

Commission Assesses EU's Asset Recovery and Confiscation Regime

Thomas Wahl



News

On 2 June 2020, the Commission presented its [report on asset recovery and confiscation](#), entitled “Ensuring that crime does not pay.” The proceeds of organised crime in the EU are currently estimated at about €110 billion per year. As [reported by Europol](#), however, only about 2% of criminal proceeds are frozen, and 1% is confiscated in the EU. Hence, organised crime groups are still able to invest in the expansion of their criminal activities and continue to infiltrate the legal economy.

The Commission outlines that the EU has put considerable efforts into harmonising the legislation on confiscation and asset recovery. Since 2007, Asset Recovery Offices have been established in all Member States, and [Directive 2014/42/EU](#) on the freezing and confiscation of instrumentalities and proceeds of crime has harmonised rules on the freezing, management, and confiscation of such assets across the EU. The recently adopted Regulation on the mutual recognition of freezing orders and confiscation orders (see [eucrim 4/2018, p. 201](#)), which will become applicable as from 19 December 2020, will improve cross-border cooperation.

The Commission report mainly assesses how Member States have transposed the key provisions of the 2014 Directive. This follows up from the [Commission staff working document on the analysis of non-conviction-based confiscation in the EU](#), which was adopted in 2019 and responds to a request by the European Parliament and the Council to assess the feasibility and possible benefits of introducing additional common rules on non-conviction based confiscation. In addition, the report examines the work of the Asset Recovery Offices (AROs), established by [Council Decision 2007/845/JHA](#), and the challenges they face when carrying out their day-to-day tasks. Ultimately, the report provides an overview of the international instruments that are relevant to the field of asset recovery.

The Commission concludes that the 2014 Directive led to substantive progress in the Member States' asset recovery framework. 24 of 26 Member States bound by the Directive have adapted their laws to higher standards. The legislative implementation of the Directive across the EU can therefore be considered satisfactory. However, the figures on asset recovery and low confiscation rates are not convincing. As a consequence, the Commission suggests further strengthening the EU legal framework as set out in the Directive. This could be achieved by:

- Extending the scope of criminal offences to which the Directive is applicable;
- Introducing more effective rules on non-conviction based confiscation;
- Being more precise as regards the management of frozen assets;
- Introducing provisions on the disposal of assets, including the social reuse of confiscated assets;
- Laying down rules on the compensation of victims of crime;

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- Reinforcing the capacity of the Asset Recovery Offices to trace and identify illicit assets.

The Commission does not exclude greater harmonisation of the EU's asset recovery regime. In response to the call by the EP and Council, further measures in the area of non-conviction based confiscation are conceivable, but the Commission first needs to analyse the effectiveness of national regimes (e.g., Germany and Italy), which may serve as a blueprint for an EU model. The Commission also stresses that a revision of EU legislation must not only include Directive 2014/42 but also Council Decision 2007/845. The ability to freeze and confiscate assets depends on the capacity to effectively trace and identify them. It is therefore crucial to ensure that the Asset Recovery Offices (AROs) are equipped to carry out their tasks effectively.

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