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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE 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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Executive Summary Sheet

Impact assessment on the revision of the EU rules on confiscation and asset recovery

A. Need for action

Why? What is the problem being addressed?

Organised crime is one of the greatest threats to the security of the European Union. The increasingly complex *modi operandi*, sophisticated means to launder and hide illicit assets and the scale of their vast profits, estimated at least EUR 139 billion every year, make disruption of organised crime extremely difficult. Recovering illicit profits and ensuring that crime does not pay is essential. Despite the 2007 Asset Recovery Offices Council Decision and the 2014 Confiscation Directive setting minimum standards for freezing and confiscation, only a minor fraction of illicit assets is taken away from the hands of criminals. The reasons are that:

- **Capabilities to swiftly identify, trace and freeze assets is limited given** that law enforcement does not prioritise financial investigations and Asset Recovery Offices do not have the resources, powers and information to efficiently cooperate across Member States;
- **The management of assets is not always carried out in an efficient way**, since the necessary specialised knowledge is not always available and measures ensuring that assets do not lose their value are not systematically taken. High management costs and depreciation of assets is a disincentive to launching asset tracing and freezing procedures;
- Existing **confiscation tools do not cover all criminal markets** and are not designed to capture criminal proceeds when criminals, in particular those at the higher echelons of the criminal enterprise, successfully cover their tracks and hide the illicit origin of their assets.
- Moreover, asset recovery and confiscation is not sufficiently prioritised with a wide range of authorities tasked with different roles.

What is this initiative expected to achieve?

This initiative is expected to **strengthen the capacity of competent authorities to deprive criminals from their illicit profits**, thereby disrupting their capacity to carry out further criminal activities. In pursuit of this general objective, this initiative aims at achieving four specific objectives:

- **Strengthening asset tracing capabilities** by ensuring that competent authorities have the competences and resources as well as sufficient access to information to trace assets and cooperate across borders;
- **Improve asset management tools** to minimise costs and safeguard the value of the assets;
- **Strengthen confiscation capabilities**, enabling authorities to capture criminal activities and illicit assets held by organised crime groups and in particular their managerial levels;
- **Improve the efficiency of the asset recovery system** through a more strategic approach and increased cooperation.

What is the value added of action at the EU level?

Organised criminal groups split their illicit properties in multiple jurisdictions. National authorities are reliant on effective asset tracing and freezing in other Member States and EU wide cooperation mechanisms to recover illicit assets. Insufficient asset recovery provisions in one Member State affect the security of all Member States where organised crime groups use the illicit profits for criminal activities across the EU. National authorities and stakeholders recognised that the European Union is better placed to develop common rules to tackle this transnational criminal phenomenon.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

Besides a non-legislative option (**option 1**) focused on the exchange of best practices, guidance and training, three legislative options addressing each specific objective have been assessed, with option 3 being the preferred option:

- **Objective I: strengthen asset tracing capabilities**
 - **Option 2:** Strengthening Asset Recovery Offices' powers, resources and access to databases.
 - **Option 3:** In addition to measures foreseen in Option 2, requiring the systematic launch of financial investigations for a set of crimes, and regulating information exchange among Asset Recovery Offices.
 - **Option 4:** In addition to the requirements considered in Option 3, extending the obligation on financial investigations to all crimes and introducing 24/7 Asset Recovery Offices contact points.
- **Specific objective II: ensure efficient asset management**
 - **Option 2:** Establishing contact points to facilitate cross-border cooperation between Asset

- Management Offices and setting out general principles for asset management.
- **Option 3:** In addition to measures foreseen in Option 2, requiring that all Member States set up specialised Asset Management Offices and ensuring that they can sale the assets before they lose value.
- **Option 4:** Centralising all tracing and management tasks in one Asset Recovery and Management Office).
- **Specific objective III: strengthen confiscation capabilities**
 - **Option 2:** Extending the scope of confiscation measures to all 'eurocrimes' (i.e. firearms trafficking).
 - **Option 3:** Extending the scope to the most revenue-producing organised-crime crimes (counterfeiting, fraud, etc.) and introducing a new confiscation model enabling confiscation of assets resulting from criminal activities but not directly linked to a specific crime, and which are disproportionate to the income of the owner.
 - **Option 4:** In addition to the measures in Option 3, extending the scope to all crimes ('all crimes approach').
- **Specific objective IV: improve the overall efficiency of the asset recovery system**
 - **Option 2:** Requiring Member States to establish a national strategy on asset recovery setting out common objectives, defining the roles of different actors and the cooperation among them.
 - **Option 3:** Setting cooperation obligations and reporting requirements on the functioning of the asset recovery system, with possible recommendations. Establishment of asset registries to track asset recovery decisions.
 - **Option 4:** Interconnecting the asset registries of the Member States across the Union.

Who supports which option?

The legislative intervention is in line with the expectation of the co-legislators, which at the time of adopting the Confiscation Directive called on the Commission to analyse the feasibility of introducing further rules on the confiscation of criminal property in the absence of a conviction. Furthermore, in June 2020 the Council called the Commission to consider **strengthening the legal framework on the management of frozen properties and granting Asset Recovery Offices** with additional powers such as urgent freezing assets and with access to databases. Asset Recovery Offices at the ARO Platform supported this possibility. Moreover, national authorities represented at the Confiscation Contact Committee supported the option to **enlarge the scope of the Confiscation Directive** and called for further **harmonisation and cooperation in relation to asset management**.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

The preferred option (option 3) is expected to **contribute in a significant** manner to improving the capacity of Member States to deprive criminals of their illicit gains. By ensuring that competent authorities have the means to better trace assets, to maintain the value of the property and to effectively confiscate assets derived from the relevant criminal activities of organised crime groups the preferred policy option would **significantly increase the potential volume of confiscated assets**. By cutting the financial profits that drive criminal activity and allow criminals to operate, the preferred option would **contribute substantially to reinforcing the fight against organised crime**. This will improve **citizen's perception of justice** and increase the opportunities for compensating victims. **Businesses would also benefit** from a reduced criminal activity, including more specifically where confiscation possibilities would be extended to proceeds resulting crimes distorting competition such as counterfeiting or VAT fraud. **Public administrations would also profit** from increased revenues brought back to the state budget.

What are the costs of the preferred option (if any, otherwise main ones)?

Under the preferred option there will be **additional costs for the public administration** as both Asset Recovery Offices as well as Asses Management Offices will need sufficient resources to fulfil the tasks assigned. The costs estimation is in a range of EUR 30 - 40 million. However, **the additional costs are more than offset by measures that improve the efficiency of the entire asset recovery process**, since the measures foreseen could result in an approximate doubling of recovered assets, which now represent EUR 1 billion annually. Overall the costs for public administrations are expected to be lower than the revenues obtained through a reinforced asset recovery system.

How will businesses, SMEs and micro-enterprises be affected?

The preferred policy option do not impose any obligation on businesses and thus does not directly affect them.

Will there be significant impacts on national budgets and administrations?

As mentioned above, the preferred option generates additional costs on national budget and administration. However, these will be compensated by revenues resulting from the increased confiscation rate and overall

efficiency gains.

Will there be other significant impacts?

The preferred option will affect **fundamental rights**, particularly on the right to property, procedural rights and data protection. The preferred option will cover a significant number of offences and will facilitate confiscation. As a result, a higher number of people and assets will be affected. However, the preferred option includes **strong safeguards and will meet the legal and procedural requirements** enshrined in the existing case law.

D. Follow up

When will the policy be reviewed?

The evaluation of the impact of the legislative act should be carried out, in principle not earlier than five years after the deadline for implementation of the legislative act to ensure that there is a sufficiently long period to evaluate the effects of the initiative after it has been fully implemented across all Member States. Such an evaluation would be preceded by implementation reports as well as a monitoring programme.