



EUROPEAN COMMISSION

*Brussels, 27.02.2023  
C(2023) 1420 final*

*Miloš VYSTRČIL  
President of the Senát  
Valdštejnské náměstí 17/4  
CZ – 118 01 PRAGUE 1*

*Dear President,*

*The Commission would like to thank the Senát for its Opinion on the proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation {COM(2022) 245 final}.*

*The Commission welcomes the Senát's general support for the proposal and notes its concerns about extending confiscation possibilities in criminal proceedings without the establishment of the relation between the property and particular criminal conduct and reducing the required standard of proof in cases of non-conviction-based confiscations. The Commission also notes the Senát's doubts relating to the elaboration of a national strategy on asset recovery and the collection of statistics, and on the legal basis underpinning the proposal.*

*The Commission is pleased to have this opportunity to provide a number of clarifications regarding its proposal and hopes that these will allay the Senát's concerns.*

*The Commission proposed to strengthen the *acquis* on asset recovery and confiscation to tackle the increased threat posed by organised criminal groups through confiscating the proceeds and instrumentalities of their crimes and, in doing so, removing their funding to engage in further criminal activities. The revision aims at increasing the effectiveness and efficiency of the asset recovery system in all its phases, including management provisions after the call of the co-legislators to strengthen the legal framework on the management of property frozen,<sup>1</sup> which was followed by a call of the European Parliament for enhanced asset recovery rules.<sup>2</sup> 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*

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<sup>1</sup> Council Conclusions on enhancing financial investigations to fight serious and organised crime Council document [8927/20](#), 17 June 2020.

<sup>2</sup> 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\(INI\)](#)).

absence of a conviction.<sup>3</sup> The Commission responded to this call and published its findings in a report ‘Analysis of non-conviction based confiscation measures in the European Union’<sup>4</sup>, which were further assessed based on stakeholder consultations as part of the impact assessment preceding the Commission’s proposal at hand.

In this context, strong confiscation rules are fundamental to ensure an effective asset recovery system. It is essential to address criminals’ complex *modi operandi*, where the managerial levels of organised criminal groups distance themselves from the revenue-producing crimes on the ground, whilst reaping most of the economic benefits of the criminal organisation and insulating themselves against criminal liability.<sup>5</sup> Possibilities for extended confiscation and confiscation based on unexplained wealth linked to criminal activities are therefore necessary to effectively disrupt organised crime activities and to ensure the protection of European citizens, particularly when capturing those proceeds of crime that stem from criminal conduct undertaken thorough a long period of time, which might not be always linked to a specific offence. These measures build upon the extended confiscation provisions already regulated by Directive 2014/42/EU<sup>6</sup> and, paired with strong safeguards, are in line with relevant human rights standards and jurisprudence.<sup>7</sup> In this regard, the Commission wishes to point out that the proposed Directive requires a link to a criminal offence in that the national court must be satisfied that the frozen property is derived from criminal offences, in the scope of the proposed Directive. Similarly, under the proposed Directive, confiscation without a prior conviction (non-conviction-based confiscation) can only be ordered where the national courts are satisfied that all elements of the offence are present. The proposed Directive would also apply to the violation of Union restrictive measures of the sort taken in response to the Russian war of aggression against Ukraine, where such conduct constitutes a criminal offence as defined.

Asset recovery is a powerful tool to tackle illicit financial flows. However, asset recovery systems differ substantially from one jurisdiction to another in terms of effectiveness, with countries which, according to the Financial Action Task Force, achieve the highest levels of effectiveness being characterised by a strong policy commitment from policy makers to a defined set of goals in a strategic document.<sup>8</sup> A national strategy setting out

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<sup>3</sup> 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](#).

<sup>4</sup> [SWD \(2019\), 1050 final](#).

<sup>5</sup> Commission Staff Working Document, Impact Assessment Report accompanying the document *Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation*, SWD/2022/246 final, p. 22, referencing Council of Europe study ‘[The Use of Non-Conviction Based Seizure and Confiscation](#)’, October 2020, p. 16

<sup>6</sup> Article 5 of Directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union [2014] OJ L127/39.

<sup>7</sup> The European Court of Human Rights 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. See in particular *Phillips v. UK*, N°41087/98 and *Grayson & Barnham v. UK*, N°19955/05 and 15085/06.

<sup>8</sup> Compliance with Financial Action Task Force (FATF) standards and assessment of effectiveness of anti-money laundering frameworks is verified by the 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\(fatf\\_releasedate\)](https://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate)).

*cooperation mechanisms, as well as identifying gaps and the necessary measures to address them in terms of resources, training and guidance, is a powerful non-legislative measure necessary to ensure the effective functioning of strengthened legislative provisions. In this context, the collection of statistics is fundamental to evaluate the effectiveness of a reformed system, and Directive 2014/42/EU already foresees the collection of a minimum set of statistics.<sup>9</sup> However, more detailed rules at EU level are necessary to ensure that the collected data is comparable across the Member States and to ensure that the administrative burdens stemming from existing obligations lead to a concrete added value.*

*The proposal covers the identification and tracing, freezing, management, and confiscation phases of asset recovery in the context of cooperation between Member States' authorities. The provisions on the tracing and identification of assets (Chapter II, Articles 4 to 10) are based on Article 87(2) TFEU, since they concern police cooperation. The provisions on the freezing, confiscation, and management of assets (Chapter III, Articles 11 to 18, and Chapter IV, Articles 19 to 21) are based on Article 83 TFEU, which is the same legal basis underpinning existing freezing, confiscation, and management provisions of Directive 2014/42/EU.<sup>10</sup>*

*Discussions between the Commission and the co-legislators, the European Parliament and the Council, concerning the proposal are now underway and the Commission remains hopeful that an agreement will be reached in the near future. The Senát's Opinion has been made available to the Commission's representatives in the ongoing negotiations of the co-legislators, the European Parliament and the Council, and will inform these discussions.*

*The Commission hopes that the clarifications provided in this reply address the issues raised by the Senát and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Maroš Šefčovič  
Vice-President*

*Ylva Johansson  
Member of the Commission*

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<sup>9</sup> Article 11 of Directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union [2014] OJ L127/39.

<sup>10</sup> Articles 4 to 7, and 10 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