



Questions and Answers: The Commission proposes rules on freezing and confiscating assets of oligarchs violating restrictive measures and of criminals

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Since the start of the war in Ukraine, the EU has adopted restrictive measures against Russian and Belarussian individuals. Freezing assets controlled by oligarchs and other individuals linked to the Russian aggression is key to disrupt the Russian war machine. To do so, it is essential to raise efforts to quickly trace and identify these assets, since they are often controlled through complex structures set up to hide the real owner of the property.

Oligarchs trying to avoid the freezing of their property would opt for hiding it or siphoning it off. For example, by taking a yacht into international waters, transferring ownership of sanctioned property to a non-sanctioned third party or through shell companies. They are helped by the existing legal loopholes, as the rules on breaches of EU restrictive measures vary across Member States.

Today, the European Commission takes a twofold action. Firstly, the Commission is proposing to add the violation of EU restrictive measures to the list of EU crimes. Secondly, the Commission is also proposing new reinforced rules on asset recovery and confiscation which, in addition to contributing to the implementation of EU restrictive measures, will have a strong impact on the fight against organised crime.

The aim is to ensure that the assets of criminal organisations are taken away so that crime does not pay, and that those of individuals and entities that violate the restrictive measures can be effectively confiscated in the future. The proposals aiming at the effective implementation of EU restrictive measures are being brought forward in the context of the 'Freeze and Seize' Task Force.

1. Proposal to add the violation of Union restrictive measure to the list of EU crimes

Why is the Commission proposing to add the violation of restrictive measures to the list of EU crimes?

The addition of the violation of restrictive measures to the list of EU crimes will make it easier to investigate, prosecute and punish such violations in all Member States alike. The Commission is asking the EU Member States to agree to such an addition, as the violation of restrictive measures meets the criteria laid down in Article 83(1) TFEU:

- The violation of restrictive measures is considered a **crime in a majority of Member States**. It is also a **particularly serious area of crime**, since it may perpetuate threats to international peace and security, undermine the consolidation and support for democracy, the rule of law and human rights and result in significant economic, societal and environmental damage.
- It has a clear **cross-border nature**, which requires a uniform cross-border response at EU level and global level.
- Different definitions and penalties of the violation of restrictive measures are an obstacle to the consistent application of the EU's sanctions policy. It creates a risk of **'forum shopping'** and **undermines the credibility of the Union's** objectives to maintain international peace and security and uphold common Union values.

What is the process to extend the list of EU crimes?

EU crimes are particularly serious crimes that take place across the EU and have impact beyond national borders. This is why they are criminalised at the EU level and are included in the in Article 83(1) TFEU. There are currently 10 areas of crime: 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.

To extend the list of the EU crimes, the Council needs to unanimously adopt, after obtaining the

consent of the European Parliament, a decision on adding the evasion or violation of restrictive measures to the areas of crime laid down in Article 83(1) TFEU.

Following that, the Commission can propose a Directive defining the scope and the criminal penalties for the violation of Union law on restrictive measures to be adopted by the European Parliament and the Council in line with the ordinary legislative procedure.

Once adopted, the Directive will complement the proposed EU rules on asset recovery and confiscation. Criminalising the violation of restrictive measures across Member States in a consistent manner, will make it possible to confiscate the assets of Russian oligarchs who try to violate the restrictive measures, for example by moving their yachts outside the EU or changing the ownership of their properties.

How will the future Directive on criminal sanctions for the violation of Union restrictive measures look like?

The Commission is also adopting a Communication, with an annex, setting what a future Directive defining the scope and the criminal sanctions for the violation of Union rules on restrictive measures could contain, notably in terms of the criminal offences to be covered. The future Directive could include, among others, offences such as:

- failing to freeze funds or economic resources belonging to or owned, held or controlled by a designated person/entity;
- engaging in prohibited financial activities, such as providing prohibited loans or credit;
- engaging in prohibited trade, commercial or other activities, such as importing or exporting goods and technology covered by trade bans, or providing prohibited services;
- failure to comply with any obligation to provide information to the authorities;
- engaging in actions or activities that seek to directly or indirectly circumvent the restrictive measures, with knowledge and intent;
- non-reporting a violation of restrictive measures, or activities that seeks to circumvent them, in violation of a specific obligation to report.

The future Directive would also establish common basic standards for penalties across the Member States, including, among others: criminal or non-criminal fines; exclusion from access to public funding; disqualification from the practice of business activities; withdrawal of permits and authorisations to pursue activities which have resulted in committing the offence; placing under judicial supervision; judicial winding-up; closure of establishments used for committing the offence.

2. Proposal for a Directive on asset recovery and confiscation

Why does the Commission put forward this Directive?

With over €139 billion in revenue every year, criminal groups constitute a very serious threat to Europe's security. Powerful transnational criminal organisations conduct illicit traffic, commit murders, bribe officials and take over legitimate businesses to cover up illegal activity. Despite existing rules on asset recovery and confiscation, only 2% of criminal assets are frozen and only 1% confiscated. [Europol's 2021 Serious and Organised Crime Threat Assessment](#) highlighted the unprecedented threat to Europe's security due to organised crime's infiltration in the legal economy and public institutions. The risk of criminals using their vast profits to participate in the economy is heightened by the economic situation caused by the COVID-19 pandemic and most recently the Russian aggression to Ukraine, as weakened companies are more vulnerable to take-overs by criminal groups. The most effective way to fight organised crime is going after their profits. The aim of this proposal is to disrupt the business model of organised criminal groups and to recover their illicit revenues.

Asset recovery is a powerful measure, as it deprives criminals from what matters the most to them: money. Only by following the money, law enforcement authorities will discover and dismantle the broad networks of criminal organisations operating inside and outside the European Union. 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. The recent major investigations (EncroChat, Sky ECC and ANOM) showed the harsh and ruthless methods of organised crime on a transnational reach.

To address these challenges, the proposed Directive will grant competent authorities with the tools to effectively and swiftly trace and identify, freeze, confiscate and manage property derived from criminal activities in all areas where organised crime is active.

This proposal was a commitment made under the Security Union Strategy, as well as the EU Strategy

to tackle organised crime 2021 – 2025, already foreseen as part of the Commission Work Programme 2021. It was adapted to meet the current challenges of the Russian war of aggression against Ukraine. The proposal will also apply to the violation of restrictive measures and will thus ensure the effective tracing, freezing, management and confiscation of proceeds derived from the violation of restrictive measures.

What does the Commission propose?

The proposal aims to provide a new comprehensive legal instrument that addresses asset recovery from beginning to end: from tracing and identification, through freezing and management, to confiscation and final disposal of assets. In particular, the Commission puts forward:

- **Clear rules on asset tracing and identification to boost cross-border cooperation.** The proposal will allow Asset Recovery Offices and competent national authorities to trace and identify assets in criminal investigations on the most serious crimes in Europe. Moreover, the new rules will provide the Asset Recovery Offices with the powers and information needed to trace and identify assets, and facilitate cross-border cooperation. The new rule will also ensure that financial investigations to trace and identify assets become an automatic reflex in investigations against the most serious forms of crime.
- **New powers to freeze assets and make sure that they do not disappear before the criminal proceeding is finalised.** The new urgent freezing powers for Asset Recovery Offices will ensure that illicit assets do not disappear before a freezing order is issued.
- **A new confiscation framework to ensure criminals are deprived of their illegal assets.** In order to strengthen the confiscation possibilities in Member States, the proposal reinforces the situations where assets can be confiscated without a conviction, such as in cases of death or immunity of the accused. Moreover, the proposal enables the confiscation of unexplained wealth linked to criminal activities to make sure that no illegal assets remain in the hands of criminals when they have been able to cover their tracks and hide the illegal origin of their properties. Safeguards have been reinforced to ensure that those affected by the measures have effective remedies.
- **An effective management of assets to ensure that property does not lose value.** The management of frozen assets is a challenge due to the possible loss of value from the moment they are frozen, until a final decision on confiscation is made. New rules on management will minimise costs and maximise the value of assets. This will be beneficial for State budgets, victim compensation, or for reusing those assets for social purposes. This revised Directive will require Member States to establish an Asset Management Office, which will make sure assets are well managed. This is particularly important for maintaining their value throughout criminal proceedings. This proposal also foresees the possibility to sell a frozen assets before it is confiscated. Yet, the procedural safeguards for the owners are ensured by providing them the right to be heard.
- **Strengthening cooperation among different actors.** Many authorities are involved in asset recovery, and it is important that they work together towards common goals. In order to achieve an efficient asset recovery system, the revised Directive will require Member States to develop national strategies on asset recovery, including actions to ensure that all actors cooperate and have adequate resources. The new rules will also strengthen cooperation with the European Public Prosecutor (EPPO), Europol, Eurojust and third partners. Moreover, Member States will have to set up registries with information on frozen and confiscated assets as well as collect statistics to measure progress made in tackling criminal finances.
- **New measures to ensure the effective implementation of restrictive measures:** The proposed rules will boost the capacity of Member States to trace and identify assets in implementing EU restrictive measures, such as the ones set out against Russia and Belarus. To do so, the proposal empowers Asset Recovery Offices to apply their expertise to trace and identify assets of sanctioned individuals and to cooperate with other EU agencies and non-EU countries in this respect. This is to ensure that the assets of sanctioned individuals are frozen before they disappear or change ownership. The entire arsenal of freezing and confiscation measures available under the new proposal would also become available in relation to sanction violations once any such behavior has been harmonised at EU level. Such rules include more effective management rules including the possibility to sell property too costly to manage or to make the owner of the property bear the costs of management.

How does this proposal contribute to the implementation of the EU restrictive measures?

In the context of the war in Ukraine, the European Union has put in place unprecedented measures to support the people in Ukraine and sanction Russian and Belarussian individuals. While this proposal is of a criminal law nature, the Commission entrusts and supports the efforts put in place by

national authorities by requiring Member States to trace any assets of sanctioned persons as soon as they are listed. In this context, Asset Recovery Offices will be able to use their powers and information to trace and identify the assets to be frozen. Moreover, the asset recovery offices will promote international cooperation in relation to the prevention, detection and investigation of such attempts to evade restrictive measures.

Can you confiscate the assets of Russian oligarchs on restrictive measures lists?

The proposal will enable confiscation of the assets of Russian oligarchs who try to violate the restrictive measures, for example by moving their yachts outside the EU or changing the ownership of their properties. In order to do so, the violation of restrictive measures should be criminalised across Member States in a consistent manner. This is why the Commission is adopting today, along this proposal, an initiative to extend the list of 'EU crimes' to include the violation of EU restrictive measures. Moreover, this proposal sets out the means to detect such crimes, promoting the launch of financial investigations in relation to assets subject to financial restrictive measures. While the proposed Directive does not provide for an automatic confiscation of all assets of persons under the EU restrictive measures' list, it would allow for the confiscation of assets related to sanction violations.

What is the current legal framework on asset recovery and confiscation and why is it being changed?

The current asset recovery and confiscation legal framework is composed of mainly three legal instruments each covering part of the asset recovery and confiscation process:

- **The 2007 Asset Recovery Offices Council Decision**, which facilitates information exchange and cooperation in tracing criminal property among asset recovery offices;
- **The 2014 Confiscation Directive 2014/42/EU**, which establishes minimum rules on freezing, confiscation and management of criminal property;
- **The 2005 Framework decision on confiscation 2005/212/JHA**, which has been for the most part replaced by the Confiscation but remains in place for so called standard confiscation measures.

These instruments are complemented by Regulation 2018/1805 on mutual recognition of freezing orders and confiscation orders.

The evaluation of the 2007 Asset Recovery offices Council Decision and of the 2014 Confiscation Directive carried out in preparation of this Directive shows that these legal instruments above have achieved their aims only to a limited extent. Financial investigations are not an automatic reflex for law enforcement authorities. Asset Recovery Offices lack the powers, resources and information to trace assets across borders. The inefficient management of assets means that property can lose value from the moment they are frozen until a final decision is taken. Current confiscation mechanisms do not tackle all relevant activities, leaving criminals with 99% of their ill-gotten gains.

The proposal aims at reinforcing asset recovery and confiscation by bringing together rules scattered in three different legislative instruments in one single Directive that strengthens actions by competent authorities, from early identification of illicit property up to its confiscation, ensuring swift cooperation among all actors and a more strategic approach to asset recovery. This is also an improvement of the cross-border dimension of cooperation between partners in other Member States and third countries.

Which crimes are covered by the new Directive?

This new Directive will be applicable to a wider list of crimes compared to the current scope of the Confiscation Directive, which is limited to terrorism, trafficking in human beings, drug trafficking, money laundering, corruption, counterfeiting of means of payment, cybercrime and organised crime. The new scope now includes crimes such as: computer crime, environmental crime, migrant smuggling and other serious criminal activities linked to organised crime, such as trafficking in firearms, counterfeiting and piracy of products, trafficking in cultural goods, robbery or murder. Once the Commission proposal on extending the list of EU crimes is adopted, the list of crimes will also include the violations of the EU restrictive measures. By covering a broad range of crimes, the proposal will tackle the profits from illicit activities that generate billions in criminal assets, fuelling the illicit economy.

How can judges confiscate criminal property? What is confiscation of unexplained wealth?

Based on current rules, when ordering a conviction, judges may decide to confiscate assets of a convicted person directly stemming from the crime (standard confiscation), including assets converted to or mixed with legitimate property (value confiscation) or transferred to a relative or

associate (third-party confiscation). Judges may also confiscate assets acquired by the offender from his/her previous criminal activities (extended confiscation). Moreover, a judge may be able to order confiscation when a conviction is not possible due to some specific circumstances, such as the accused being gravely ill or absconding (non-conviction-based confiscation). The proposal extends those circumstances to cases of death of the suspect, when the accused benefits from immunity or amnesty, or when the time limits for prosecuting the offence have expired. This is particularly necessary for cases of corruption or when criminals can prolong judicial proceedings.

However, current tools do not allow tackling the entire opaque nature of organised crime. Criminals try to avoid confiscation by hiding their tracks and disguising illicit origins of property. The new rules enable judicial authorities to confiscate property when they are convinced it derives from criminal activities, even if it cannot be linked to a specific crime (confiscation of unexplained wealth linked to criminal activity). This also applies when the accused cannot justify the legal origin of property which does not match his/her official income. This measure, key to the disruption of criminal activities, comes with robust safeguards: it is limited to crimes carried out by organised crime groups and to offences of serious nature, and rights of defence are fully respected.

With the new rules, judicial authorities will be equipped with a complete toolbox of confiscation measures, enabling them to capture all illicit assets amassed by organised crime, and give them back to society, the victims and affected communities.

Who carries the costs for the management of the frozen property?

With the new Directive, Member States should consider the possibility to charge the costs of management of frozen property to the beneficial owner. This includes the possibility of charging the beneficial owner with the costs for the management of frozen property, as long as they have been frozen in relation to criminal charges. This also applies to the violation of restrictive measures.

What is happening to the money you confiscated? Will you be able to reuse the assets for social purposes?

The proposal maintains the current provision encouraging Member States to provide for the social reuse of confiscated assets. The large majority of Member States have enacted this provision in national legislation. Social reuse projects send a strong signal to society that crime does not pay, and, most importantly, restores the damage done to the communities affected by organised crime-infiltration and, in doing so, prevents further crimes in disadvantaged areas. This is why the proposal maintains its support for social reuse as a powerful tool to prevent criminal activities, while respecting the budgetary autonomy of Member States.

What role will Asset Recovery Offices play?

Asset Recovery Offices have already proven their added value in boosting cross-border asset tracing investigations in the EU. This proposal aims at further strengthen the role of these offices and ensure that asset-tracing investigations are effective. The proposal will provide Asset Recovery Offices with direct access to information such as real estate, vehicle or company registries, which are crucial to trace assets in the hands of criminals, and to respond to urgent requests from Asset Recovery Offices of other Member States. The Asset Recovery Offices will also be empowered to urgently freeze property so to avoid that these assets disappear before a freezing order is issued. In order to ensure a smooth and efficient cross-border cooperation, Asset Recovery Offices will exchange information via Europol's Secure Information Exchange Network Application (SIENA). The use of SIENA will also ensure that operational information is exchanged in a secure environment, safeguarding data protection.

What role will Asset Management Offices play?

Management of frozen assets is key to ensure that these do not lose value over time. In order to ensure effective asset management, this Directive requires the establishment of specialised Asset Management Offices in all Member States. Their main role will be to ensure that frozen and confiscated assets are efficiently managed until their disposal, including by providing their expertise to other authorities in charge of managing frozen property. In addition, the Asset Management Offices will need to ensure their support to the national authorities in assessing which assets need to be frozen before an order is issued. At the same time, Asset Management Offices will facilitate cross-border cooperation to ensure that assets are managed efficiently when located outside the territory of the Member State carrying the investigation.

How will this proposal contribute to the protection of EU financial interests?

With the implementation of Next Generation EU, the Commission is putting in place an unprecedented amount of funds (more than €800 billion) to support the recovery of national economies from the COVID-19 pandemic. In this context, the first disbursement of the funds has

started in 2022. The threat assessment carried out by Europol has showed that organised criminal groups will try to get their hands on these funds. In order to avoid that a single euro falls in the hands of criminals, we need an effective system that allows national authorities to trace and confiscate the assets derived from fraud and misuse of these funds. This way, it is ensured that this money is used for its original purpose: the benefit of citizens and the economic recovery in the EU.

How does this proposal safeguard data protection and privacy?

The European Union has a robust data protection framework composed of several legal instruments. Data protection rules will apply in full to the access and exchanges of information foreseen in this Directive. At the same time, specific safeguards have been introduced concerning the access to databases. Only authorised staff members of the Asset Recovery Offices will be able to access the databases, and only for the purpose of tracing illicit assets. Furthermore, national authorities will have to keep logs of each search in order to ensure the legality of such access.

For More Information

[Press Release](#)

[Factsheet](#)

Towards a Directive on criminal penalties for the violation of Union law on restrictive measures

[Proposal for a Council decision on extending the list of EU crimes to include the violation of Union restrictive measures](#)

[Communication and Annex](#)

Asset recovery and confiscation

[Proposal](#) for a Directive on asset recovery and confiscation

[Webpage](#) on asset recovery and confiscation

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