



EUROPEAN COMMISSION

*Brussels, 9.11.2022
C(2022) 8024 final*

Dear Chair,

The Commission would like to thank the Poslanecká sněmovna for its Opinion on the initiatives adopted on 25 May 2022, comprising a Communication from the Commission to the European Parliament and the Council - Towards a Directive on criminal penalties for the violation of Union restrictive measures {COM(2022) 249 final}, a proposal for a Council Decision on adding the violation of Union restrictive measures to the areas of crime laid down in Article 83(1) of the Treaty on the Functioning of the European Union {COM(2022) 247 final} and a 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 support of the Poslanecká sněmovna to the proposed Council Decision. It is part of a two-step approach to end impunity for those violating Union restrictive measures following Russia's war of aggression against Ukraine. As a first step, the proposed Council Decision identifies the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the European Union (TFEU). Immediately after the adoption of the Council Decision, the Commission would as a second step present a proposal for a Directive on the definition of criminal offences and penalties for the violation of Union restrictive measures. In view of the urgent need to hold individuals and legal persons involved in the violation of Union restrictive measures accountable, the main elements of a future proposal for a Directive are set out in the annex to the Commission Communication entitled 'Towards a Directive on criminal penalties for the violation of Union restrictive measures'.

Further, the Commission welcomes the Poslanecká sněmovna's broad support for the aims of the proposal for a Directive on asset recovery and confiscation and would like to address the doubts raised, in particular on the extension of confiscation possibilities in

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criminal proceedings and on the strengthening of management provisions, notably its legal basis.

The Commission has 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 to increase the effectiveness and efficiency of the asset recovery system in all its phases, including management provisions. This follows a call of the Council to strengthen the legal framework on the management of property frozen,¹ recently followed by a call by the European Parliament for enhanced asset recovery rules.² These complement an earlier 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.³ The Commission responded to this call and published its findings in a report ‘Analysis of non-conviction based confiscation measures in the European Union’⁴. The findings were further assessed in stakeholder consultations informing the impact assessment accompanying the proposal.

Strong confiscation and management rules are essential to ensure an effective asset recovery system. Existing confiscation provisions do not address the complex modi operandi of criminals. 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.⁵ Possibilities for extended confiscation and confiscation based on unexplained wealth linked to criminal activities are therefore necessary to effectively disrupt organised crime and protect European citizens. These measures, paired with strong safeguards, are grounded in criminal law and are not preventive in nature, since they require a link to a criminal offence insofar as the national court must be satisfied that the frozen property is derived from criminal offences.

At the same time, inadequate management discourages asset recovery as a whole since there is a disincentive to recover criminal assets where the cost to manage them is higher than their recovered value after confiscation. In this regard, effective management of frozen assets is necessary to ensure the effectiveness of confiscation measures. It is

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

² 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\(INI\)](#)).

³ 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](#).

⁴ [SWD \(2019\). 1050 final](#).

⁵ 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

*therefore covered by the legal basis of Article 83 TFEU in the same way existing management provisions in the current Confiscation Directive are.*⁶

The Commission hopes that the clarifications provided in this reply address the issues raised by the Poslanecká sněmovna and looks forward to continuing the political dialogue in the future. The points made above are based on the Commission proposal, which is currently in the legislative process involving the European Parliament and the Council. The Poslanecká sněmovna's Opinion has been made available to the Commission's representatives in the ongoing negotiations of the co-legislators and will inform these discussions.

Yours faithfully,

*Maroš Šefčovič
Vice-President*

*Ylva Johansson
Member of the Commission*

⁶ Article 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