Article 5(2)(b) Directive 2014/42/EU: "offences relating to participation in a criminal organisation, as provided for in Article 2 of Framework Decision 2008/841/JHA, at least in cases where the offence has led to economic benefit"

[174] Article 5(2)(c) Directive 2014/42/EU: "causing or recruiting a child to participate in pornographic performances, or profiting from or otherwise exploiting a child for such purposes if the child is over the age of sexual consent, as provided for in Article 4(2) of Directive 2011/93/EU; distribution, dissemination or transmission of child pornography, as provided for in Article 5(4) of that Directive; offering, supplying or making available child pornography, as provided for in Article 5(5) of that Directive; production of child pornography, as provided for in Article 5(6) of that Directive"

[175] Article 5(2)(d) Directive 2014/42/EU: "illegal system interference and illegal data interference, as provided for in Articles 4 and 5 respectively of Directive 2013/40/EU, where a significant number of information systems have been affected through the use of a tool, as provided for in Article 7 of that Directive, designed or adapted primarily for that purpose; the intentional production, sale, procurement for use, import, distribution or otherwise making available of tools used for committing offences, at least for cases which are not minor, as provided for in Article 7 of that Directive"

[176] Article 5(2)(e) Directive 2014/42/EU: "a criminal offence that is punishable, in accordance with the relevant instrument in Article 3 or, in the event that the instrument in question does not contain a penalty threshold, in accordance with the relevant national law, by a custodial sentence of a maximum of at least four years."

Non-conviction based confiscation refers to a confiscation measure taken in the absence of a conviction and directed against an asset from illicit origin. In the case of Directive 2014/42/EU, it covers cases where a criminal conviction is not possible because the suspect has become ill or fled the jurisdiction. In more expansive non-conviction based regimes, NCBC can also be available in cases where the suspect has died, lacks legal capacity (e.g. is a minor or of unsound mind), has immunity from prosecution or amnesty or where the statute of limitations has passed, or where a conviction is not possible for other reasons like lack of proof, but the court is nevertheless convinced in a criminal procedure that the assets are of criminal origin.

As highlighted by FATF, like all other types of confiscation measures NCBC is a legal consequence of criminal conduct, with however the evidentiary focus being on the property and its nexus to a criminal activity, rather than the prosecution of a particular individual. It can be based in civil or criminal proceedings. Whilst Directive 2014/42/EU convers only cases of **criminal** non-conviction based confiscation, the concept of non-conviction based confiscation also covers the cases of action against the asset itself (so-called "**proceedings *in rem***", generally in civil proceedings), regardless of the person in possession of the property. It is applicable to cases, for example, when the proceeds of crime have been identified but cannot be linked to any individual; or the suspect is outside the jurisdiction of the Member State considering confiscation and there is no prospect of his being brought within that Member State to face trial.

Criminal non-conviction based confiscation is regulated by Article 4(2) of Directive 2014/42/EU.[177] It applies to the same list of offences to which value confiscation is applicable to, listed in Article 3 of the Directive, but only in cases of impossibility to reach a confiscation verdict because the defendant fled or was ill.

The table below compares the scopes of these confiscation measures.

Table 1. Comparison of scope of confiscation measures

[177] Article 4(2) Directive 2014/42/EU: "Where confiscation on the basis of paragraph 1 is not possible, at least where such impossibility is the result of illness or absconding of the suspected or accused person, Member States shall take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial."

Scope of confiscation measures under Framework Decision 2005/212/JHA and Directive 2014/42/EU					
Scope	*Confiscation measures covered by EU acquis*				
	Standard confiscation	**Value confiscation**	**Third party confiscation**	**Extended confiscation**	**NCBC**
All offences punishable by more than 1 year	✓	✓	X	X	X
All offences punishable by more than 4 years	✓	X	X	✓	X
Corruption (public officials)	✓ (if above 1 year)	✓	✓	✓ (only applicable to article 2 and 3 of the Convention on the fight against corruption involving officials)	✓ (only in cases where a criminal conviction could have been obtained had not been for illness and absconding of the defendant)
Corruption (private sector)	✓ (if above 1 year)	✓	✓	✓ (only applicable to Article 2 of Framework Decision 2003/568/JHA)	✓ (only in cases where a criminal conviction could have been obtained had not been for illness and absconding of the defendant)
Counterfeiting of the euro	✓ (if above 1 year)	✓	✓	X	✓ (only in cases where a criminal conviction could have been obtained had not been for illness and absconding of the defendant)
Credit card fraud	✓ (if above 1 year)				✓ (only in cases where a criminal conviction could have been obtained had not been for

		✓	✓	X	illness and absconding of the defendant)
Money Laundering	✓ (if above 1 year)	✓	✓	X	✓ (only in cases where a criminal conviction could have been obtained had not been for illness and absconding of the defendant)
Terrorism	✓ (if above 1 year)	✓	✓	X	✓ (only in cases where a criminal conviction could have been obtained had not been for illness and absconding of the defendant)
Illicit drugs trafficking	✓ (if above 1 year)	✓	✓	X	✓ (only in cases where a criminal conviction could have been obtained had not been for illness and absconding of the defendant)
Participation in a criminal organisation	✓ (if above 1 year)	✓	✓	✓ (Only applicable to Article 2 of Framework Decision 2008/841/JHA, and in cases leading to an economic benefit)	✓ (only in cases where a criminal conviction could have been obtained had not been for illness and absconding of the defendant)
Trafficking in human beings	✓ (if above 1 year)	✓	✓	X	✓ (only in cases where a criminal conviction could have been obtained had not been for illness and absconding of the defendant)
Sexual abuse and exploitation of children	✓ (if above 1 year)	✓	✓	✓ (only applicable to Articles 4(2), 5(4), 5(5) and 5(6) of Directive	✓ (only in cases where a criminal conviction could have been obtained had not been for

				2011/93/EU)	illness and absconding of the defendant)
Cyberattacks	✓ (if above 1 year)	✓	✓	✓ (only in specific cases outlined in article 4 and 5 of Directive 2011/93/EU, where a "significant number" of information systems are affected by tools outlined in Article 7, and in other instances[178] outlined in Article 7 of the Directive, only if not minor)	✓ (only in cases where a criminal conviction could have been obtained had not been for illness and absconding of the defendant)
Fraud against the Union's financial interests	✓ (if above 1 year)	✓	✓	X	✓ (only in cases where a criminal conviction could have been obtained had not been for illness and absconding of the defendant)

[178] "the intentional production, sale, procurement for use, import, distribution or otherwise making available of tools used for committing offences" Article 5(2)(d) Directive 2014/42/EU

Moreover, the confiscation tools foreseen by Directive 2014/42/EU do not cover all revenue-generating criminal markets where organised crime is active. The table below highlights the scopes of offences covered by confiscation measures regulated by Directive 2014/42/EU.

Table 2. Crimes covered by Directive 2014/42/EU

Provisions of Directive 2014/42/EU	Instruments Covered	Category of crimes covered
Article 3 Directive 2014/42/EU	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 Union (1) ('Convention on the fight against corruption involving officials')	Corruption
	Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro	Counterfeiting
	Council Framework Decision 2001/413/JHA of 28 May 2001 on combating fraud and counterfeiting on non-cash means of payment	Fraud Counterfeiting
	Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime	Money Laundering
	Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism	Terrorism
	Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector	Corruption
	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	Illicit drug trafficking
	Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime	Participation in a criminal organisation
	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 (6	Trafficking in human beings

Provisions of Directive 2014/42/EU	Instruments Covered	Category of crimes covered
	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	Sexual abuse and exploitation of children
	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	Cyberattacks
Article 5 Directive 2014/42/EU	Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector	Active and Passive Corruption in the private sector
	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 Union (1) ('Convention on the fight a	Corruption involving officials
	Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime	Participation in a criminal organisation
	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	Sexual abuse and exploitation of children
	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	Illegal system interference and illegal data interference

Consequently, Directive 2014/42/EU fails to address a multitude of crime where organised crime is active: firearms trafficking, environmental crime, migrants smuggling, contract killing (including murder, grievous bodily harm and kidnapping), organ trafficking, organised armed robbery, trafficking in cultural goods, swindling, racketeering and extortion, counterfeiting, documents forgery, forgery of means of payment, trafficking of nuclear materials and of illicit hormonal substances, illicit tobacco trade and of stolen vehicles. Even though the aggregate value of the revenues generated from these crimes cannot be defined with precision, cautious estimates would place this value at **EUR 50 billion at least per annum** outside the scope of the Confiscation Directive.

ANNEX 6: CONFISCATION AND FUNDAMENTAL RIGHTS

The fundamental rights enshrined in the Charter of Fundamental Rights of the European Union ("the Charter") and the Treates provide important limits for Union legilsative action, notably in the field of confiscation[179]. In particular, Article 49 of the Charter sets out the principles of legality and proportionality of criminal offences and penalties, and Artice 52 Paragraph 1 deals with the arrangements for the limitation of some rights (relative or rectius rights, as opoposed to absolute rights) inlcuding the right to property.

At stake in confiscation cases are also procedural rights, including in particular the right to a fair trial, the right to an effective remedy, and the presumption of innocence;

1. Right to property and the principle of proportionality

Article 17 of the Charter guarantees the right to property[180]. The corresponding provision is Article 1 of the first Protocol to the European Convention of Human Rights ("ECHR")[181].

The right to property is relevant in the context of freezing and confiscation orders as in the former the control over the property is altered and in the latter the ownership of the property is transferred.

The right to property is not an absolute right, as it is subject to interference. According to the established case-law of the European Court of Human Rights ("ECtHR")[182], an interference with property rights must be prescribed by law (**legality**) and pursue one or more legitimate aims. In addition, there must be a reasonable relationship of **proportionality** between the means employed and the aims sought to be realised. A balance has to be struck between the demands of general interest and the interest of the individual concerned.

In the case *Phillips v. UK*[183], the ECtHR held that the confiscation action was not disproportionate given the importance of the aim to be pursued, which was in this case the fight against drug trafficking. The Court took good note of the fact that *"the making of a confiscation order operates in the way of a deterrent to those considering engaging in drug trafficking, and also to deprive a person of profits received from drug trafficking,*

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[179] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law", Brussels, 20.9.2011, COM(2011) 573 final.

[180] *"1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest."*

[181] *"1. Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.*
2. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties".

[182] See, for example, ECtHR, *Agosi v. UK*, N°9118/80; *Raimondo v. Italy*, N°12954/87.

[183] ECtHR, *Phillips v. UK*, N°41087/98.

and to remove the value of the proceedings from possible future use in the drugs trade". In addition, and although it acknowledged that the sum payable under the confiscation order was considerable, namely GBP 91,400, the Court considered that it corresponded to the amount which the Crown Court judge found the applicant to have benefited from through drug trafficking over the preceding six years and that it was a sum which he was able to realise from the assets in his possession. The Court also found that the procedure followed in the making of the order was fair and respected the rights of the defence.

In the case *Butler v. UK*[184], the ECtHR allowed the State even greater latitude when ordering a preventive confiscation. The ECtHR considered that the problems faced by States combating the problem of drug trafficking justified the wide margin of appreciation accorded to them in this area and was satisfied that the applicant had been given a fair hearing in his appeal challenging the confiscation order. The ECtHR concluded that as drug trafficking is of serious concern in Member States, its policy must be capable of balancing the rights of the individual with the general interest of the community. The actions were subject to judicial scrutiny and the courts weighed the evidence before ordering seizure. The interference with his property rights was not, therefore, disproportionate.

2. Procedural rights, including in particular the right to a fair trial, the right to an effective remedy and the presumption of innocence

The nature of confiscation measures is a central aspect when assessing their impact on procedural rights, such as the right to a fair trial, the right to an effective judicial remedy, and the principle of presumption of innocence. All these rights apply to confiscation measures which are of criminal nature[185].

The right to a fair trial, the right to an effective remedy and the presumption of innocence are enshrined in Articles 47 and 48 of the Charter[186] as well as in Articles 6 and 13 of the ECHR.

Inasmuch as confiscation orders interfere with the right to property, affected parties must be able to challenge such orders under the conditions set by these articles.

In this context due account has also to be taken of the European Union directives on procedural rights[187] and notably Directive 2012/13/EU on the right to information in

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[184] ECtHR, *Butler v. UK*, N°41661/98.

[185] See European Agency for Fundamental Rights, *FRA Opinion 03/2012 on the Confiscation of proceeds of crime*, p.7.

[186] Article 47 - Right to an effective remedy and to a fair trial : *"Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."*

Article 48 - Presumption of innocence and right of defence: *"1. Everyone who has been charged shall be presumed innocent until proved guilty according to law. 2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed."*

criminal proceedings[188] and Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings[189]. These directives provide for common minimum standards of procedural rights which are necessary to enhance mutual trust between Member States and to facilitate the principle of mutual recognition.

Moreover, the Confiscation Directive introduced in its Article 8 procedural safeguards in line with the fundamental rights enshrined in the Charter. This will lead to a minimal harmonisation in this area throughout the EU.

Ordinary conviction-based confiscation

It appears from the established case-law of the ECtHR that the ordinary conviction-based confiscation is generally perceived to be a legitimate restriction to the right to property guaranteed by Article 1, Protocol 1 of the ECHR, if the principles of legality and proportionality are respected, and if procedural safeguards such as the right of the person concerned to a fair trial and to an effective remedy provided for in Articles 6 and 13 of the ECHR are sufficiently ensured. The principle of presumption of innocence has also to be respected.

In the case *Van Offeren v. the Netherlands*[190] the applicant was convicted of having held and transported cocaine and of having held a cocaine-diluting substance in preparation of drug offences, but was acquitted of the remaining charges, including trafficking cocaine. An order for confiscation of illegally obtained advantage was imposed on the applicant in the amount of NLG 357,059 to be replaced, in case of lack of payment or impossibility of recovery, by thirty months detention. The applicant claimed that the confiscation order imposed on him infringed his **right to be presumed innocent** under Article 6(2) ECHR. The Court, however, held that subsequent confiscation proceedings did not amount to being charged with a criminal offence but that these were rather analogous to a penalty determining stage. Indeed, the purpose of the confiscation proceedings was not the conviction or acquittal of the applicant for any other offence, but to assess whether assets demonstrably held by him were obtained by or through drug-related offences and, if so, to assess the amount at which the confiscation order should properly be fixed. Insofar as there was no "new charge", the Court concluded, that Article 6(2) ECHR related to presumption of innocence did not apply.

On the other hand, the case *Geerings v. the Netherlands*[191] illustrates a case where the principle of presumption of innocence enshrined in Article 6(2) ECHR was not respected. It concerned the imposition of a confiscation order based on a judicial finding that the applicant had derived advantage from offences (thefts of lorries containing merchandise)

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[187] Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, Directive 2012/13/EU on the right to information in criminal proceedings, Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings, Directive (EU) 2016/343 on the presumption of innocence, Directive (EU) 2016/800 on procedural safeguards for children in criminal proceedings, Directive (EU) 2016/1919 on legal aid in criminal proceedings.

[188] OJ L 142/1 of 1.6.2012.

[189] OJ L 65/1 of 11.3.2016.

[190] ECtHR, *Van Offeren v. the Netherlands*, N°19581/04.

[191] ECtHR, *Geerings v. the Netherlands*, N°30810/03.

for which he had been acquitted in the criminal proceedings brought against him. In finding a breach of Article 6(2) the ECtHR took into consideration that the confiscation order related to the very crimes for which the applicant had been acquitted, and also acknowledged that it could not be established that any advantage, illegal or otherwise, was actually obtained.

Extended confiscation

Extended confiscation (in which a criminal conviction is followed by the confiscation not only of assets associated with the specific crime, but of additional assets which the court determines as deriving from criminal conduct) may raise concerns with regard to the presumption of innocence, as confiscation is enabled without an established link between the asset and a particular criminal conviction. It may also raise issues with regard to the principle of legality, including the non-retroactivity of criminal law and the prohibition of the imposition of heavier penalties laid down by Article 49 of the Charter and Article 7 ECHR. However, the ECtHR has on many occasions concluded that extended confiscation is compatible with the ECHR, provided that certain safeguards, notably under Article 6(1), are complied with.

In the case *Phillips v. UK*[192], Mr Phillips was sentenced to nine years imprisonment for the importation of cannabis resin. On the basis of the 1994 Drug Trafficking Act, an inquiry was conducted into the applicant's means that same year. The investigating officer argued that the applicant had benefited from drug trafficking and invited the Crown Court to apply assumptions foreseen by section 4(2) and 4(3) of the Drug Trafficking Act, namely that any property appearing to have been held by the defendant at any time since his conviction or during the period of six years before the date on which the criminal proceedings were commenced was received as a payment or reward in connection with drug trafficking, and that any expenditure incurred by him during the same period was paid for out of the proceeds of drug trafficking. Shortly after, the Crown Court imposed an extended confiscation order on the applicant, having assessed the illicit profits at GBP 91,400). Mr Phillips complained that the statutory assumption under the UK Drug Trafficking Act 1994 violated the presumption of innocence enshrined in Article 6(2) ECHR as well as his right to property contained in Article 1, Protocol 1 ECHR.

With regard to the alleged breach of the **presumption of innocence**, the ECtHR examined first whether the prosecutor's application for a confiscation order following the applicant's conviction amounted to the bringing of a "new charge" within the meaning of Article 6(2) ECHR. In order to address this issue, the Court applied three criteria: the classification of the confiscation proceedings under national law, their essential nature and the type and severity of the penalty at stake. The Court first looked at the first criterion and held that the application for a confiscation order did not involve any new charge or offence in terms of criminal law. The Court then examined the other two

[192] ECtHR, *Phillips v. UK*, N°41087/98.

criteria. It underlined that - although the Crown Court assumed that the applicant had benefited from drug trafficking in the past - the purpose of the confiscation procedure was not the conviction or acquittal of the applicant for any other drug-related offence. The confiscation procedure was instead aimed at enabling the national court to assess the amount at which the confiscation order should properly be fixed. In this sense, the person was thus not "charged with a criminal offence" and Article 6 (2) was not applicable to the confiscation proceedings.

Furthermore, the Court found no violation of **Article 6(1) ECHR** as "the system was not without **safeguards**", in the sense that the assessment was carried out by a court following a judicial procedure including a public hearing, advance disclosure of the prosecution case and the opportunity for the applicant to adduce documentary and oral evidence, the most relevant safeguard being the opportunity for the applicant to rebut the assumption foreseen in the national legislation.

In the case *Grayson & Barnham v. UK*[193], Mr Grayson was convicted with intent to supply over 28 kilograms of pure heroin and Mr Barnham was convicted of two conspiracy charges involving plans to import large consignments of cannabis. Extended confiscation proceedings were initiated against each of them. They both alleged that the burden to prove that their realisable property was less than the amount to which they had been assessed to have benefited from drug trafficking violated their **right to a fair hearing** under Article 6 (1) of the Convention. The ECtHR, when assessing whether the way in which the statutory assumptions of the 1994 Drug Trafficking Act were applied in the particular proceedings offended the basic principles of a fair procedure inherent in Article 6(1), took well into account that the rights of the defence were protected during the confiscation proceedings by "*the safeguards built in the system. Thus, in each case the assessment was carried out by a court with a judicial procedure including a public hearing, advance disclosure of the prosecution case and the opportunity for the applicant to adduce documentary and oral evidence. Each applicant was represented by counsel of his choice"*.

As regards the burden of proof, it *"was on the prosecution to establish that the applicant had held the assets in question during the relevant period. Although the court was required by law to assume that the assets derived from drug trafficking, this assumption could have been rebutted if the applicant had shown that he had acquired the property through legitimate means. Furthermore, the judge had a discretion not to apply the assumption if he considered that applying it would give rise to a serious risk of injustice"*. The Court concluded that "*it was not incompatible with the notion of a fair hearing in criminal proceedings to place the onus on each applicant to give a credible account of his current financial situation"* after *having been proved to have been involved in extensive and lucrative drug dealing over a period of years*".

Non-conviction based confiscation

NCBC enables interferences with the right to property without the property being linked to a specific criminal conviction. Since these measures do not relate to assets for which a

[193] ECtHR, *Grayson & Barnham v. UK*, N°19955/05 and 15085/06.

criminal conviction has been obtained, they may raise issues with regard to the right to a fair trial, the right to an effective remedy and the presumption of innocence.

Although the ECtHR has not ruled on the principled question of their compatibility with the ECHR, the Court has repeatedly considered NCBC to be consistent with Article 6 ECHR and Article 1, Protocol 1, as long as effective procedural safeguards are respected.

In Italy, **preventative confiscation** can be ordered for alleged proceeds of crime of the presumed offender who is deemed a member of a mafia-like organisation. According to the ECtHR, such confiscation measures "*sought to prevent the unlawful use, in a way dangerous to society, of possessions whose lawful origin has not been established*."[194] It therefore considers that the aim of the resulting interference serves the general interest." In relation to the use of presumptions, the ECtHR confirmed that "*the Convention obviously does not prohibit such presumptions in principle. However, the applicant's right to peaceful enjoyment of their possessions implies the existence of an effective judicial guarantee*". It should be underlined that under the ECtHR case-law considerable importance is given to the fact that **effective procedural safeguards** are in place. In the case *Arcuri v. Italy*[195], the Court found that the proceedings were conducted in the presence of both parties and with respect for the rights of defence before three successive courts. Those courts gave full reasons on all the points at issue, thus avoiding any risk of arbitrariness. In the case *Bocellari and Rizza v. Italy*[196] the ECtHR found a violation of Article 6(1) ECHR as the applicants should have had at least the opportunity to ask for a public hearing and in the case *Bongiorno a.o. v. Italy*[197] the applicants' rights to a public hearing were also violated.

The ECtHR also had the opportunity to rule on the compatibility with the Convention of **civil "in rem" confiscation**, a system existing in the United Kingdom's legislation. In the cases *Butler v. UK*[198] and *Webb v. UK*[199], the ECtHR held that cash confiscation (forfeiture) proceedings were not criminal in nature. Cash confiscation was a "*preventive measure*" which could not be compared to a criminal sanction, since it was designed to take out of circulation money which was presumed to be bound up with the international trade in illicit drugs. The Court also considered that the proceedings did not involve the determination of a criminal charge and hence did not attract the full guarantees of Article 6 of the ECHR under its criminal head, such as the presumption of innocence.

Third party confiscation

The question of proportionality and relevant safeguards plays also an important role in the context of third party confiscation. Where, in the case-law of the ECtHR, there is an interference with the property rights of such parties, a link between the proceeds of crime and the assets in the possession of a third party has to be established. Moreover, the

[194] ECtHR, *M. v. Italy*, N°12386/86.
[195] ECtHR, *Arcuri v. Italy*, N°52024/99.
[196] ECtHR, *Bocellari and Rizza v. Italy*, N°399/02.
[197] ECtHR, *Bongiorno a.o. v. Italy*, N°4514/07.
[198] ECtHR, *Butler v. UK*, N°41661/98.
[199] ECtHR, *Webb v. UK*, N°56054/00.

confiscation must be proportionate to the objectives being pursued and the right to a fair trial must be respected. In any event, confiscation from third parties should not prejudice the rights of *bona fide* third parties[200].

In the case *Arcuri v. Italy*[201] confiscation orders were issued against the property of a number of family members on the basis of the "lifestyle discrepancy" of the first applicant. There were no criminal proceedings directly related to the confiscation order. The presumption that the family's fortune had been created by the proceeds of criminal offences committed by the first applicant was supported by the first applicant's long criminal history and his involvement in organised crime. The ECtHR held that the function of the confiscation order was to prevent the unlawful use, in a way dangerous to society, of possessions whose lawful origin has not been established. As a crime prevention policy, the Court accorded the State a wide margin of appreciation. In assessing the proportionality of the confiscation, the Court considered the rationale for the measure was sound, taking into account the serious nature of organised crime and the threat it posed to the rule of law in the state. Further, the applicants' right to peaceful enjoyment of their possession had not been infringed as the Italian courts had provided them with a reasonable opportunity of putting their case to the responsible authorities.

In the case *Silickiene v. Lithuania*[202] confiscation measures (related to shares in a telecommunication company and an apartment) were applied to the applicant, widow of a high ranking tax police officer who was charged with forming and leading a criminal organisation for smuggling. Proceedings against the husband were discontinued after he had committed suicide. At the same time, three co-accused persons were convicted. The Court upheld the confiscation of the applicant's assets because they stemmed from proceeds of criminal activities of the entire criminal organisation. The Court found no violation of Article 6(1) ECHR accepting that "*the Lithuanian authorities had de facto afforded the applicant a reasonable and sufficient opportunity to adequately protect her interests*". Moreover, the Court found no violation of Article 1, Protocol 1 either. The confiscation order was prescribed by law and it pursued a legitimate aim, namely to ensure that the use of the property issue did not procure the applicant a pecuniary advantage to the detriment of the community. The Court noted that the applicant had direct knowledge that the confiscated property could only have been purchased with the proceeds of the criminal organisation's unlawful enterprise and in separate criminal proceedings had confessed to having committed crimes with a view to helping her husband escape criminal liability while he was detained. As to the way the confiscation proceedings were held, the Court noted that the judicial review was conducted by three successive courts and concerned the legality and the justification for the confiscation. Lastly, given the scale, systematic nature and organisational level of the criminal activity at issue, the Court considered that the confiscation measure complained of may have appeared essential in the fight against organised crime.

[200] See Article 6(2) of 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.
[201] ECtHR, *Arcuri v. Italy*, N°52024/99.
[202] ECtHR, *Silickiene v. Lithuania,* N°20496/02.

In the case *Veits v. Estonia*[203] the applicant's mother and grandmother were convicted for fraud and murder related to real estate transactions. The confiscation of one apartment belonging to the applicant was ordered (as property obtained through crime). The ECtHR found neither a violation of Article 6 nor of Article 1, Protocol 1. The Court held that even though the applicant was not invited to take part in the proceedings, her interests were de facto protected by her mother and grandmother and did not remain unrepresented. Moreover, domestic courts dealt with, and rejected with sufficient reasoning, the arguments by the applicant's mother and grandmother to the effect that the apartment in question had not been obtained through crime.

For the ECtHR, it is also essential that a third party has an effective opportunity possibility to claim the ownership of a seized asset and to protect her/his interests.

In the case *Denisova and Moiseyev v. Russia*[204] the ECtHR concluded on a violation of the rights of property of the applicants for the following reasons: the applicants were wife and daughter of Mr Moiseyev who had been confiscated a large amount of money, a pc and other assets. The spouse claimed her right to a portion of the money and the daughter asserted her ownership of the pc. The issue at stake was that the domestic courts had not provided them with an effective opportunity to claim ownership. Domestic case-law indicated that confiscation could not extend to third parties, these could be subjected to it only if it was found in subsequent civil proceedings that they acted as straw men. The applicants were not party to the criminal proceedings and had not standing to make any submissions. In the civil proceedings the civil courts refused to take cognisance of the merits of the vindication claims or make any independent findings of fact, and they merely referred back to the judgment in the criminal case.

[203] ECtHR, *Veits v. Estonia*, N°12951/11.

[204] ECtHR, *Denisova and Moiseyeva v. Russia,* N°16903/03.

ANNEX 7: EVALUATION OF THE EXISTING POLICY AND LEGISLATIVE FRAMEWORK

1. INTRODUCTION

1.1 Purpose and scope

Financial gain is the primary motivation behind organised crime. Criminal revenues in the nine main criminal markets in the European Union amounted to €139 billion in 2019,[205] corresponding to 1% of the Union's Gross Domestic Product.[206] Their large illegal profits allow organised crime groups to maintain and expand their activities and to infiltrate the licit economy and public institutions, including via corruption, eroding the rule of law and fundamental rights, and undermining people's right to safety as well as their trust in public authorities. The EncroChat[207], Sky ECC[208] and AN0M[209] cases have further shown the extent of organised crime's transnational reach, their complex modi operandi and unprecedented degree of economic infiltration.

The objective of this Evaluation is to assess whether the European Union's asset recovery framework has achieved the declared objectives and is still "fit for purpose". The EU asset recovery framework subject to review is composed of two main legal instruments:

(i) **Council Decision 2007/845/JHA** 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 (hereinafter referred to as the "ARO Council Decision")[210];

(ii) **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 (hereinafter referred to as the "Confiscation Directive")[211].

[205] Illicit drugs, trafficking in human beings, smuggling of migrants, fraud (MTIC fraud, IPR infringements, food fraud), environmental crime (illicit waste and illicit wildlife), illicit firearms, illicit tobacco, cybercrime activities, organised property crime – 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, p. 10

[206] Europol, From suspicion to action – Converting financial intelligence into greater operational impact, 2017

[207] Europol, "Dismantling of an encrypted network sends shockwaves through organised crime groups across Europe", 2 July 2020,

[208] Europol, "New major interventions to block encrypted communications of criminal networks", 10 March 2021

[209] Europol, "800 criminal arrested in biggest ever law enforcement operation against encrypted communication", 8 June 2021

[210] [2007] OJ L332/103.

[211] [2014] OJ L127/39.

These instruments are complemented by the Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders[212], which is out of the scope of this Evaluation.

The aim of this Evaluation is to assess the functioning of the ARO Council Decision and the Confiscation Directive, the level of implementation and application in EU Member States since the end of their transposition period in 2008 and in 2015 respectively, and to assist in determining the level of additional EU intervention necessary for the efficient and effective recovery of illicit assets when fighting serious and organised crime. The findings of this Evaluation serve as one relevant input to the Impact Assessment. The Evaluation covers all legal provisions of the ARO Council Decision and of the Confiscation Directive. The Evaluation covers all EU Member States,[213] with the exception of Denmark with regards to the Confiscation Directive[214]. The Evaluation will follow the five evaluation criteria set out in the Commission's Better Regulation Guidelines:[215] relevance, effectiveness, efficiency, coherence and EU added value.

1.2 Sources and methodology

The implementation of the EU asset recovery framework has been analysed in various reports over the past years. The European Commission relied on findings of three studies and two reports for this Evaluation: the Commission report "Asset Recovery and confiscation, ensuring that crime does not pay,"[216] the staff working document "Analysis of non-conviction based confiscation measures in the European Union,"[217] and the studies on the transposition of Directive 2014/42/EU[218], on "Asset recovery and confiscation: what works and what doesn't work"[219] and the "Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation"[220].

The study on "Asset recovery and confiscation: what works and what doesn't work" is, in particular, a backward-looking assessment of what works and what does not work in the different phases of the asset recovery process in the Member States. The study provides for the main source of backward-looking information of Council Decision 2007/845/JHA on Asset Recovery Offices and Directive 2014/42/EU. The data gathered from this study allowed the drawing of preliminary conclusions which were then tested with evaluation-specific consultations in the "Study to support the preparation of an Impact Assessment

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[212] 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, pp.1-38.

[213] The United Kingdom left the European Union as of 1 February 2020 and chose to opt out from the Confiscation Directive. However, since the reference period for this evaluation is 2011-2020, and studies upon which it relies upon include the United Kingdom in their scope, this evaluation includes information on the United Kingdom.

[214] 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 chose not to take part in the adoption of the Directive.

[215] Better Regulation Guidelines, November 2021, SWD(2021) 305 final

[216] Report from the Commission to the European Parliament and the Council, *Asset recovery and confiscation: Ensuring that crime does not pay*, SWD COM/2020/217 final

[217] SWD (2019), 1050 final.

[218] HOME/2017/ISFP/FW/LECO/0084

[219] HOME/2018/ISFP/FW/EVAL/0081, https://data.europa.eu/doi/10.2837/649661

[220] HOME/2020/ISFP/FW/EVA2/0016

on EU policy initiatives on asset recovery and confiscation", the public consultation[221] and the 20th Meeting of the EU Asset Recovery Offices' Platform together with the Fifth meeting of the Contact Committee on Directive 2014/42/EU. The evidence gathered in these studies, reports, and consultation activities informed in aggregate the conclusions and lessons learned, as these studies gave an overview of what was achieved through the evaluated instruments, together to an overview of tools available to Member States, existing gaps, and best practices.

2. WHAT WAS THE EXPECTED OUTCOME OF THE INTERVENTION?

2.1 Description of the intervention and its objectives

In line with the "evaluate first" principle, the Evaluation seeks to assess the value of the Confiscation Directive and of the ARO Council Decision. Both legislative instruments were enacted with the same general objectives of fighting serious and organised crime through targeting its profits.[222] In the specific, both interventions aimed at reducing the attractiveness of organised crime by making sure that those profits could be taken away, showing that "crime does not pay" and preventing their reinvestment into further criminal activities. In order to do so, both instruments aimed at equipping competent authorities with tools to retrieve criminal profits, and to facilitate mutual trust and effective cross-border cooperation, ultimately resulting in an increased security trust in public institutions and the rule of law.

The objectives of the instruments subject to this Evaluation relate to a number of sustainable development goals. By countering organised crime's infiltration into the legal economy, the fight against organised crime's profits primarily contributes to goals of (16), peace, justice, and strong institutions and (8), decent work and economic growth.

The two initiatives differ in terms of specific objectives, inputs and results.

The **Confiscation Directive** aimed at approximating Member States' legislation on freezing and confiscation, particularly clarifying common definitions and existing concepts. It also aimed at increasing the rates of freezing and confiscation of the proceeds and instrumentalities of crime, improve the management and disposal of frozen and confiscated assets until the end of judicial proceedings, and at improving the statistical data picture on asset recovery.

In order to achieve these specific objectives, the Confiscation Directive lays down minimum rules on the freezing and confiscation of criminal assets across the European Union. Building upon Framework Decision 2005/212/JHA[223], which allows for standard confiscation measures to all crimes punishable by deprivation of liberty for more than

[221] The feedbacks received can be consulted here.
[222] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, p.12-14
[223] 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. This Framework Decision, after being partially replaced by the Confiscation Directive, only applies in respect of standard confiscation with the exception of Denmark, which is not bound by the Confiscation Directive and for which the other provisions of the 2005 Framework Decision apply (notably the provisions on extended confiscation).

one year[224], the Confiscation Directive requires Member States to enable the confiscation of property of equivalent value to the proceeds of a crime (value confiscation), held by a third party (third-party confiscation), or property derived from criminal conducts but that goes beyond the direct proceeds of the crime for which the offender was convicted (extended confiscation). It also requires Member States to enable confiscation of property in cases where a criminal conviction is not possible because the suspect has become ill or fled the jurisdiction (non-conviction based confiscation). Such confiscation mechanisms are applicable to a defined set of "eurocrimes". It also lays down rules on freezing measures, asset management, a set of safeguards, and minimum rules on statistical data collection.

The **expected results** of the intervention were clarity regarding common definitions, and increased rates of freezing and confiscation orders. The intervention also aimed at improving practices on management and disposal, including social reuse, and an improved statistical picture on asset recovery in the Member States.

The **ARO Council Decision** aimed at enabling cross-border cooperation on tracing and identification of suspected criminal assets and proceeds of crime through information exchanges between Asset Recovery Offices.

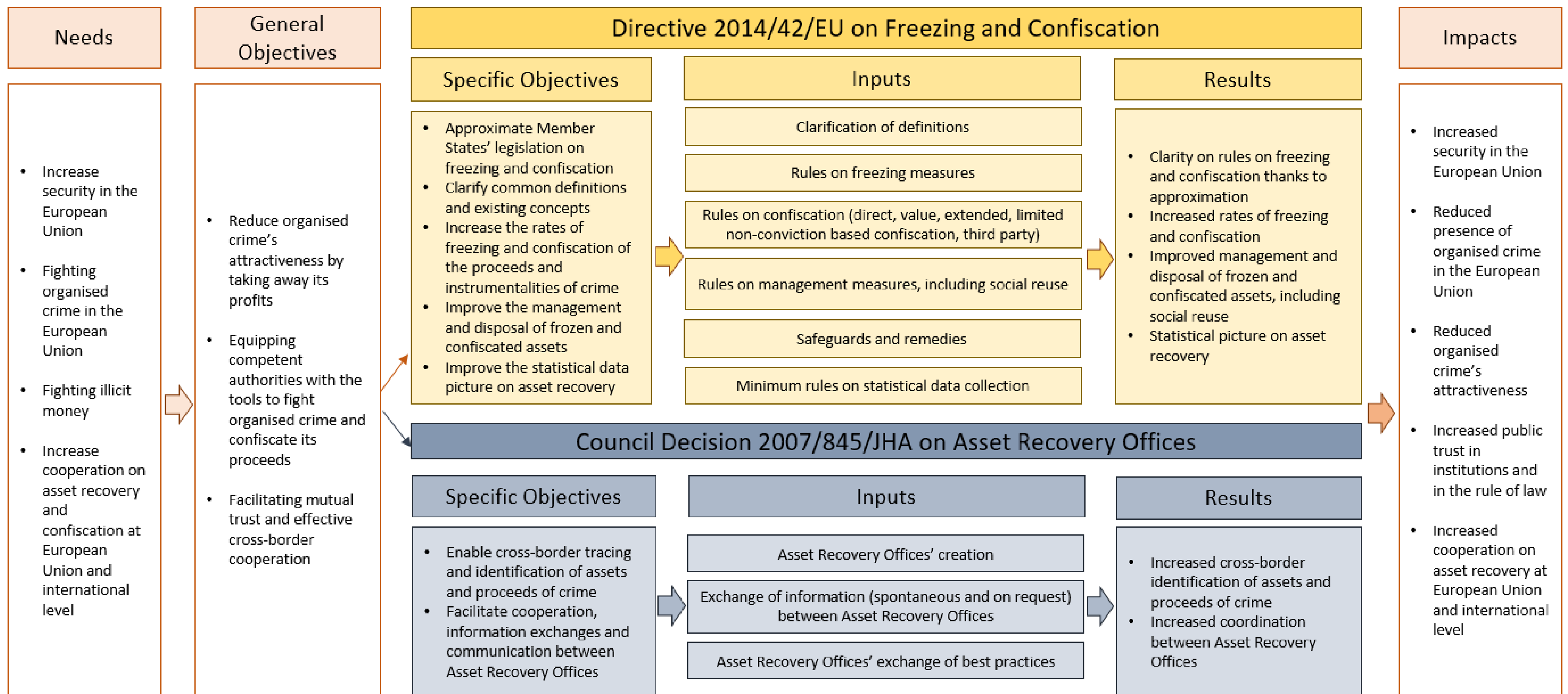
In order to achieve these specific objectives, the ARO Council Decision sets minimum rules requiring Member States to set up or designate national Asset Recovery Offices to facilitate the identification of proceeds of crime or other crime-related property that may become the object of a freezing or confiscation order. It enables Asset Recovery Offices to exchange information upon request and spontaneously (subject to data protection provisions) and to share best practices. The main conditions and time limits for the exchange of information between Asset Recovery Offices are those set in Framework Decision 2006/960/JHA on the exchange of information and cooperation between law enforcement authorities ("the Swedish Initiative").[225]

The **expected results** of the intervention were increased coordination between Asset Recovery Offices and increased cross-border identification of suspected criminal assets.

[224] Article 2(1) Council Framework Decision 2005/212/JHA.

[225] Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386, 29.12.2006.

Figure 1. Joint intervention logic Directive 2014/42/EU and Council Decision 2007/845/JHA, developed in the course of the Evaluation



2.2 Points of comparison

To reconstruct the baseline scenario and the point of comparison, this Evaluation relies on the Impact Assessment accompanying the proposal for the Confiscation Directive[226]. For Council Decision 2007/845/JHA this Evaluation relies on various other documents as mentioned below, as a formal Impact Assessment was not carried out.

The ARO Council Decision and the Confiscation Directive were adopted to tackle the financial dimension of organised crime, which, although having experienced some remarkable evolutions since, already presented some key characteristics of modern organised crime at the time of adoption. The 2007 Europol's Organised Crime Threat Assessment[227] already alerted that organised crime groups "displace their criminal activities across regions and countries" and that they were characterised by a "business-like behaviour and organisation".[228] The use of legitimate business structures by organised crime to facilitate criminal activities, launder money and reinvest it in the legal economy, was already identified in 2007. While the 2007 EU Organised Crime & Threat Assessment (OCTA) indicated that organised crime groups "tend to build in-house money laundering capabilities", it also identified their recourse to professionals, for instance lawyers, financial advisors or accountants, to launder their profits.[229] This trend is likely to have increased since then, given the emergence of a parallel underground financial system, according to the 2021 European Union Serious and Organised Crime Threat Assessment (SOCTA)[230].

The intelligence picture on the modus operandi applied by criminals to hide their assets was further reinforced in the 2011 OCTA, which alerted that besides established methods such as cash couriers and shell companies, modern technology was offering many new laundering possibilities and new ways to further their criminal interests. Such methods range from smurfing – the breaking down of large sums into less detectable transactions – to the control of cash-intensive businesses and of companies in the real estate and construction sectors, or investment in artworks. The 2011 OCTA already identified emerging trends such as the use of crypto-asset service providers (a nascent market at the time) and of banks located in third countries (such as the United Arab Emirates and the Dutch Antilles) for money laundering purposes.[231]

The adoption of the EU legal framework also has to be seen against the background of international instruments. At United Nations level, asset recovery system is regulated by the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988, the UN Convention against Transitional Organised Crime of 12 December

[226] SWD(2012) 31 final
[227] Europol, OCTA 2007: EU Organised Crime & Threat Assessment.
[228] *Ibid*., p. 28
[229] *Ibid*., p. 11
[230] Europol, European Union Serious and Organised Crime Threat Assessment "A Corrupting Influence: The infiltration and undermining of Europe's economy and society by organised crimes" (2021), p. 98
[231] Europol, OCTA 2011: EU Organised Crime Threat Assessment, p. 44

2000, and the UN Convention against Corruption of 31 October 2003. At European level, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990 and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of terrorism of 16 May 2005 are the main references for the EU legal framework on asset recovery and confiscation. Besides these instruments, until the 2000s the international community had not developed specific initiatives aimed at improving in practice the tracing and confiscation of criminal proceeds. The first initiative of this kind was the launch in 2004 of the Camden Asset Recovery Inter-agency Network (CARIN) network, gathering practitioners with the aim of facilitating cooperation in asset recovery across borders. In September 2007, the World Bank and the United Nations Office of Drugs and Crime (UNODC) launched the Stolen Asset Recovery (StAR) initiative, a partnership aimed at supporting international asset recovery efforts, in particular the recovery of assets derived from corruption.

ARO Council Decision

The EU and its Member States were not well equipped to effectively address this complex threat transcending national borders. The lack of dedicated tools was particularly acute in the initial phase of the asset recovery process: the identification of assets. Responsibilities for tracing assets, in national or cross-border cases, would fall on various agencies depending on the Member State, including police, Financial Intelligence Units, audit authorities, anti-corruption agencies and tax authorities. An "*assessment of the asset recovery regime in the European Union highlighted the shortage of skilled financial investigators as one of the principal constraints*" for identifying and ultimately recovering criminal assets.[232] At the time of adoption of the ARO Council Decision, only eight Member States (AT, BE, EE, FR, DE, IE, NL and UK) had fully-fledged Asset Recovery Offices at their disposal. Such Offices differed widely in structure, powers and practices.

Cooperation between national authorities in this field took place mostly through CARIN, launched in 2014 to gather asset recovery practitioners with the aim of facilitating cooperation across borders. At the time, CARIN was comprised of Asset Recovery Offices but also of law enforcement and judicial experts on asset recovery from 40 countries, including 26 EU Member States. The objectives of this network, which is base at Europol and it is still operating, are the exchange of best practices and the improvement of inter-agency cooperation and exchange of information in cross-border matters.

Confiscation Directive

Statistical data provisions on criminal revenues and on retrieved criminal assets were far and apart in 2012, with data available on the baseline covering only a few Member States. However,

[232] The World Bank and UNODC, Towards a Global Architecture for Asset Recovery, Stolen Asset Recovery Initiative, August 2010, p. 27

existing data already showed a gap between identified and recovered criminal assets: whilst profits laundered in Italy alone were estimated at €150 billion in 2011, and at £15 billion in 2006 in the U.K., only €189 million were recovered in the U.K. in 2009, and €60m in the Netherlands[233].

The Confiscation Directive attempted to address this gap and several obstacles to effective confiscation, such as conflicting legal traditions resulting in the lack of a common approach to confiscation measures, difficulties in securing and maintaining assets, and a lack of a coherent and comparable statistical system. It attempted to address the following problems in the EU legislative framework: (i) its incomplete or late transposition, caused by lack of clarity of EU provisions on confiscation, (ii) the existence of diverging national provisions, leading to issues of mutual recognition, and (iii) the low utilisation of confiscation in practice, caused by challenges in cross-border cooperation, and lack of enforcement culture of financial investigations and confiscation orders.

At the time of adoption, Member States' legislation on freezing and confiscation of criminal assets had developed organically and independently thorough the years, leading to a multitude of conflicting terminology and confiscation tools. This was due to the existence of several legislative instruments,[234] which were only partially transposed by the Member States in 2012[235]. This situation was caused by the complexity of the legislative instruments to be transposed – which in turn led to a complex legislative patchwork of confiscation measures – and the discretion provided to Member States in their implementation: one example was the notion of extended confiscation of Framework Decision 2005/212/JHA, which required Member States to choose between three alternative criteria for extended confiscation, or to adopt two or all three of them cumulatively. This overlapping national and EU legal framework led to practitioners' confusion regarding asset recovery terminology and definitions, leading in turn to issues of cross border cooperation in the recovery of criminal assets in cases involving all existing confiscation measures.

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[233] Commission Staff Working Paper, Proposal for a Directive of the European Parliament and the Council on the freezing and confiscation of proceeds of crime in the European Union, SWD(2012)31 final, annex 2, p. 13

[234] Framework Decision 2006/783/JHA, Framework Decision 2005/212/JHA, Council Framework Decision 2003/577/JHA, Joint Action 98/699/JHA and Council Framework Decision 2001/500/JHA.

[235] The reports on Framework Decisions 2005/212/JHA, 2003/577/JHA and 2006/783/JHA show that Member States have been slow in transposing these legislative instruments, and that the relevant provision have been often implemented in an incomplete or incorrect way. In 2012, only Council Decision 2007/845/JHA was implemented in a moderately satisfactory way. Report from the Commission pursuant to Article 6 of the Council Framework Decision of 24 February 2005 on Confiscation of Crime-related Proceeds, Instrumentalities and Property (2005/212/JHA), COM(2007) 805; Report from the Commission based on Article 14 of the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, COM(2008) 885 final; Report from the Commission pursuant to Article 22 of the Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, COM(2010) 428; Report from the Commission based on Article 8 of the 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, COM(2011) 176 of 12 April 2011.

Furthermore, no provisions existed in 2012 regarding the preservation and management of frozen assets, which were fragmentally addressed exclusively by national provisions and presented structural criticalities in terms of competence and management expertise.[236] As already underlined in the 2012 Impact Assessment, as a result of this shortcoming the difference in value between the asset frozen or seized at the beginning of the procedure was substantially different compared to the value of the assets recovered at the end of the confiscation procedure.[237]

Moreover, existing confiscation powers were underutilised, and cross-border requests were hampered by indirect barriers to practitioners, such as freezing requests being made alongside multiple other cross-border requests requiring practitioners to be familiar with many different instruments. Finally, no provisions existed in 2012 regarding the disposal of confiscated assets, leading to instances of organised crime groups being able to recover confiscated property after the conclusion of judicial proceedings through intimidation.

3. HOW HAS THE SITUATION EVOLVED OVER THE EVALUATION PERIOD?

This section of the Evaluation presents the current state of play of the ARO Council Decision and the Confiscation Directive, particularly how the interventions have been implemented

3.1 ARO Council Decision

Institutional set-up

As a result of the adoption of the Council Decision 2007/845/JHA, all Member States have established at least one Asset Recovery Office. At the same time, the Offices' legal framework leaves a considerable degree of discretion to Member States when it comes to the exact number of Asset Recovery Offices to establish in their territory as well as their legal nature and their powers. In this context, 19 Member States have designated one Asset Recovery Office (AT, BE, HR, CY, CZ, DK, EE, FI, EL, HU, IE, IT, LV, LU, MT, PL, PT, RO, SK, and SI having designated just a contact point), while seven other Member States designated two (BG, FR, DE, LT, NL, ES, SE)[238].

When it comes the status and nature of the Asset Recovery Offices, Member States had different approaches in implementing the Council Decision. 13 Member States decided to establish the Offices within a law enforcement structure, while two Member states established the Asset Recovery Offices as a judicial authority. In three Member States, the Offices have a mixed nature and in two Member States they are established as administrative authorities. Furthermore, the 8 Member states where two Asset Recovery Offices exist, one is established as a judicial

[236] Commission Staff Working Paper, Proposal for a Directive of the European Parliament and the Council on the freezing and confiscation of proceeds of crime in the European Union, SWD(2012)31 final, p. 6
[237] *Ibid*., p. 13
[238] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081, pp. 45-46

authority while the other one is law enforcement. This institutional set up has proven to work in the Member States where it was adopted[239].

With regards to the purpose and competences assigned to Asset Recovery Offices, the Council Decision envisages the Offices as a mechanism to 'facilitate' the tracing of criminal assets (Article 1). While its recital 1 indicated that "law enforcement services should have the necessary skills to investigate and analyse financial trails of criminal activity", the main focus of the ARO Council Decision is promoting the "close cooperation" between the authorities involved in the tracing of illicit proceeds and the "direct communication between those authorities" (recital 3).

Cross border cooperation and information exchange

The Council Decision sets minimum provisions to ensure that Asset Recovery Offices can cooperate cross-border with other Asset Recovery Offices in tracing and identifying criminal assets by sharing best practices and by exchanging information on a request from another Member State or spontaneously. Such exchanges were to be made on the basis of the Council Framework Decision 2006/960/JHA on the exchange of information and intelligence between law enforcement authorities (the so-called Swedish Initiative)[240], to which the ARO Council Decision makes a cross-reference. The Swedish Initiative establishes templates for requesting and providing information and sets deadlines for such exchange, of eight hours for urgent requests and one week for non-urgent ones, when the requested information or intelligence is held in a database directly accessible by a law enforcement authority.

The exchange of best practices has taken place not only through the CARIN network (which enables the exchange of good practices with practitioners of its participating jurisdictions, including third countries) but mainly through the informal Asset Recovery Offices Platform, set up by the European Commission, which has enabled the sharing of experiences on topics such as virtual currencies, investigative tools or access to information. The Platform has also been the forum for carrying out light peer reviews of Asset Recovery Offices aimed at assessing the key features of the Offices in order to establish good practices. 98% of stakeholders agreed that the exchange of good practices carried out in line with the Council Decision was beneficial for their cooperation.[241] At the same time, the majority of Asset Recovery Offices have expressed their interest in establishing a more regular exchange of good practices.[242]

[239] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081 p. 47.
[240] Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386, 29.12.2006, p. 89.
[241] *Information gathered in the ARO Platform meeting held in June 2021*
[242] *Ibid.*

In relation to cooperation, all Member States have granted the minimum powers required by the Council Decision for Asset Recovery Offices to exchange information with each other. All Offices are empowered to exchange information across borders, which takes place to a large extent through Europol's Secure Information Exchange Network Application (SIENA) network and via CARIN for exchanges with third countries, to which all but eight Asset Recovery Offices are directly connected. At the same time, there are differences in the powers and information that have been made available to Asset Recovery Offices to cooperate with each other, since these are not regulated by the Council Decision. More than two thirds of Asset Recovery Offices (73%) have autonomous tracing powers enabling them to respond to requests from other Offices, the rest (27%) rely on other authorities for the identification of criminal assets upon request from another Member State. In the case of asset tracing in the post-trial phase, these proportions are reversed, with 32% of the Asset Recovery Office empowered with post-trial tracing capacity, while a majority (68%) does not have such powers. Access to information to respond to cross-border requests also differs among Asset Recovery Offices: 15% of Offices have access to all databases; one third can check police databases or tax/income registers, while 64% and 45% of Asset Recovery Offices can access real estate registers and company registers, respectively.[243] In relation to the deadlines set out in the Swedish Initiative, less than 50% of Offices considered that the deadlines are met, indicating that in almost half of the cases responses take up to two weeks non-urgent situations and 12 hours or more in urgent ones.[244]

3.2 Confiscation Directive

Asset Recovery and confiscation are the tools necessary to deprive criminals from their illicit gains. In order to provide with an effective response to the threat posed by serious and organised crime, the Confiscation Directive introduced a set of minimum rules to strengthen the legislative framework and increase the effectives of the freezing, management and confiscation of criminal assets.

With respect to the previous legal framework, the Confiscation Directive introduced several new elements at EU level. Non-conviction based confiscation was introduced in case the accused or suspected person absconds or is ill, together with extended confiscation and third party-confiscation measures. The issue of freezing of properties with a view to subsequent confiscation (including cases of urgent freezing) was clarified, alongside key definitions. In this context, the safeguards for suspected and accused person were reinforced, and rules on the tracing of assets after a final conviction were introduced. The Confiscation Directive further established minimum management obligations of frozen and confiscated assets, together with the obligation to maintain statistical data on freezing and confiscation.

[243] *Information gathered in the ARO Platform and Confiscation Directive meetings held in June/July 2021.*
[244] *Ibid*

As highlighted in the Report "Asset Recovery and Confiscation, Ensuring that Crime Does not Pay", the Confiscation Directive has been implemented in all Member States with the exception of Denmark and the U.K., who opted out from the Directive.

Definitions

The Confiscation Directive aimed at clarifying common definitions on freezing and confiscation, particularly regarding the concept of 'proceeds of crime' to include the direct proceeds from criminal activity and all indirect benefits, including subsequent reinvestment or transformation of direct proceeds. Proceeds can thus include any property, including that which has been transformed or converted, fully or in part, into other property, and that which has been intermingled with property acquired from legitimate sources, up to assessed value of the intermingled proceeds. It can also include income or other benefits derived from proceeds of crime, or from property into which such proceeds have been transformed, converted, or intermingled.[245]

Article 2 of the Confiscation Directive defines the terms 'proceeds', 'property', 'instrumentalities', 'confiscation', 'freezing' and 'criminal offence'. Even though the definitions have not been explicitly transposed in a number of Member States, the concepts have been embedded in the national legislation of freezing and confiscation of all.[246]

Scope

The scope of the Confiscation Directive is defined in Article 3 which lists the offences for which the freezing and confiscation orders should be available. The scope also extends to other legislative instruments that foresee the availability of freezing and confiscation orders for the offences they regulate with a cross reference to the Confiscation Directive[247]. While the scope of the Directive is limited to most of the so-called 'eurocrimes' (with the exception of firearms trafficking), several Member States have decided to go beyond the minimum rules set by the Confiscation Directive. Some Member states have decided to set minimum imprisonment threshold or foresee a specific list of crimes for which confiscation measures are available: 18 Member States have enabled freezing and confiscation orders for all crimes, 2 Member States for all crimes sanctioned by an imprisonment of at least 1 year, 4 Member States for all international crimes, one Member State applies freezing and confiscation orders for all offences especially in cases of life imprisonment or unconditional imprisonment for a serious crime, and one Member

[245] Recital 11 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.

[246] Report from the Commission to the European Parliament and the Council, *Asset recovery and confiscation: Ensuring that crime does not pay*, SWD COM/2020/217 final, p. 6

[247] For example, Article 10 of Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law specifically states that the freezing and confiscation of instrumentalities and proceeds of crime should be enabled for the offences criminalised by it.

State has a specific list of offences for which freezing and confiscation orders may be applied[248]. The majority of Member States have therefore gone beyond the minimum scope requirements of the Confiscation Directive, although in a non-uniform manner, and with a majority having adopted the all crime approach for standard confiscation measures.

Freezing

Article 7(1) requires Member States to take the necessary measures to enable the freezing of property with a view to its subsequent confiscation. It also provides for the urgent action to preserve the property. Article 7(2) requires the Member States to enable the freezing of the property of a third party with a view to subsequent confiscation. This is possible in all Member States. Furthermore, the freezing of property with a view to its subsequent confiscation has been enabled in all Member States, with 12 Member States having granted their prosecution and law enforcement authorities the powers to take urgent action and freeze property before judicial authorisation.[249]

Table 1: Institutional framework in place for ordering freezing and urgent freezing[250]

Member State	Type of freezing	Institutional Framework
AT	Urgent freezing	▪ Prosecution service; Police
BE	Urgent freezing	▪ Prosecution service; Investigating judge
BG	Urgent freezing	▪ Court
CY	Urgent freezing	▪ Unit for Combating Money Laundering – MOKAS
CZ	Urgent freezing	▪ Police; Financial Analytical Office
DE	Urgent freezing	▪ Police; Prosecution service; ▪ In case of money laundering: Financial Intelligence Unit
EE	Urgent freezing	▪ Prosecution service
EL	Urgent freezing	▪ Investigating judge; Investigating officer ▪ In case of money laundering: Chairman of the authority
ES	Urgent freezing	▪ Court
FI	Urgent freezing	▪ Officials with the formal power of arrest (representatives of Police; Prosecution service; Customs; Military)

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[248] Report from the Commission to the European Parliament and the Council, *Asset recovery and confiscation: Ensuring that crime does not pay*, SWD COM/2020/217 final, p. 6; European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081, p. 105

[249] European Commission, Directorate-General for Migration and Home Affairs, Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation, 2021, HOME/2020/ISFP/FW/EVA2/0016, p. 32

[250] European Commission, Directorate-General for Migration and Home Affairs, *Compliance assessment of measures of Member States to transpose Directive 2014/42/EU ("Confiscation Directive") and legal consultancy on this Directive,* Overall Report Annex III, 2019, HOME/2017/ISFP/FW/LECO/0084.

Member State	Type of freezing	Institutional Framework
FR	Urgent freezing	■ Judicial police officer; Prosecution service
HR	Urgent freezing	■ Police, Court
HU	Urgent freezing	■ Investigating authority (i.e. Police, Customs Authority, Prosecution service); Prosecution service
IE	Urgent freezing	■ Garda Síochána; Officers of customs and excise; Prosecution service
IT	Urgent freezing	■ Court; Police
LT	Urgent freezing	■ Court; Prosecution service; Financial Crime Investigation Service; Criminal Intelligence Unit
LU	Urgent freezing	■ Officer of the judicial police, Investigative judge; Investigating magistrate; Prosecution service; Financial Intelligence Unit
LV	Urgent freezing	■ Person directing the proceedings; Financial Intelligence Union (in case of money laundering)
MT	Urgent freezing	■ Court
NL	Urgent freezing	■ Police, Prosecution service
PL	Urgent freezing	■ Prosecution service, Court, Police, other authorised body
PT	Urgent freezing	■ Police, Court
RO	Urgent freezing	■ Prosecution service, Court
SE	Urgent freezing	■ Prosecution service; Police
SI	Urgent freezing	■ Court ■ In case of money laundering: Office for Money Laundering Prevention
SK	Urgent freezing	■ Police, Prosecution service

Confiscation

Building upon Framework Decision 2005/212/JHA, which set up minimum rules on standard and value confiscation,[251] the Confiscation Directive laid down minimum rules on the following confiscation measures:

- Value confiscation
- Third party confiscation
- Extended confiscation
- Non-conviction based confiscation

Value confiscation

[251] Standard confiscation is regulated by Article 2(1) of Framework Decision 2005/212/JHA. It applies to all offences punishable by deprivation of liberty for more than one year.

Value confiscation refers to a type of confiscation measure targeting property of equivalent value to the proceeds or instrumentality of a crime.[252] The confiscation order is realizable against any property of the individual charged. It is employed most often in cases where criminals convert proceeds of crime into other property to hide its illicit origin and disguise the audit trail.

Value confiscation is regulated by Article 2(1) of Framework Decision 2005/212/JHA and Article 4(1) of Directive 2014/42/EU.[253] It applies to all offences punishable by deprivation of liberty for more than one year[254] and to the crimes listed and cross-referenced in article 3 of Directive 2014/42/EU[255].

The rules on value confiscation are in place in all Member States. Most have gone beyond the minimum rules set by the Confiscation Directive, and all enable confiscation subject to a final conviction, the confiscation of instrumentalities and proceeds of crime or property the value of which corresponds to such instrumentalities and proceeds.[256]

Third party confiscation

Third-party confiscation refers to a confiscation measure made to deprive someone other than the offender – the third party – of criminal property, where that third party is in possession of property transferred to him or her by the offender. It is regulated by Article 6 of Directive 2014/42/EU. It applies to the same list of offences to which value confiscation is applicable to, listed in Article 3 of Directive 2014/42/EU.

All Member States have enabled third party confiscation measures. Four Member States rely on general rules of confiscation, targeting the illicit origin of the property and enabling its confiscation irrespective of whether it belongs to the suspect or accused person or to a third party, whilst all other Member States have put in place specific provisions on third party confiscation.[257]

Extended confiscation

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[252] K. Ligeti & M. Simonato, *Chasing Criminal Money: Challenges and Perspectives on Asset Recovery in the EU*, p. 5

[253] Article 4 Directive 2014/42/EU: "Member States shall take the necessary measures to enable the confiscation, either in whole or in part, of instrumentalities and proceeds or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence, which may also result from proceedings in absentia."

[254] Article 2(1) Directive 2014/42/EU: "Each Member State shall take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds."

[255] 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. 29–41. The PIF Directive makes a reference to the Confiscation Directive so that the provisions of the latter apply to the offences harmonised by the PIF Directive.

[256] Report from the Commission to the European Parliament and the Council, *Asset recovery and confiscation: Ensuring that crime does not pay*, SWD COM/2020/217 final, pp. 7-10

[257] *Ibid.*, p. 9

Extended confiscation concerns confiscation orders which go beyond the direct proceeds of a crime. The order follows a criminal conviction, targeting property beyond the direct proceeds of the crime for which the offender was convicted, where the property seized is derived from criminal conduct. A direct link between the property and the offence, such as in the case of standard confiscation measures, is not necessary if the court assesses that the offender's property was nevertheless derived for other unlawful conduct.

Extended confiscation is regulated by Article 5(1). It requires the Member States to enable the confiscation of property belonging to a convicted person when: (i) the crime is liable to give rise to economic benefit; and (ii) the circumstances of the case indicate that the property is derived from criminal conduct. Member States have implemented this provision, with some going beyond the minimum rules set by the Confiscation Directive. In this context, discrepancies have been identified for what concern the list of crimes and the minimum imprisonment threshold for which extended confiscation is allowed in Member States. Whilst extended confiscation has been enabled for the list of crimes covered by Article 5(1) of Directive 2014/42/EU, 14 Member States have drawn up specific lists of offences for which extended confiscation is enabled going beyond those of the Confiscation Directive, whilst seven Member States enable extended confiscation for all criminal offences punishable by a prison sentence of between at least three or five years. However, the transposing legislation in seven Member States that have gone beyond the scope of the Confiscation Directive have included the requirement that the criminal offence must be such as to generate a financial gain.

Non Conviction Based Confiscation

Non-conviction based confiscation refers to a confiscation measure taken in the absence of a conviction and directed against an asset from illicit origin. The Confiscation covers only cases of criminal non-conviction based confiscation, regulated by Article 4(2).[258] It applies to the offences listed in Article 3 of Directive 2014/42/EU, but only in cases where a criminal conviction is not possible because the suspect has become ill or fled the jurisdiction.

The analysis carried out by the Commission on non-conviction based confiscation shows that most Member States have gone beyond the minimum rules set by the Confiscation Directive, introducing wider reaching grounds for non-conviction based confiscation measures beyond cases of illness and absconding[259]. Whilst in nine Member States confiscation without a prior conviction is enabled only in those cases, 17 Member States have gone beyond the situations

[258] Article 4(2) Directive 2014/42/EU: "Where confiscation on the basis of paragraph 1 is not possible, at least where such impossibility is the result of illness or absconding of the suspected or accused person, Member States shall take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial".

[259] Commission Staff Working Document *Analysis of non-conviction based confiscation measures in the European Union*, SWD(2019)1050, 12 April 2019, p. 6

foreseen therein. In 10 Member States NCBC is available in cases of the death of the offender, in nine Member States in cases where the statute limitations have passed, in five Member States in cases of amnesty, and in four Member States where the defendant lacks legal capacity (e.g. is a minor or of unsound mind). Other cases where NCBC is available in the Member States include where a conviction is not possible for objective reasons such as where the identity of the perpetrator of a crime cannot be ascertained (three Member States), in cases of immunity from prosecution (two Member States), when the conviction was waived by the court (two Member States), in cases involving victims' settlements (two Member States), where the offender is outside the court's jurisdiction (two Member States), where the property belongs to an individual already convicted of an offence from which the property originated, or in cases where the property is of intrinsic illicit nature (such as bribes, or drugs, covered by two Member States).[260]

Management of frozen and confiscated property

Article 10 of Directive 2014/42/EU requires that all Member States ensure the "adequate management" of property that is frozen with a view to subsequent confiscation. Whilst all Member States have adopted provisions to ensure the management of frozen and confiscated property, the Confiscation Directive leaves a wide degree of discretion to the Member States in the setup of management structures. In assessing the meaning of "adequate management" from the point of view of practitioners of asset recovery, consultation held during the Contact Committee Meeting held on 1-2 June 2021 and in the course of the study on freezing, confiscation and asset recovery – what works, what does not work,[261] gathered information on the factors necessary for effective management, which could define its "adequate" standard. Stakeholders from Asset Recovery Offices, law enforcement, prosecution and public authorities indicated that adequate management of assets consists of having a centralised office which is specialised in asset management (Asset Management Offices) and is allocated with appropriate (human, financial and technical) resources. These Offices should be able to exchange information in cross-border cases and help with the estimation of the value of an asset and with interlocutory sales. In the absence of Asset Management Offices, contact points should be in place to provide information about the management of assets in the Member State in question.

Even though the establishment of Asset Management Offices is considered by stakeholders as key to ensure the "adequate management" of property, the Confiscation Directive does not oblige Member States to set up national centralised offices for asset management. Pursuant to Article 10(1) of Directive 2014/42/EU, Member States 'shall take the necessary measures, for example by establishing centralised offices, a set of specialised offices or equivalent mechanisms, to ensure the adequate management of property frozen with a view to possible subsequent

[260] European Commission, Directorate-General for Migration and Home Affairs, Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation, 2021, HOME/2020/ISFP/FW/EVA2/0016, pp. 81-86

[261] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081.

confiscation'[262]. Nevertheless, 16 Member States have set up, or are in the process of setting up, Asset Management Offices to ensure the specialised management of frozen and confiscated property in order to preserve its economic value.[263] Other Member States have adopted a decentralised system of management, entailing a multitude of often non-specialised authorities and actors (such as prosecution services, enforcement authorities, state agencies etc.) involved in the management process. As Article 10 leaves a wide scope for discretion in its implementation, the function and competences of the Offices also greatly vary among the Member States. This leads to a fragmented management picture: even where Asset Management Offices have been established, their competencies are not aligned, with some empowered to manage frozen assets only, whereas others are also competent with the management of confiscated assets and responsible for the effective disposal of confiscated property.[264] Moreover, half of the established Management Offices in the Member states (seven) are also identified as Asset Recovery Offices. The management picture in the Member States is therefore fragmented, with a multitude of actors with greatly varying degrees of competence and specialised expertise responsible for the management phase of asset recovery.

Article 10(2) obliges the Member States to ensure the sale or transfer of frozen or seized property where necessary, the so-called 'interlocutory sales'. Whilst nearly all Member States have adopted measures transposing this very generally formulated obligation, substantial discrepancies remain when it comes to the conditions for authorizing the sale of a frozen asset. The main pre-requisite for authorizing an interlocutory sale in the Member States is whether the asset if perishable or it could rapidly depreciate, if the storage or maintenance costs are disproportionate, or if the asset is easily replaceable. In some Member States, there are additional conditions for proceeding with an interlocutory sale such as the value of the asset or if the asset is no longer useful for the investigation. Furthermore, in some Member States the suspect may also provide a financial guarantee to avoid the asset to be sold.[265] In this context, several shortcomings have been identified in the application of interlocutory sales by Member States, as this measure does not seem to be used in practice. The differences in the implementation and use of this measures have also a direct impact on cross border cooperation when the asset is located in a different Member state that the one where the investigation is primarily carried. This regards for example the cost of storage o maintenance that may be higher in the Member State who should actually take care of the management thus making him more reluctant to cooperate.

[262] Recital 32 of 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. See also Art. 10(1) of the Directive.

[263] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, p. 100.

[264] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081, pp. 89-95.

[265] Report from the Commission to the European Parliament and the Council, *Asset recovery and confiscation: Ensuring that crime does not pay*, SWD COM/2020/217 final, p/ 12

Social reuse

Article 10(3) of the Confiscation Directive requires Member States to consider reusing confiscated property for the public interest or social purposes. Despite the non-binding nature of Article 10(3), specific legislation on the use of confiscated property for public interest or social purposes exists in 19 Member States.[266]

Statistics

The Confiscation Directive foresees in Article 11 a specific obligation on Member States to compile and send to the Commission statistical data on the number of freezing and confiscation orders executed, as well as the estimated value of property frozen and of property recovered at the time of confiscation. In addition to these minimum requirements, Member States shall send to the Commission cross-border statistical data on the number or requests for freezing orders to be executed in another Member State, the number of requests for confiscation orders to be executed in another Member State, and the value or estimated value of the property recovered following execution in another Member State, only if available at a central level in the Member State concerned.

Whilst internal statistics on freezing and confiscation orders and on the value of recovered property are always to be provided, the Confiscation Directive does not impose an obligation to collect cross-border data, but only to share it with the Commission if it is available. Data collection in several Member State is however not centralised, with statistical data being collected by multiple, often decentralised, organisations. These organisations do not for the great majority follow a harmonised approach to data collection with the same indicators, resulting in non-comparable data both in the same and between Member States.[267] Statistical data on asset recovery is therefore considerably fragmented.

4. EVALUATION FINDINGS

4.1 To what extent was the intervention successful and why?

For the purposes of this Evaluation, this section will assess the extent the intervention was successful, and why, through the analysis of the effectiveness, efficiency and coherence criteria for both the ARO Council Decision and the Confiscation Directive.

Effectiveness

Council Decision 2007/845/JHA

Evaluation question: What have been the (quantitative and qualitative) results of Council

[266] Libera, *The Social Re-use of Confiscated Assets in Europe, a First Mapping*, November 2021, p. 6

[267] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081, p. 14.

Decision 2007/845/JHA?

The specific objectives of the ARO Council Decision relate to increasing cross-border tracing and cooperation in the identification of suspected criminal assets. The Council Decision thus established Asset Recovery Offices to achieve this objective, entrusting them with exchange of information and best practices. Between 2013 and 2021, data gathered though Europol shows that exchanges between the Offices have increased from 1894 in 2013 to 9246 in 2021.[268] This represents a five-fold increase, reflecting the Council Decision has been effective in increasing cooperation among Asset Recovery Offices and therefore a rising effectiveness in information exchange and cooperation. These figures reflect the increasing cooperation among Asset Recovery Offices evidence how, whilst the Council Decision has been effective in increasing the volume of information exchanges through the creation and set up of Asset Recovery Offices, it has not been equally effective in ensuring the exchange of good quality information that would be able to lead to an equivalent increase in tracing and subsequent new cases.

When Asset Recovery Offices were consulted on the effectiveness of the ARO Council Decision, stakeholders agreed that the establishment of Asset Recovery Offices contributed to foster cross-border tracing and identification of assets (51% ‘to a great extent,’ 49% ‘to a reasonable extent’). Half of consulted Asset Recovery Offices agreed ‘to a great extent’ that the obligations of the ARO Council Decision contributed to fostering communication between Asset Recovery Offices, whilst 47% believed they only contributed ‘to a reasonable extent’ and 3% ‘neither contributed nor impeded.’[269] The greater factor that contributed to achieving these objectives was access to the SIENA channel and direct cross-border exchanges through the platform, as well as regular meetings and personal contacts and the standardized exchanges of information and intelligence enabled by the use of the common form for information exchange provided by Framework Decision 2006/960 form).[270] 56% of stakeholders agreed ‘to a reasonable extent’ that the obligations of Council Decision 2007/845/JHA contributed to facilitating the exchange of good practices between Asset Recovery Offices, whilst 18% believed they only contributed ‘to little extent’.[271]

However, as reflected in the number of cases opened following information exchanges, while Asset Recovery Offices have been established in all Member States, they have reported of not always having the resources to effectively carry out their tasks.[272] Only one in ten Offices are

[268] Europol, information gathered through a bilateral interview on 25 January 2022.

[269] *Information gathered in the ARO Platform and Confiscation Directive meetings held in June/July 2021.*

[270] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, p. 45

[271] *Information gathered in the ARO Platform and Confiscation Directive meetings held in June/July 2021.*

[272] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081, pp. 54-59

fully satisfied with the human resources available, with 42% of Asset Recovery Offices clearly indicating a lack of staff to fulfil their duties[273].

Table 2: Number of staff per Asset Recovery Office[274]

Member State	Number of staff	Member State	Number of staff
AT	▪ Criminal Intelligence Service Austria: **7**	**IT**	▪ Asset Recovery Office within the Central Criminal Police Directorate at the Ministry of Interior: **2**
BE	▪ Central Office for Seizure and Confiscation: **37**	**LV**	▪ 2nd Unit (ARO and Information Analysis Unit), Criminal Intelligence Department, Central Criminal Police Department, State Police of Latvia: **12**
BG	▪ Commission for Anti-Corruption and Illegal Assets Forfeiture: **482**[275] ▪ Supreme cassation prosecutor`s office, International legal assistance department: **no information available**	**LT**	▪ Lithuanian Criminal Police Bureau: **4** ▪ Prosecutor General's Office of the Republic of Lithuania - Department of Criminal Prosecution: **1**
HR	▪ Criminal police directorate - National police for suppression of corruption and organised crime - Economic crime and corruption department: **4**	**LU**	▪ Office of the State Prosecutor - District Court Luxembourg: **1**
CY	▪ Unit for Combating Money Laundering: **6**	**MT**	▪ Asset Recovery Bureau: **9**
CZ	▪ National Organised Crime Agency: **no information available**	**NL**	▪ Functional Prosecution Office: **6** ▪ International Legal Help Centre of the National Police, the Hague Regional Unit: **3**
DK	▪ State Prosecutor for Serious Economic and International Crime: **no information available**	**PL**	▪ Asset Recovery Department of the National Police Headquarters: **no information available**
EE	▪ Asset Recovery Bureau of the Police and Border Guard Board: **16**	**PT**	▪ Asset Recovery Office, Criminal Police: **no information available**
FI	▪ National Bureau of Investigation within the National Police: **5**	**RO**	▪ National Agency for the Management of Seized Assets: **35**

[273] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, p. 33
[274] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081 Country Chapters. Data contained in this table might not represent the latest datasets. The data were supplied by the respective AROs, representing the latest datasets on record.
[275] This refers to the total capacity of the Commission, which holds responsibilities beyond those of an Asset Recovery Office.

Member State	Number of staff	Member State	Number of staff
FR	▪ Platform for the Identification of Criminal Assets: **30** ▪ Agency for the Management and Recovery of Seized and Confiscated Assets: **37**	**SK**	▪ Presidium of the Police Force, National Crime Agency, National Unit of Financial Police, Property Check-Up Department: **10**
DE	▪ Federal Criminal Police: **25** ▪ Federal Office of Justice: **1**	**SI**	▪ Expert Information Centre within the Office of the Supreme State Prosecutor's Office General of the Republic of Slovenia: **1**
EL	▪ Financial and Economic Crime Unit within the Ministry of Finance: **5**	**ES**	▪ Office of Asset Recovery and Management: **26** ▪ Intelligence Centre against Terrorism and Organised Crime: **5**
HU	▪ Asset Recovery Office, within the National Investigation Office of the National Police: **72**	**SE**	▪ Financial Investigation Unit of the National Operations Department within the Swedish Police: **8** ▪ Swedish Economic Crime Authority: **2**
IE	▪ Criminal Assets Bureau: **91**		

Moreover, whilst the ARO Council Decision aimed at increasing the rates of cross border identification of suspected criminal assets, it does not specify the powers available to Asset Recovery Offices to do so: lack of basic powers such as the capacity to trace assets for almost one third of Offices (almost two thirds in the post-trial phase) or to ensure rapid freezing in urgent cases (only one fourth of the Offices have the competence to issue urgent freezing orders[276]) clearly affects their capacity to swiftly trace assets in a cross-border context. This is also the case in relation to access to information. The fact that 85% of Asset Recovery Offices do not have access to all relevant databases significantly impacts their capacity to swiftly respond to cross-border requests, with delays of one week in almost half of the cases and of four hours or more in urgent situations (i.e. a 100% and 50% time-delay in relation to the 1 week/8 hours deadlines).[277] While these aspects are not regulated in the ARO Council Decision, it is clear that the absence of provisions in these areas negatively affects the effectiveness of Asset Recovery Offices and, more broadly, cross-border cooperation in asset tracing.

This is also the case for areas relating to the organisation of tasks at national level but which ultimately have an effect on the identification of criminal assets across the EU. The absence of EU-wide rules on the launch of financial investigations result in an uneven picture across

[276] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, p. 25

[277] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081 , pp. 58-59

Member States, with eight Member States where there is no requirement to automatically carry out parallel financial investigations, and another eight where this automatism is limited to certain crimes.[278] 72% of respondents to the public consultation and the majority of Asset Recovery Offices confirmed the results of previous studies that the failure to systematically launch financial investigations is one of the main reasons behind the low rates of identified assets.[279] If financial investigations are not carried out in a systematic manner, the chances that assets in other Member States remain untraced are significantly higher, and the opportunities for cross-border cooperation are considerably reduced.

Similarly, the absence of rules at EU level on the role of Asset Recovery Offices in national settings have led to significant differences in Member States, with one fourth of Asset Recovery Offices not acting as asset recovery focal points, 40% of them not being able to provide training to other authorities and 60% not collecting statistics.[280] This considerable discrepancy in Member States approaches results in a diverging level of effectiveness of Member States' asset recovery systems. This in turn creates gaps across the EU, with the risk that criminals target those Member States where the assets are less likely to be identified, and results in missed opportunities for cross-border cooperation.

Public consultation: Most respondents agreed that it was 'very important' for i) Member States to be able to trace illicit proceeds and other property which may become liable to confiscation (82%) and ii) Asset Recovery Offices to communicate, exchange information and cooperate with each other (80%). Overall, respondents considered that Asset Recovery Offices within their Member States were effective in i) tracing criminal proceeds and other property which may become liable to confiscation (20% considering it to be 'highly effective' and 30% considering it 'effective'), and ii) communicating, exchanging and cooperating with each other (with 32% respondents considering this to be 'effective' and 26% either 'highly effective' or 'very highly effective').

In conclusion, the ARO Council Decision was effective in increasing the rates of cross-border information exchanges and tracing of suspected criminal assets. Nevertheless, it did so leaving many shortcomings, including in particular in terms of resources available to Asset Recovery Offices, lack of powers to trace assets and in ensuring rapid freezing in urgent cases as well as the absence of a systematic launch of financial investigations. These shortcoming led to the

[278] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016; Report from the Commission to the European Parliament and the Council, *Asset recovery and confiscation: Ensuring that crime does not pay*, SWD COM/2020/217 final

[279] *Information gathered in the ARO Platform and Confiscation Directive meetings held in June/July 2021*

[280] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081, p. 30

increase of information exchanges failing to match to an equivalent increase in tracing cases. On effectiveness, the intervention was **relatively successful**, with potential for improvement.

Directive 2014/42/EU

Evaluation question: What have been the (quantitative and qualitative) effects of Directive 2014/42/EU?

On the Confiscation Directive's goal to **approximate legislation on freezing and confiscation and clarifying existing concepts**, 79% of stakeholders (Asset Recovery Offices, law enforcement, prosecution, and public authorities) agreed that the Confiscation Directive has been greatly or reasonably effective in approximating legislation on freezing and confiscation, and clarifying common definitions and existing concepts, with minority views considering the Confiscation Directive neither effective nor ineffective in these areas.[281] Although the definitions provided by Article 2 of the Confiscation Directive, defining the terms 'proceeds', 'property', 'instrumentalities', 'confiscation', 'freezing' and 'criminal offence' have not been explicitly transposed in a number of Member States, the concepts have been embedded in the national legislation of freezing and confiscation of all. The concepts appears therefore to have been sufficiently clarified, addressing this specific challenge regarding conflicting definitions and lack of clarity on the meaning of terms arising from different national systems which was identified in 2012[282].

On freezing and confiscation, 63% of stakeholders (Asset Recovery Offices, law enforcement, prosecution and public authorities) believed the Confiscation Directive to have been effective 'to a reasonable extent' in **increasing the freezing and confiscation rates** of the proceeds and instrumentalities of crime, with minority views considering the Confiscation Directive to have contributed only to little extent in this area[283]. When assessing the effectiveness of the Confiscation Directive in increasing the rates of freezing and confiscation of criminal assets, the lack of widespread and reliable statistical data on asset recovery in 2012 presents a challenge in establishing the effectiveness of the new system, as no EU-wide data existed at the time on the number of freezing and confiscation orders, or the value of retrieved property[284]. Trends can however be observed on the basis of the statistics collected on the basis of the obligations of Article 11 of the Confiscation Directive: between 2017 and 2019, the number of freezing orders executed within EU Member States was estimated to be 123 432 in 2017, with the number increasing to 166 859 orders in 2019, whilst confiscation orders are estimated to have increased

[281] *Information gathered in the ARO Platform and Confiscation Directive meetings held in June/July 2021.*
[282] Report from the Commission to the European Parliament and the Council, *Asset recovery and confiscation: Ensuring that crime does not pay*, SWD COM/2020/217 final, p. 6
[283] *Information gathered in the ARO Platform and Confiscation Directive meetings held in June/July 2021.*
[284] Commission Staff Working Paper, Proposal for a Directive of the European Parliament and the Council on the freezing and confiscation of proceeds of crime in the European Union, SWD(2012)31 final, p. 6

from 58 109 in 2017 to 107 236 in 2019. The value of frozen property is similarly estimated to have increased from EUR 2.6 billion to EUR 2.9 billion between 2017 and 2019.[285]

Figure 2-3. Estimated total number of freezing orders executed – EU-27, 2017 – 2019, national and cross-border requests[286].

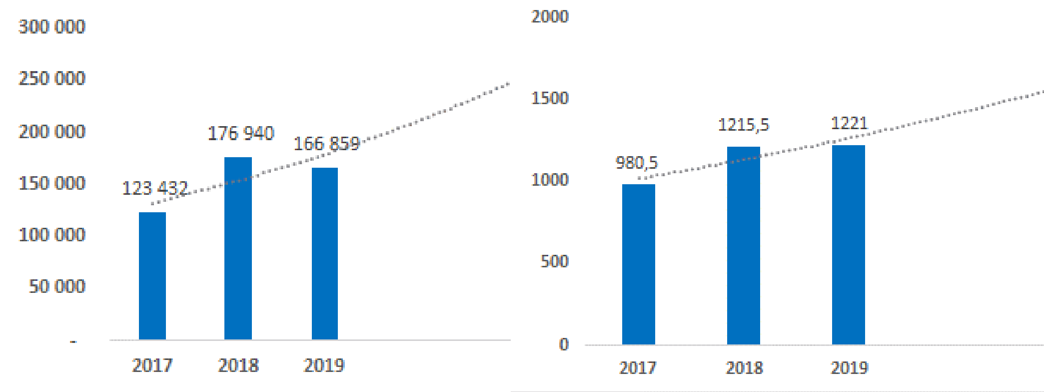
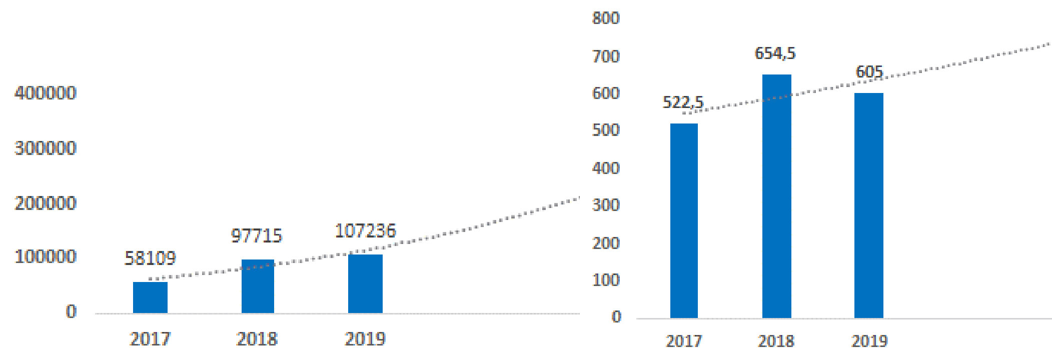


Figure 4-5. Estimated total number of confiscation orders executed in EU- 27 (2017-2019), national and cross-border requests[287].



Whilst a positive trend showing a steady growth in freezing and confiscation orders from one year to the next can be identified, current data should be assessed in the context of the overall objective to tackle organised crime's profits. Out of EUR 139 billion estimated yearly criminal profits, [288] only EUR 2,4 billion are being frozen annually, whereas only about EUR 1,2 billion

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[285] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, pp. 67-69

[286] *Ibid.*

[287] *Ibid.*

[288] 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, p. 10

are finally confiscated each year at EU level.[289] This data evidences that, despite the increase in freezing and confiscation rates, the percentage of criminal profits addressed by the intervention remains minimal, with only 2% of identified criminal profits, which already amount to a conservative estimate, being frozen and 1% confiscated.

When consulted as to what elements of the Confiscation Directive contributed to increasing freezing and confiscation rates, the majority of stakeholders who provided input agreed that extended confiscation and third-party confiscation had the biggest effect; interlocutory sales and non-conviction-based confiscation were also mentioned,[290] even though they are not sufficiently widespread in the Member States.[291] When consulted on whether the obligations on freezing and confiscation of the Confiscation Directive are sufficient to achieve good results, and to specify what did not work, stakeholders (Asset Recovery Offices, law enforcement, prosecution and public authorities) reported on the persistent challenges regarding the lack of Asset Management Offices in all Member States; difficult cross-border communication – particularly during the management asset recovery phase; non-conviction based confiscation measures not covering the death of the accused, recognition of convictions from proceedings in absentia; lack of ambition of the Confiscation Directive in not going beyond the minimum requirements of existing international conventions; lack of consistent training; issues related to the effective exchange of cross-border information in the tracing, freezing and execution phases of confiscation orders.[292]

The Confiscation Directive was thus moderately effective in achieving its objective increasing the rates of freezing and confiscation of proceeds and instrumentalities of crime: whilst a positive trend can be detected, particularly thanks to the positive impacts of urgent freezing measures, and of new and stronger confiscation measures introduced by the Confiscation Directive such as third party, extended, and non-conviction based confiscation, the overall percentages of profits that remain in the hands of criminal organisations (99%) are still too high to assess the full effectiveness of the Confiscation Directive.

On the Confiscation Directive's objective of **improving management and disposal** of frozen and confiscated assets, the lack of widespread and reliable statistical data on asset recovery in 2012 also presents a challenge in assessing the effectiveness of the new system. Nevertheless, 52% of stakeholders (Asset Recovery Offices, law enforcement, prosecution and public authorities) consulted believe the Confiscation Directive contributed in different degrees to improving the management practices of frozen and confiscated property, with the other half considering that it had not contributed to improvements in the management of assets, or had done so in a limited way. On social reuse, only 38% of stakeholders believed 'to a reasonable extent'

[289] Europol, "Does Crime still pay? Criminal Asset Recovery in the EU, Survey of Statistical information 2010-2014." Europol Criminal Assets Bureau, (2016). p.4.
[290] *Information gathered in the ARO Platform and Confiscation Directive meetings held in June/July 2021*.
[291] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081, p. 106
[292] *Information gathered in the ARO Platform and Confiscation Directive meetings held in June/July 2021*.

that the Confiscation Directive has been effective in fostering the social reuse of recovered property, with 29% believing it had been 'neither effective nor ineffective', and 29% believing it had little to no impact to it.[293] These opposite views are likely to be a reflection of the great degree of discretion that the Confiscation Directive left to Member States on how to achieve the obligation of ensuring 'adequate management', and on which disposal methods they chose to adopt. Answers to the assessment of the effectiveness of the Confiscation Directive's managements and disposal objectives thus vary depending to the national set up and experience of the consulted stakeholders, reflecting the fragmented picture on management and social reuse in the Member States.

As outlined in the state of play section, when consulted on what contributed to adequate management, the majority of stockholders who provided input (seven) agreed that the establishment of an Asset Management Office with appropriate (human, financial and technical) resources had the biggest impact towards good management, which is effective only when it is cost efficient and it ensures that property in under the responsibility of management authorities does dot depreciate whilst awaiting the end of judicial proceedings.[294] As management responsibilities are allocated to decentralised authorities in half of the Member States, this fragmentation is a shortcoming hampering the effectiveness of the system.[295] This finding was confirmed through experts' consultation, who raised also issues relative to low use of interlocutory sales, issues related to the legal personality of Asset Management Offices, or to raising policy makers' attention to the need to take advanced management measures, and the need for more specific and more detailed management provisions among the elements challenging the effectiveness of the current management system, highlighting its shortcomings.[296] When identifying which elements of the Confiscation Directive did not contribute to its effectiveness regarding management and disposal, stakeholders (Asset Recovery Offices, law enforcement, prosecution and public authorities) equally confirmed the results of existing studies, mentioning the lack of provisions of the existing instruments, which does not cover elements such as resources to ensure adequate management, challenges in exchange of information between existing Asset Management Offices, the lack of a clear Asset Management Office point of contact for questions about management of frozen assets, and the lack of obligation towards the establishment of an Asset Management Office.[297]

[293] *Ibid.*
[294] *Ibid.*
[295] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081, pp. 90-91
[296] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, p. 78.
[297] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081; *Information gathered in the ARO Platform and Confiscation Directive meetings held in June/July 2021*

The Confiscation Directive was therefore slightly effective in improving management and disposal of frozen and confiscated assets. Whilst on one side it introduced minimum obligations in absence of previous regulations, thus leading to improvements in the management and disposal phases, the resulting fragmented picture on management and disposal standards in the Member States does not achieve the overall goal of effective asset recovery in all Member States.

The Confiscation Directive was finally moderately effective in **improving the statistical picture on asset recovery**. Whilst on one side the obligations of Article 11 did support the development of a more complete statistical picture on asset recovery than the one available on 2012, the previously quoted data and the lack of common indicators and comparability of data show moderate as opposed to full effectiveness regarding this objective.

Public consultation: respondents were asked to assess the effectiveness of the Confiscation Directive in achieving specific outcomes. Their responses suggest that the Confiscation Directive was relatively effective in i) fighting serious and organised crime, with 48% believing it between highly and effective; ii) making serious and organised crime less attractive, with 58% believing it between highly and slightly effective; iii) fostering a culture of asset recovery, with 56% believing it between highly and effective; iv) leading to increased rates of freezing and confiscation of criminal proceeds and instrumentalities, with 46% believing it between highly and effective; and v) leading to effective management practices of frozen and confiscated property, with 34% believing it between highly and effective. The results also show that contributors felt the Confiscation Directive was relatively less effective in i) providing adequate safeguards to affected parties, with 40% believing it between highly and effective; ii) fostering the social reuse of recovered property, with 28% believing it between highly and effective; and iii) gathering sufficient and adequate statistics on freezing, confiscation, value of property frozen and recovered, with 36% believing it between highly and effective.

In conclusion, the Confiscation Directive has been **moderately successful** regarding the effectiveness criterion. Whilst on one side it has led to some approximation of the concepts of freezing and confiscation and to an increase in freezing and confiscation rates from the baseline, the overall results remain too low to significantly impact organised crime's profits, with no statistical evidence showing that criminal proceeds are recovered to an extent that would undermine the activities of organised crime groups. This shortcoming can be linked to a large extent to the limited scope of confiscation measures under the Confiscation Directive, as shown by the fact that Member States' legislation shows significant differences in terms of scope of the different instruments affecting the development of a more uniform understanding and implementation throughout the EU, going beyond the minimum obligations set out in the Confiscation Directive. Asset management has been improved but the results are not satisfactory. Inefficiencies in asset management due to the lack of agreed management principles and tools, insufficient expertise or cooperation between the relevant actors undermine the **effectiveness** of

asset recovery measures as a whole and need to be addressed. Finally, the existing obligations in terms of data collection do not allow for a complete and meaningful picture of the results of asset recovery efforts in Member States.

Efficiency

Council Decision 2007/845/JHA

> **Evaluation question:** "To what extent were the effects of Council Decision 2007/845/JHA achieved at a reasonable cost?"

Although the implementation of the ARO Council Decision has incurred some fixed costs for the Member States (between EUR 2.8 and 7 million EUR for each Member States) in order to establish Asset Recovery Offices, and some continuous ones for the European Commission in hosting information and best practices exchanges fora such as the Asset Recovery Offices Platform meetings (estimates yearly costs of 150 000 EUR), the incurred costs have been reasonable when comparing with the benefits stemming from the rates of frozen assets. As the value of frozen property is estimated to have increased from EUR 2.6 billion to EUR 2.9 billion between 2017 and 2019 alone, the costs towards the establishment and maintenance of Asset Recovery Offices have been proportionate in relation to the benefits provided, reaching cost-efficiency in recent years.[298]

At the same time, the potential efficiency gains of the ARO Council Decision are not fully reaped due to various obstacles such as the insufficient human resources. 84% of Asset Recovery Offices believe they do not have enough resources to achieve the results expected by the Council Decision or that their resources should improve. Lack of human resources was identified as the greatest barrier regarding the effective exchange of information, with 21 Asset Recovery Offices confirming the need for adequate human resources as a major issue.[299] The other two main barriers to a swift information exchange are the insufficient powers and access to databases[300], which means that Asset Recovery Offices do not have the necessary tools and information that would allow them to carry out their tasks in an efficient way.

According to the stakeholder consultation (Asset Recovery Offices, law enforcement, prosecution and public authorities., Europol), another issue affecting the efficiency of information exchange and cross-border cooperation between Asset Recovery Offices is the fact

[298] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016.
[299] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081
[300] *Information gathered in the Asset Recovery Offices platform meeting of 25th-26th June 2021.*

that a small number of Offices still do not have access (or have an indirect access) to SIENA[301]. While SIENA allows Asset Recovery Offices to quickly communicate with each other and to benefit from Europol's analysis and operational support (i.e. identification of new leads and links between investigations), the Council Decision 2007/845/EU does not regulate the channel to be used for communication between Asset Recovery Offices.

Public consultation: respondents were also asked about the efficiency of the ARO Council Decision. While most respondents considered that the effects of Council Decision were achieved at a reasonable cost (44%), a large share did not know (40%) and some respondents thought the effects were not achieved at a reasonable cost (16%).

In conclusion, the intervention has been **successful** regarding the efficiency criterion, being cost-effective to the extent that it achieved its objectives. Through the creation of central channels for the exchange of information on asset tracing, the establishment of Asset Recovery Offices in all Member States has improved the efficiency of the identification of assets across borders. The establishment of minimum rules for the exchange of information and best practices has facilitated in an efficient way cooperation among Asset Recovery Offices. Nevertheless, the benefits achieved have been reduced by identified challenges such as insufficient human resources available and the shortcomings identified in Asset Recovery Offices' powers. Challenges related to access to information have reduced the Offices' efficiency in tracing illicit assets and responding to requests from Asset Recovery Offices from other Member States. Additionally, a small number of Asset Recovery Offices still do not have access to SIENA, or only have indirect access, hampering the efficiency of cross border information exchange.

Directive 2014/42/EU

Evaluation question: "To what extent were the effects of Directive 2014/42/EU achieved at a reasonable cost?"

The establishing and strengthening of common rules on the freezing and confiscation of the proceeds and instrumentalities of crime, as well as of minimum management and disposal obligations, has improved the efficiency of the recovery of criminal assets across borders. Even though the statistical picture on freezing and confiscation presents significant gaps, given that the obligations of Article 11 on statistical data collection only require Member States to record and transmit data on the estimated value of property frozen and of property recovered at the time of confiscation, with no point of reference regarding the value of the property at the time of freezing for comparison, allowing the assessment of the effectiveness of management measures,

[301] One access is pending due to technical issues while in other three cases is due to the judicial nature of the Asset Recovery Office that do not require a access to SIENA.

data has been extrapolated in the course of the 'Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation'[302] and through stakeholders consultations (Asset Recovery Offices, law enforcement, prosecution and public authorities).

The Confiscation Directive has presented no costs to citizens and businesses, and only costs to the public administration. The legislative intervention has led to a higher number of freezing and confiscation orders, and thus of property and recovered, than in 2012, with the value of frozen property being estimated to have increased from EUR 2.6 billion to EUR 2.9 billion between 2017 and 2019 alone.[303] Stronger management measures, when paired with the establishment of Asset Management Offices in the Member states, has improved the capacity to manage frozen and confiscated asset, and led to an estimated increase of the value of managed assets by Asset Management Offices of 15%. Moreover, by removing some of the disincentives to asset recovery, efficient management incentivises competent authorities to trace more assets an annual increase of recovered assets totalling approximately EUR 240 million per Asset Management Office.[304] This figure is however applicable only to those Member States that established strong management provisions, showing the cost-effectiveness of good management when implemented.

The great majority of stakeholders (94%) therefore confirmed the results of previous studies, considering that the costs associated with the implementation of the Confiscation Directive have been justified in light of the benefits produced.[305] Besides the benefits of economic returns to the public budget, recovered criminal property further leads to indirect benefits that are not directly quantifiable, such as increased social cohesion and the long-term impacts of restorative justice on victims and communities benefitting from returns from social reuse and from lower rates of crime. Moreover, property taken away from criminal organisations is property that cannot be reinvested to undertake further crimes, and that contributes to reducing criminal infiltration, which benefits both the Rule of Law and the economic integrity of the Union, protecting businesses and industries and increasing competition in the EU market.

On statistics, 81% of stakeholders similarly consider that the collection of statistical data has improved 'to a reasonable or to a great extent' the overall efficiency of freezing, confiscation and asset recovery. Of the five stakeholders who provided further input, three considered the costs of

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[302] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016.

[303] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, 2021, HOME/2020/ISFP/FW/EVA2/0016, pp. 67-69

[304] European Commission, Directorate-General for Migration and Home Affairs, *Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation*, Annexes, 2021, HOME/2020/ISFP/FW/EVA2/0016, pp. 46, 48

[305] *Information gathered in the ARO Platform and Confiscation Directive meetings held in June/July 2021*.

statistical data collection justified to the benefits it provided, and that associated costs would not be a justifiable argument for not collecting data leading to the benefits of a better statistical picture on the results achieved, whilst two disagreed and did not consider the collection of data worth its costs.[306]

Public consultation: respondents were asked to comment on the efficiency of the Confiscation Directive. While most respondents claimed the effects of the Directive 2014/42/EU were achieved at a reasonable cost (40%), about a quarter of respondents expressed the contrary (24%), and others did not know (36%).

In conclusion, the intervention has been **successful** regarding the efficiency criterion, being cost-effective to the extent that it achieved its objectives. However, to the extent that freezing and confiscation rates as well as the value of frozen and confiscated assets are not as high as would be expected from a fully effective asset recovery system, the efficiency of the measures in place is also affected: where confiscation measures remain too limited in scope, the resources needed to carry out investigations may be disproportionate to the benefits in terms of recovered assets. Similarly, where management costs remain too high while the risk of a depreciation of assets is not properly remedied, the asset recovery process is inefficient to a point that it may affect the initiation of asset recovery procedures.

Coherence

Evaluation question: "Are the provisions laid down in Council Decision 2007/845/JHA and Directive 2014/42/EU coherent with other relevant EU policies?"

This section examines how the ARO Council Decision and the Confiscation Directive work in relation to other relevant EU instruments. The analysis of coherence is of particular importance in relation to the **range of illicit activities** in scope of other pieces of EU legislation relevant for asset recovery and to the **confiscation tools** covered by the asset recovery instruments. This analysis also considers the **level of EU intervention** on the **repressive aspects of anti-money laundering** as compared to the **preventative** dimension.

Regarding the **scope** of illicit activities, the ARO Council Decision and the Confiscation Directive are not consistent: the first one refers generally to the proceeds of crime (and is therefore applicable to any crime area), the second is limited to a narrow set of offences[307]

[306] *Ibid.*

[307] Directive 2014/42/EU covers certain offences harmonised at EU level in relation to corruption, counterfeiting of the euro, credit card fraud, money laundering, terrorism, illicit drug trafficking, organised crime, trafficking in human beings, sexual exploitation of children, and cyberattacks. The Confiscation Directive further applies to fraud to the Union's financial interests. For example, the Mutual Regulation covers 'corruption', while the Confiscation

through cross-references to existing EU instruments. The Confiscation Directive is narrower than the Mutual Recognition Regulation. This instrument covers a wider range of crimes in a more general way (i.e. a list of criminal offences punishable by maximum prison sentences of three years or more), an approach potentially broader than the one of the Confiscation Directive.

The scope of the Confiscation Directive is also narrower than the one of Council Framework Decision 2005/212/JHA. The latter covers standard confiscation and value-based confiscation for all offences punishable by deprivation of liberty for more than one year. The Framework Decision still applies for all Member States as regards crimes out of the scope of the Confiscation Directive, and it is still applicable for Denmark in relation not only to standard and value-based confiscation, but also as regards the extended confiscation provisions contained therein.

Similarly, other instruments of the EU's anti-money laundering framework are broader in scope than the Confiscation Directive: the Anti-Money Laundering Directive (AMLD) defines criminal activity by referring to a set of offences but also to offences punishable by deprivation of liberty for more than one year. The Directive on the criminalisation of Money Laundering (CMLD)[308], in addition to the offences above the one-year threshold, lists in a general manner a long list of criminal activities to which the money laundering offence should be applicable.

In conclusion, in terms of **scope** there are **significant discrepancies** between the Confiscation Directive and the ARO Council Decision as well as with other relevant instruments. This is caused by the timing of adoption of different instruments, with some being adopted before the coming into force of the Lisbon Treaty, whilst others were adopted after 2008 and under a different legal basis limiting their scope.

As regards the **confiscation tools covered** by the different asset recovery instruments, there is also a **significant level of inconsistency** between the Confiscation Directive and the Mutual Recognition Regulation, which "*covers all types of freezing orders and confiscation orders issued following proceedings in relation to a criminal offence, not only orders covered by the Confiscation Directive. This includes other types of orders issued without a final conviction*" (recital 13). Therefore, the Regulation would also apply to orders issued through confiscation models that enable confiscation in the absence of a conviction but the court is nevertheless convinced in a criminal procedure that the assets are of criminal origin, a model which has achieved significant results in tackling organised crime finances, but which is only available in three Member States. This means that the Regulation enables the recognition of confiscation decisions based on models which are however not available to the large majority of Member States, despite their proven effectiveness. The lack of coherence, albeit not being a problem per

Directive only applies to criminal offences covered by the Convention on the fight against corruption involving officials.

[308] Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.

se for the application of the Regulation, means that the benefits of this instrument cannot be reaped to their full extent.

Moreover, it is important to assess the coherence of the asset recovery regime within the broader anti-money laundering framework. Together with instruments such as the Directive on the criminalisation of Money Laundering, asset recovery and financial investigations are the main building block of the **repressive dimension** of **anti-money laundering policies**. This repressive angle complements and follows on the outcomes of the **preventative** side of the anti-money laundering framework, the main instrument therein being the AMLD. Both dimensions need to perform in a coherent manner in order for the overall anti-money laundering policy to be effective, and therefore it is relevant to compare the **level of EU intervention** in both areas.

On the one hand, the Anti-Money Laundering Directive has established detailed rules to ensure a smooth flow of information and cooperation among the different actors (private entities, Financial Intelligence Units, supervisors). On the basis of a strategic approach based on a thorough assessment of risks, the various actors have clearly defined roles and prioritise the identification of suspicious financial activities as part of their work. Rules are also set to determine the cases where private entities and Financial Intelligence Units should act to identify suspicious money flows.

This comprehensive and structured system contrasts with the situation in the repressive angle, where a lack of strategic approach on asset recovery, insufficient cooperation among different actors and a lack of prioritisation and resources to address the scale of the threat are present in the majority of Member States.

An example of the divergences between the two ‘legs’ of the AML system is the level of cross-border cooperation: the number of exchanges between Financial Intelligence Units amounted to 25,641 in 2014, a figure nine times higher than the 2,763 exchanges between Asset Recovery Offices in the same year. This is not only due to the nature of the activities performed, but also due to the more detailed rules on the information to be exchanged, the deadlines for replying to requests and the databases to be accessed.

The lack of coherence among both dimensions does not allow to exploit to its full extent the financial intelligence provided by the private sector and Financial Intelligence Units, thereby hindering the overall effectiveness of the Anti-Money Laundering regime.

Public consultation: respondents were asked to comment on the coherence of the ARO Council Decision and of the Confiscation Directive. Whilst most respondents considered that the provisions laid down in Council Decision 2007/845/JHA were coherent with other relevant EU policies (56%), many respondents did not know (30%) and some did not consider the provisions to be coherent (14%). Similarly, whilst most respondents felt the provisions laid down in Directive 2014/42/EU were coherent with other relevant EU policies (64%), some respondents

considered that the provisions lacked coherence (22%), and others did not know (14%).

In conclusion, both interventions were **relatively successful** as regards the coherence criterion. Whilst the ARO Council Decision and the Confiscation Directive are part of a wider legislative framework aiming at countering proceeds of crime, discrepancies persist in particular between the Confiscation Directive and with other relevant EU legislation. The scope of criminal activities and the scope of confiscation tools covered by the Confiscation Directive are more limited than in other EU legislation. In addition, compared to the tools available and approach provided for in relation to the prevention of money laundering, the asset recovery legislation is less developed in terms of available tools and competences as well as the overall strategic approach. These discrepancies imply that the full benefits of the various instruments and of the EU policy in depriving criminals of their illicit assets cannot be fully reaped.

4.2 How did the EU intervention make a difference?

This sections aims at establishing the EU added value of the ARO Council Decision and the Confiscation Directive as regards the recovery of criminal assets.

Council Decision 2007/845/JHA

Evaluation question: "Without the adoption of Council Decision 2007/845/JHA, would it have been easier or harder for EU Member States to tackle serious and organised crime individually?"

At the time of the introduction of the ARO Council Decision, only eight Member States had established Asset Recovery Offices.[309] Considering this baseline situation, the creation of these entities in the remaining Member States and the positive effects in terms of cross-border cooperation reflect that the ARO Council Decision has a considerable added value in facilitating the identification of criminal assets, which is a challenge of transnational character. The fight against organised crime is cross border in nature, where criminals transfer and spread their illicit property across multiple jurisdictions Asset tracing across jurisdictions is therefore the first key step to follow the money trail, where the freedom of movement in the single market allow for easier flow of people and capital. This cross-border dimension of organised crime activities and their multi-country investments makes an EU intervention fundamental to level the playing field in the fight against organised crime.

The great majority of stakeholders consulted, mainly composed of Asset Recovery Offices, believed that the ARO Council Decision contributed to increasing cross-border identification of

[309] European Commission, Directorate-General for Migration and Home Affairs, *Study on freezing, confiscation and asset recovery – what works, what does not work*, 2021, HOME/2018/ISFP/FW/EVAL/0081.

assets and proceeds of crime (35% ‘to a great extent’, 60% ‘to a reasonable extent’). Whilst highlighting the challenges presented in the previous sections of this Evaluation, the great majority of Asset Recovery Offices also agreed that the EU intervention had a positive effect to increase coordination between themselves (46% ‘to a great extent’, 46% ‘to a reasonable extent’) and 97% believed cross-border identification of assets and coordination between the Offices would have been more difficult without EU intervention.[310]

Public consultation: 97% of consulted stakeholders in the public consultation consider cross-border cooperation essential in the identification of criminal assets and 88% believe it would be harder to freeze and confiscate the proceeds of crime without EU intervention. Moreover, 68% of respondents to the public consultation considered that it would have been harder for EU Member States to tackle organised crime individually without the adoption of the Confiscation Directive, and 46% without the introduction of Asset Recovery Offices in the Member States.

Directive 2014/42/EU

Evaluation question: “Without the adoption of Directive 2014/42/EU, would it have been easier or harder for EU Member States to tackle serious and organised crime individually?”

Similarly as for the ARO Council Decision, the challenges stemming from the fight against organised crime’s profits can only adequately be addressed at EU level in light of the international nature of organised criminal groups. According to Europol, 80% of organised crime groups in the EU are highly poly-criminal and active across borders, with 7 out of 10 active in more than 3 countries and 65% of organised crime groups being composed of multiple nationalities.[311] Individual efforts of Member States against organised crime’s activities are insufficient as criminals take advantage of the benefits of the EU’s internal market and of the speed of the financial system, as well as of the underground parallel financial system built by organised crime. The EU added value is therefore clear in this area, although Member States have sought to go beyond the EU intervention on asset recovery.

Overall, it can be considered that the Confiscation Directive has contributed to stepping up confiscation efforts across all Member States. The overwhelming majority of stakeholders from law enforcement, judicial and public authorities (88%) believed it would have been harder to freeze and confiscate the proceeds of crime without EU intervention. At the same time, 85% believe that the rates of freezing and confiscation of proceeds and instrumentalities of crime

[310] *Information gathered in the ARO Platform and Confiscation Directive meetings held in June/July 2021.*
[311] Europol, European Union Serious and Organised Crime Threat Assessment “A Corrupting Influence: The infiltration and undermining of Europe’s economy and society by organised crimes” (2021), p. 19

would have been lower without EU intervention.[312]At the same time, most Member States have gone beyond the Confiscation Directive in several key areas such as the scope of crimes covered by the confiscation regimes (including those covered by extended confiscation) or the objective circumstances to which non-conviction based confiscation can be applied, and there remain important divergences in areas such as management of assets. The developments at national level, often in diverging ways, are thus proof that the EU added value has not been achieved to its full potential.

Public consultation: respondents were asked to comment on the relevance of the Confiscation Directive. Most respondents considered that it would have been relatively harder for EU Member States to tackle serious and organised crime individually without the adoption of the Directive 2014/42/EU (42% considered it would have been harder, and 26% claimed it would have been 'to a small extent harder'). However, this view was not shared by all stakeholders as some considered that it would have been 'neither harder or easier' (24%), one claimed it would have been easier (2%) and three did not know (6%).

The ARO Council Decision and the Confiscation Directive **made a difference** through providing added value to the Member States in increasing their coordination and freezing, confiscation and management powers in cross-border cases against a threat that is cross-border in nature. Without EU intervention it would have been harder for Member States to combat organised crime's profits without the benefits provided by Asset Recovery Offices' tracing and coordination role. At the same time, despite these benefits, the shortcomings identified in the previous sections of the Evaluation do not allow for the exploitation of the full the potential of the EU added value of Asset Recovery Offices.

4.3 Is the intervention still relevant?

Council Decision 2007/845/JHA

Evaluation question: "To what extent is the Council Decision 2007/845/JHA still relevant in the fight against the proceeds of serious and organised crime?"

The work of the Asset Recovery Offices **has proven to be relevant** for the overall objective of the ARO Council Decision of facilitating the identification of criminal assets through the establishment of the Asset Recovery Offices in all Member States and the streamlining of cross border cooperation in asset tracing. This objective remains relevant in turn in the fight against proceed of serious and organised crime in the EU, both in light of the overwhelming number of

[312] *Information gathered in the ARO Platform and Confiscation Directive meetings held in June/July 2021.*

criminal profits that remain in the hands of criminal, requiring therefore a continued intervention and in light of the added value provided by Asset Recovery Offices in the fight against these proceeds – as established in the previous sections.

A large majority of stakeholders from law enforcement, judicial and public authorities consulted considered that the ARO Council Decision has contributed to (i) taking away organised crime profits, (ii) equipping law enforcement with the means and tools to fight organised Crime and confiscate its proceeds, and (iii) facilitating mutual trust and cross border cooperation, in percentages ranging from 63% to 95%. However, the overwhelming majority of stakeholders also agreed that there is still a need to increase security, fight organised crime, illicit money and increase asset recovery and confiscation cooperation in the EU.[313]

However, whilst the intervention remains relevant and necessary, the limited requirements of the ARO Council Decision as presented in the Effectiveness and Efficiency sections reduce its relevance insofar as Asset Recovery Offices are impaired in the achievement of the policy goals of the ARO Council Decision. Issue relate to the lack of minimum standards in relation to issues essential for the work of Asset Recovery Offices, such as their powers and information sources:[314] evidence of the insufficient reach of the Council Decision is the fact that in these areas Member States have gone beyond the provisions therein, often in diverging ways, as outlined in the state of play section and in the Commission report "Asset Recovery and Confiscation, Ensuring that Crime does not Pay".[315] The Decision also does not tackle key aspects of asset tracing, such as financial investigations by law enforcement authorities or the role of Asset Recovery Offices in support of these investigations, issues which are only regulated at national level, with approaches varying from one Member State to another. Its limitations are particularly acute given the increasing complexity of organised crime groups and their financial activities. At the same time, insufficient powers and limited access to information hamper cross-border cooperation among Asset Recovery Offices. This results in a limitation of their potential in depriving criminals of their finances, especially in a cross border context, thereby affecting their relevance in this area.

Public consultation: most respondents agreed that it was 'very important' for i) Member States to be able to trace illicit proceeds and other property which may become liable to confiscation (82%) and ii) Asset Recovery Offices to communicate, exchange information and cooperate with each other (80%).

Directive 2014/42/EU

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[313] *Information gathered in the ARO Platform and Confiscation Directive meetings held in June/July 2021.*
[314] *Ibid.*
[315] Report from the Commission to the European Parliament and the Council, *Asset recovery and confiscation: Ensuring that crime does not pay*, SWD COM/2020/217 final.

Evaluation question: "To what extent is freezing and confiscating the proceeds and instrumentalities of crime relevant to fight serious and organised crime?"

The identification and seizure of criminal assets have been identified as a priority of the European Union since the 2009 Stockholm programme.[316] The objectives of the Confiscation Directive of depriving criminals from the profits of their illicit activities are thus still relevant today: With EUR 139 billion of annual profits at their disposal, criminals groups are able to take over vulnerable businesses to expand and cover up illegal activities.[317] Criminal infiltration, alongside organised crime's widespread use of corruption, is a threat to the Rule of Law and to the integrity of the economy. Furthermore, in view of the economic recovery from the Covid-19 crisis, it is more important than ever to tackle the profit-based motivation behind organised crime, taking away money from the hands of criminals.

The majority of respondents agreed the identified general objectives set out are still highly relevant to the needs to increase security, fight organised crime, illicit money and increase asset recovery and confiscation cooperation in the EU. The positive response rates that (i) taking away organised crime profits, (ii) equipping law enforcement with the means and tools to fight organised crime and confiscate its proceeds, and (iii) facilitating mutual trust and cross border cooperation to address these needs ranged from 52% to 90%.[318] During the consultation, stakeholders (Asset Recovery Offices, law enforcement, prosecution and public authorities) further expressed that the needs to increase cooperation and exchange of information in the execution phase of confiscation, the need to capture proceeds from all criminal activities, the need to increase cooperation outside the EU, and the need to strengthen operational freezing powers of law enforcement authorities, are not sufficiently addressed by the Confiscation Directive and of relevance today. Furthermore, an extension of the scope of confiscation to environmental crime and the possibility to issue specific seizure measures such as for virtual assets or value-based confiscation, civil forfeiture, and increase cooperation in out-of-court settlements for confiscation need to be further improved. Equally, few stakeholders did not consider that further needs not addressed by the Confiscation Directive arose from the time of its adoption.[319]

Public consultation: nearly all respondents agreed that freezing and confiscating the proceeds

[316] The Stockholm Programme — An open and secure Europe serving and protecting citizens, OJ C 115, 4.5.2010, p. 1–38.
[317] Savona Ernesto U. & Riccardi Michele (Eds.). 2015. From illegal markets to legitimate businesses: the portfolio of organised crime in Europe. Final Report of project OCP – Organised Crime Portfolio.
[318] *Information gathered in the ARO Platform and Confiscation Directive meetings held in June/July 2021.*
[319] *Ibid.*

and instrumentalities of crime was relevant to fight serious and organised crime (98%).

The challenges arising from the fight against criminal proceeds are still in place at the end of the evaluation period, highlighting the continuous relevance of the ARO Council Decision and of the Confiscation Directive. As highlighted in previous sections, Asset Recovery Offices have achieved substantial results and reached mixed levels of success: lack of powers and capabilities hinder their ability to achieve the policy objectives they were set to achieve by the ARO Council Decision. Nevertheless, the work of the Asset Recovery Offices **has proven to be relevant** in the fight against proceed of serious and organised crime in the EU, both in light of the overwhelming number of criminal profits that remain in the hands of criminal, and of the added value provided by Asset Recovery Offices in the fight against these proceeds.

Similarly to the ARO Council Decision, the Confiscation Directive achieved mixed levels of success, with Member States going beyond its minimum obligations to capture proceeds of crime. Nevertheless, the freezing, confiscation, management and disposal provisions of the Confiscation Directive **have proven to be relevant** in the fight against proceed of serious and organised crime in the EU, both in light of the rise of freezing and confiscation orders since the beginning of the evaluation period, and the persisting threat of criminal infiltration of organised crime into the legal economy.

5. WHAT ARE THE CONCLUSIONS AND LESSONS LEARNED?

The objective of this Evaluation is to draw conclusions and lessons learned from the implementation of the current asset recovery rule and to check whether the EU Asset Recovery system is still fit for purpose and what are the shortcomings that could hamper the fight against organised crime. Against this background, Directive 2014/42/EU and Council Decision 2007/845/JHA have been evaluated against the five evaluation criteria: effectiveness, efficiency, relevance, coherence and EU added value. In line with the "evaluate first" principle and in view of the adoption of a new legal proposal to strengthen the confiscation and asset recovery system, this Evaluation has assessed whether the expected results were achieved and identified few areas where a further improvement or update of existing legal instrument is needed.

As highlighted in the most recent SOCTA, the threat posed by organised crime is higher than ever and the increased level of organised crime complexity poses additional challenges to law enforcement authorities fighting organised criminal groups. In this context, depriving organised criminal groups of their profits is recognised as one of the most effective way.

In this context, the two evaluated legal instruments have certainly introduced several improvements with respect to the previous legal framework. However, this Evaluation shows that the current EU confiscation and asset recovery system has only to some extent achieved the objectives and expected results and envisaged impacts. While approximation has led to a further

clarification of the different concepts related to asset recovery and confiscation measures and has improved cross border cooperation and trust among in particular Asset Recovery Offices, overall confiscation stays behind expectations which is explained by the fact that the existing rules are not sufficient to provide an effective response to the increased threat posed by organised crime, to reduce the attractiveness and presence of organised crime.

More specifically, the Evaluation concluded that:

- Despite the fact that the **ARO Council Decision** has resulted in increased information exchange and overall cooperation between Asset Recovery Offices, challenges remain in the identification of assets phase. The effectiveness of the ARO Council Decision has been hampered due to a number of identified shortcomings. Asset Recovery Offices do not have all the necessary powers, information and resources to identify and trace all assets related to criminal activities: one third lacks tracing powers, the great majority lacks the power to urgently freeze assets and only 15% has access to all databases necessary for their tasks. Consequentially, Asset Recovery Offices are not always used to their full potential in supporting asset tracing, with some acting as mere cross-border contact points while others are empowered to support national investigations, provide training, or collect statistics. The above circumstances diminish the effectiveness of asset recovery measures and the ability to respond to cross-border requests.

- Similarly, the **Confiscation Directive** has been moderately **effective**. Whilst on one side it has led to some approximation of the concepts of freezing and confiscation and to an increase in freezing and confiscation rates from the baseline, the overall results remain too low to significantly impact organised crime's profits, with no statistical evidence showing that criminal proceeds are recovered to an extent that would undermine the activities of organised crime groups. This shortcoming can be linked to a large extent to the limited scope of confiscation measures under the Confiscation Directive, as shown by the fact that Member States' legislation shows significant differences in terms of scope of the different instruments affecting the development of a more uniform understanding and implementation throughout the EU, going beyond the minimum obligations set out in the Confiscation Directive. Whilst asset management has been improved, the results are not satisfactory. Even though management requires specialized expertise, the majority of Member States has left management responsibilities to a fragmented range of authorities (prosecution services, courts, bailiffs, law enforcement authorities, etc.) that often lack the expertise, human, financial and technical resources for efficient management. Furthermore, good methods such as pre-seizure planning, which entails authorities assessing the suitability of property before confiscating it, and interlocutory sales, which entail selling frozen property before it is confiscated, are not widely used. Finally, the existing obligations in terms of data collection do not allow for a complete and meaningful picture of the results of asset recovery efforts in Member States.

- The establishment of Asset Recovery Offices in all Member States as the central point for cross-border cooperation on asset tracing has increased the **efficiency** in tracing assets within the EU, with the costs of the ARO Council Decision being proportionate and overall cost-effective when compared to the benefits. On the other hand, the benefits achieved have been reduced by identified challenges such as insufficient human resources available and the shortcomings identified in Asset Recovery Offices' powers. Challenges related to access to information have reduced the Offices' efficiency in tracing illicit assets and responding to requests from Asset Recovery Offices from other Member States. Additionally, a small number of Asset Recovery Offices still do not have access to SIENA, or only have indirect access, hampering the efficiency of cross border information exchange.

- This Evaluation shows that stakeholders agree that the adoption of the Confiscation Directive has increased the system's overall **efficiency**. To the extent that freezing and confiscation rates as well as the value of frozen and confiscated assets are not as high as would be expected from a fully effective asset recovery system, the efficiency of the measures in place is also affected: where confiscation measures remain too limited in scope, the resources needed to carry out investigations may be disproportionate to the benefits in terms of recovered assets. Similarly, where management costs remain too high while the risk of a depreciation of assets is not properly remedied, the asset recovery process is inefficient to a point that it may affect the initiation of asset recovery procedures. Finally, as also highlighted by some stakeholders , the collection of more comprehensive and comparable statistics on frozen and confiscated assets could improve the overall efficiency of the system, since it would allow to better evaluate the results and monitor progress and the associated cost would be justified compared to the benefit they would provide.

- **On relevance**, Asset Recovery Offices have proven to be able to achieve the main objectives of the Council Decision: facilitating cooperation and streamlining cross-border information exchange, with these objectives remaining relevant. However, the problems which led to the establishment of Asset Recovery Offices are still present today, and the limited role and competences of Asset Recovery Offices, as laid down in the Council Decision, do not match the need for enhanced asset tracing capabilities, thereby diminishing the potential for Asset Recovery Offices to become even more relevant actors in the asset recovery process. As the first step in the asset recovery process, tracing remains fundamental towards the recovery of criminal assets, and Asset Recovery Offices alongside it.

- Similarly, the objectives set out in the Confiscation Directive are still **relevant** today, particularly in the context of the COVID-19 pandemic. In this context, the need to protect

the legal economy and to guarantee that illicit profits are recovered remains of the outmost importance. The need for a more uniform understanding of asset freezing and confiscation measures remains therefore valid today. This objective gains in importance given the need to be able to better capture illicit proceeds from organised crime activities together with the objective to increase freezing and confiscation rates in relation to criminal activities. Improved and efficient management remains relevant and increasingly so given the importance of an efficient management of assets for ensuring full effectiveness of the entire asset recovery process.

- **As for coherence**, this Evaluation shows that discrepancies persist in particular between the Confiscation Directive and with other relevant EU legislation. Compared to other relevant EU legislation the scope of criminal activities and the scope of confiscation tools covered are more limited than in the Confiscation Directive. In addition, compared to the tools available and approach provided for in relation to the prevention of money laundering, the asset recovery legislation is less developed in terms of available tools and competences as well as the overall strategic approach. These discrepancies imply that the full benefits of the various instruments and of the EU policy in depriving criminals of their illicit assets cannot be fully reaped.

- Finally, the **EU added value** was proven by the achievements attained so far. Stakeholders agree that the adoption at EU level of the Confiscation Directive and of the ARO Council Decision has improved the Member States capacity to trace and confiscate illicit assets. At the same time, the nature of the identified shortcomings equally highlights the added value of interventions at EU Level ensuring that Member States can count on similarly effective asset tracing and confiscation capabilities throughout the EU.

In conclusion, this Evaluation shows that despite the improvement of various aspects of the asset recovery system after the adoption of the ARO Council Decision and of the Confiscation Directive, the problems identified prior to the adoption of the relevant acts (and in particular the Confiscation Directive) still persist to a large extent and there are a number of shortcomings affecting the Member State’s capacity to trace, freeze, confiscate and manage illicit assets in an effective and efficient manner.

ANNEX 8. EVALUATION MATRIX

Table 1. Evaluation matrix Directive 2014/42/EU

Question	Judgment criteria	Indicator	Primary and Secondary Data Sources
1. To what extent is freezing and confiscating the proceeds and instrumentalities of crime relevant to fight serious and organised crime?	The provisions of the Confiscation Directive address the needs existing in relation to reducing organised crimes' attractiveness through confiscation of profits	For replying the evaluation questions a number of qualitative and quantitative indicators was used. Concerning the qualitative indicators, the main one used was the needs and perceptions provided by the public and mostly of the relevant stakeholders in the consultations that took place during the Evaluation. Concerning the quantitative indicators the main ones used was statistical data from various sources and studies.	• Public consultation • Stakeholders' consultation • 2012 Impact Assessment Confiscation Directive • Europol SOCTA Reports
	The provisions of the Confiscation Directive have addressed the competent authorities' needs for the fight against organised crime and facilitation of mutual trust and cooperation		• Public consultation • Stakeholders' consultation • Impact Assessment Confiscation Directive • Europol SOCTA Reports
	The provisions of the Confiscation Directive have addressed the competent authorities' needs for facilitation of mutual trust and cooperation		• Public consultation • Stakeholders' consultation • 2012 Impact Assessment Confiscation Directive • Europol SOCTA Reports
2. What have been the (quantitative and qualitative) effects of Directive 2014/42/EU?	The Confiscation Directive has contributed to fighting serious and organised crime in the EU	For replying the evaluation questions a number of qualitative and quantitative indicators was used. Concerning the qualitative indicators, the main one used was the needs and	• Europol SOCTA Reports • Commission report "Asset Recovery and confiscation, ensuring that crime does not pay" • Study "Asset recovery and confiscation: what works and what

Question	Judgment criteria	Indicator	Primary and Secondary Data Sources
		perceptions provided by the public and mostly of the relevant stakeholders in the consultations that took place during the Evaluation. Concerning the quantitative indicators the main ones used was statistical data from various sources and studies.	doesn't work". • "Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation'" • Public consultation • Stakeholders' consultation
	The Confiscation Directive has contributed to the reduced attractiveness of organised crime in the European Union		• Europol SOCTA Reports • Commission report "Asset Recovery and confiscation, ensuring that crime does not pay" • Study "Asset recovery and confiscation: what works and what doesn't work". • "Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation'" • From illegal markets to legitimate businesses (2015) • Mapping the risk of SOC in Europe (2018) • Mapping the risk of SOC in Europe (2021) • Public consultation • Stakeholders' consultation
	The Confiscation Directive has increased cooperation on asset recovery at EU and international level		• Public consultation • Stakeholders' consultation • Commission report "Asset Recovery and confiscation, ensuring that crime does not pay"

Question	Judgment criteria	Indicator	Primary and Secondary Data Sources
			• Study "Asset recovery and confiscation: what works and what doesn't work". • "Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation'"
	The Confiscation Directive has enabled similar or common provisions at national level in relation to freezing and confiscation and clarified common definitions and existing concepts		• Study on the transposition of Directive 2014/42/EU • Commission report "Asset Recovery and confiscation, ensuring that crime does not pay" • Study "Asset recovery and confiscation: what works and what doesn't work". • Stakeholders' consultation
	The Confiscation Directive has increased the freezing and confiscation rates of the proceeds and instrumentalities of crime		• Study "Asset recovery and confiscation: what works and what doesn't work". • Statistics provided by Member States in accordance with Article 11 of Directive 2014/42/EU • "Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation'" • Stakeholders' consultation • Public consultation
	The Confiscation Directive has improved the management and disposal of frozen and confiscated assets		• Study "Asset recovery and confiscation: what works and what doesn't work". • Europol's casework

Question	Judgment criteria	Indicator	Primary and Secondary Data Sources
			• Number of SIENA exchanges • "Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation'" • Stakeholders' consultation • Public consultation
	The Confiscation Directive has ensured minimum statistics are gathered on freezing, confiscation, value of property frozen or recovered		• Study on the transposition of Directive 2014/42/EU • Statistics provided by Member States in accordance with Article 11 of Directive 2014/42/EU • Commission report "Asset Recovery and confiscation, ensuring that crime does not pay" • Study "Asset recovery and confiscation: what works and what doesn't work". • Stakeholders' consultation
3. To what extent were the effects of Directive 2014/42/EU achieved at a reasonable cost?	The costs related to establishing and strengthening common rules on freezing and confiscation were justified in light of the benefits produced by the Confiscation Directive	For replying the evaluation questions a number of qualitative and quantitative indicators was used. Concerning the qualitative indicators, the main one used was the needs and perceptions provided by the public and mostly of the relevant stakeholders in the consultations that took place during the Evaluation.	• Study "Asset recovery and confiscation: what works and what doesn't work". • "Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation'" • Stakeholders' consultation • Public consultation

Question	Judgment criteria	Indicator	Primary and Secondary Data Sources
	The costs related to establishing and strengthening common rules on management of assets were justified in light of the benefits produced by the Confiscation Directive	Concerning the quantitative indicators the main ones used was statistical data from various sources and studies.	• Study “Asset recovery and confiscation: what works and what doesn’t work”. • “Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation’” • Stakeholders’ consultation • Public consultation
	The costs related to gathering statistics are proportionate to the benefits in terms of having a better picture of the results of asset recovery		• Study “Asset recovery and confiscation: what works and what doesn’t work”. • Statistics provided by Member States in accordance with Article 11 of Directive 2014/42/EU • “Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation’” • Stakeholders’ consultation • Public consultation
4. To what extent were the provisions laid down in Directive 2014/42/EU coherent with other relevant EU policies?	The provisions of the Confiscation Directive are aligned with other relevant legislation adopted at EU level	For replying the evaluation questions a number of qualitative and quantitative indicators was used. Concerning the qualitative indicators, the main one used was the needs and perceptions provided by the public and mostly of the relevant stakeholders in the consultations that took place during the Evaluation.	• Study “Asset recovery and confiscation: what works and what doesn’t work”. • “Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation’” • Stakeholders’ consultation • Public consultation

Question	Judgment criteria	Indicator	Primary and Secondary Data Sources
		Concerning the quantitative indicators the main ones used was statistical data from various sources and studies.	
5. Without the adoption of Directive 2014/42/EU, would it have been easier or harder for EU Member States to tackle serious and organised crime individually?	The Confiscation Directive provided added value to Member States in the fight against serious and organised crime	For replying the evaluation questions a number of qualitative and quantitative indicators was used. Concerning the qualitative indicators, the main one used was the needs and perceptions provided by the public and mostly of the relevant stakeholders in the consultations that took place during the Evaluation. Concerning the quantitative indicators the main ones used was statistical data from various sources and studies.	• Study "Asset recovery and confiscation: what works and what doesn't work". • "Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation'" • Stakeholders' consultation • Public consultation

Table 2. Evaluation matrix Council Decision 2007/845/JHA

Question	Judgment criteria	Indicators	Primary and Secondary Data Sources
1. To what extent is the Council Decision 2007/845/JHA still relevant in the fight against the proceeds of serious and organised crime?	The provisions of the ARO Council Decision address the needs existing in relation to reducing organised crimes' attractiveness through confiscation of profits	For replying the evaluation questions a number of qualitative and quantitative indicators was used. Concerning the qualitative indicators, the main one used was the needs and perceptions provided by the public and mostly of the relevant stakeholders in the consultations that took place during the Evaluation. Concerning the quantitative indicators the main ones used was statistical data from various sources and studies.	• Public consultation • Stakeholders' consultation • Europol's number of cross-border info exchanges • Europol SOCTA reports
	The pro provisions of the ARO Council Decision visions address the needs existing to equip competent authorities with tools to identify illicit assets and fight organised crime		• Public consultation • Stakeholders' consultation • Europol's number of cross-border info exchanges • Europol SOCTA reports
	The provisions of the ARO Council Decision address the needs existing in relation to the facilitation of mutual trust, exchange of information and cross-border cooperation		• Public consultation • Stakeholders' consultation • Europol's number of cross-border info exchanges • Europol SOCTA reports
2. What have been the (quantitative and qualitative) effects of Council Decision 2007/845/JHA?	The creation of Asset Recovery Offices in all Member States through the ARO Council Decision has increased the number of cross-border cases traced and identified	For replying the evaluation questions a number of qualitative and quantitative indicators was used. Concerning the qualitative indicators, the main one used was the needs and perceptions provided by the public and	• Study "Asset recovery and confiscation: what works and what doesn't work". • Number SIENA exchanges • Europol's data on Asset

Question	Judgment criteria	Indicators	Primary and Secondary Data Sources
		mostly of the relevant stakeholders in the consultations that took place during the Evaluation. Concerning the quantitative indicators the main ones used was statistical data from various sources and studies.	Recovery Offices • Public consultation • Stakeholders' consultation
	The creation of Asset Recovery Offices in all Member States through the ARO Council Decision has facilitated communication between Asset Recovery Offices through the exchange of information and best practices		• Study "Asset recovery and confiscation: what works and what doesn't work". • Number SIENA exchanges • Europol's data on Asset Recovery Offices • Public consultation • Stakeholders' consultation
3. To what extent were the effects of Council Decision 2007/845/JHA achieved at a reasonable cost?	The costs associated with setting up Asset Recovery Offices and ensuring their cooperation and exchange of information are proportionate to the results achieved in terms of asset tracing	For replying the evaluation questions a number of qualitative and quantitative indicators was used. Concerning the qualitative indicators, the main one used was the needs and perceptions provided by the public and mostly of the relevant stakeholders in the consultations that took place during the Evaluation. Concerning the quantitative indicators the main ones used was statistical data from various sources and studies.	• Study "Asset recovery and confiscation: what works and what doesn't work". • Number SIENA exchanges • Europol's data on Asset Recovery Offices • "Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation'" • Stakeholders' consultation • Public consultation

Question	Judgment criteria	Indicators	Primary and Secondary Data Sources
	Additional resources were required to put in place Asset Recovery Offices		• Study "Asset recovery and confiscation: what works and what doesn't work". • Stakeholders' consultation • Public consultation
4. Were the provisions laid down in Council Decision 2007/845/JHA coherent with other relevant EU policies?	The provisions of the ARO Council Decision are aligned with legislation adopted at EU level	For replying the evaluation questions a number of qualitative and quantitative indicators was used. Concerning the qualitative indicators, the main one used was the needs and perceptions provided by the public and mostly of the relevant stakeholders in the consultations that took place during the Evaluation. Concerning the quantitative indicators the main ones used was statistical data from various sources and studies.	• Study "Asset recovery and confiscation: what works and what doesn't work". • "Study to support the preparation of an Impact Assessment on EU policy initiatives on asset recovery and confiscation'" • Stakeholders' consultation • Public consultation
5. Without the adoption of Council Decision 2007/845/JHA, would it have been easier or harder for EU Member States to tackle serious and organised crime individually?	The ARO Council Decision provided added value to Member States in the fight against serious and organised crime	For replying the evaluation questions a number of qualitative and quantitative indicators was used. Concerning the qualitative indicators, the main one used was the needs and perceptions provided by the public and mostly of the relevant stakeholders in the consultations that took place during the Evaluation. Concerning the quantitative indicators	• Study "Asset recovery and confiscation: what works and what doesn't work". • Stakeholders' consultation • Public consultation

Question	Judgment criteria	Indicators	Primary and Secondary Data Sources
		the main ones used was statistical data from various sources and studies.	