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REGULATORY SCRUTINY BOARD OPINION

Fighting organised crime
freezing and confiscating the proceeds of crime
& Strengthening the mandate of EU Asset Recovery Offices

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Brussels,
RSB

Opinion

Title: Impact assessment / Fighting organised crime – freezing and confiscating the proceeds of crime & Strengthening the mandate of EU Asset Recovery Offices

Overall opinion: POSITIVE

(A) Policy context

Cross-border EU organised-crime generates large profits, with only about 2% of criminal proceeds frozen and 1% confiscated today. Criminals use illicit earnings to expand their reach and infiltrate the legal economy and public institutions, threatening the security of the Union.

The initiative aims to modernise the EU asset recovery framework. The framework is composed of two main legal instruments: Directive 2014/42/EU on Freezing and Confiscation and Council Decision 2007/845/JHA on Asset Recovery Offices. These are jointly reviewed to take advantage of synergies and interlinkages in tackling the threat of organised crime. The ability to freeze and confiscate assets depends directly on the capacity of Member States' authorities to trace and identify them.

The evaluation of these instruments and the accompanying impact assessment have been conducted as part of a combined process. The evaluation has shown that the framework is still relevant and that the problems identified prior to the adoption of the relevant acts still persist. However, Member States' capacity to trace, freeze, confiscate and manage illicit assets remains limited. Meanwhile, the EU asset recovery system is not well equipped to address the complex modus operandi of cross-border criminal organisations effectively.

(B) Summary of findings

The Board notes the useful additional information provided in advance of and during the meeting and commitments to make changes to the report.

The Board gives a positive opinion. The Board also considers that the report should further improve with respect to the following aspects:

- (1) The report does not clearly present the policy options and some of the measures they include. The differences between policy options in terms feasibility of some of their measures are not sufficiently elaborated.**
- (2) The cost and benefit estimates of the options are not clearly presented in detail. The underlying methodology used to compare and score the options, including in**

This opinion concerns a draft impact assessment which may differ from the final version.

terms of efficiency and proportionality, is not sufficiently clear.

(C) What to improve

(1) The report should strengthen the presentation of policy options, in particular in terms of the concrete measures they contain to facilitate their comparison. It should elaborate in particular the exact difference between the preferred option and the most ambitious option. It should clarify whether and why all measures in the most ambitious option are in line with the limitations of the legal base.

(2) The impact analysis should clearly compare the costs and benefits of options, justifying the choice of the preferred option. The report should explain the underlying methodology for the various cost and benefit estimates. It should be precise about how these estimates were calculated, the evidence base for them and be clear about the source of data.

(3) The situation of Member States should be more clearly reflected throughout the report. It should better present how the problems differ between Member States, and also how each Member State will be affected by the envisaged measures. It should better explain how effective implementation of the measures will be ensured.

(4) The comparison of options should more clearly demonstrate that the preferred combination of measures is the best performing one overall. It should clarify how the benchmarks against which to measure efficiency and proportionality are defined.

(5) The section on future monitoring and evaluation should be further developed. It should define operational objectives and identify core monitoring indicators for the specific policy objectives against which progress will be evaluated. It should be more specific about what kind of information to look for and define indicators to monitor outcomes.

(6) Differing stakeholder views, including from the targeted consultation, should be presented in a more transparent way throughout the report.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

(D) Conclusion

The DG may proceed with the initiative.

The DG must revise the report in accordance with the Board’s findings before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Impact Assessment on two proposals for a Directive on Fighting organised crime – freezing and confiscating the proceeds of crime & Strengthening the mandate of EU Asset Recovery Offices
Reference number	PLAN/2020/8718 + PLAN/2020/8719

Submitted to RSB on	2 February 2022
Date of RSB meeting	2 March 2022

ANNEX: Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

Overview of Benefits (total for all provisions) – Preferred Option		
Description	Amount	Comments
Direct benefits		
<p>Asset tracing: The requirement for law enforcement authorities, to trace assets in a wider range of criminal activities, including with the support of Asset Recovery Offices, will lead to a greater identification of assets, including in other Member States since it will allow to identify cases where criminals have transferred or acquired assets in other jurisdictions. Similarly, the reinforced powers and access to information of Asset Recovery Offices will facilitate asset tracing across the Union, leading to a considerable increase in cross-border identification of assets.</p>	<p>Besides the reinforced capacities of competent authorities, including Asset Recovery Offices, to trace assets, such reinforcement is expected to lead to an increase in frozen and ultimately confiscated assets.</p> <p>While the increase directly stemming from these measures cannot be quantified, some figures are indicative of the improvements the preferred option would bring. In at least eight Member States financial investigations would be carried out in a more systematic manner. Asset Recovery Offices would obtain a more adequate access to information (currently only 15% of them have access to all relevant databases) and more adequate resources that would address the considerable divergence between them, e.g. one Asset Recovery Office counting with only one employee compared to 91 in another one (despite the latter being in a Member State only double the population of the first one).</p>	
<p>Asset Management: The establishment of Asset Management Offices and the generalised application of efficient asset management techniques such as pre-seizure planning or interlocutory sales would ensure a more efficient asset management, including assets frozen and confiscated on behalf of other Member States, and overall support cross-border cooperation in the management of assets.</p>	<p>The improved capacity to manage frozen and confiscated assets would increase the value of such assets considerably. While such an increase cannot be quantified, examples such as those the Netherlands (which reduced the cost of management of movable assets from EUR 23 million to EUR 9 million through interlocutory sales) demonstrate the ample room for improvement. The establishment of Asset Management Offices will also lead to improved management of assets in the 14 Member States which do not have them yet.</p> <p>More generally, by removing some of the disincentives to asset recovery, an efficient management of assets would incentivise competent authorities to trace more assets of taking freezing and confiscation decisions.</p>	
<p>Confiscation measures: The broader scope of confiscation mechanisms, which would be available to judicial authorities in respect of a broader set of crimes, and especially the establishment of a new confiscation model designed to tackle the complex nature of modern organised crime will significantly reinforce the capabilities of judicial authorities to confiscate assets.</p>	<p>The greater gains of these measures in terms of volume of confiscated assets would derive in particular from the enlarged possibilities to apply extended confiscation in a larger set of crimes, and in particular from the availability of a very effective new confiscation model. Overall these measures would enable to recover additional criminal assets in a significant manner.</p> <p>It is not possible to estimate exact figures on the increased confiscation rates directly resulting from these measures, although some examples are representative of their potential. In Italy, authorities are able to confiscate assets in 90% of judicial proceedings through a confiscation mechanism similar to the new</p>	

Overview of Benefits (total for all provisions) – Preferred Option

<i>Description</i>	<i>Amount</i>	<i>Comments</i>
	confiscation model envisaged in the preferred option, compared to 50% through the traditional confiscation mechanisms, while Latvia is able to confiscate 25 times more through such mechanisms than through standard forms of confiscation (EUR 105,4 million vs. EUR 4,2 million between 2013 and 2017). The last Member State putting in place such model, Germany in 2017, has applied it successfully in a considerably high number of cases: 5,100 in 2018 and 5,800 in 2019.	
Strategic approach to asset recovery: In addition to measures specific to each phase of the asset recovery process, other provisions requiring the establishment of an asset recovery plan and coordination measures as well as requirements to improve statistical data collection (including the asset registry) would considerably improve the overall efficiency of the asset recovery regime.	Concrete figures that would give an indication of the quantitative benefits of this set of measures cannot be provided, given the systemic and strategic nature of the measures.	
Indirect benefits		
The improved possibilities to confiscate illicit assets contribute to a reduction of the attractiveness of criminal activities, the reduction of assets available for further criminal activities and possibilities to infiltrate the legal economy thereby contributing to a level playing field in the EU market	This indirect impact on disrupting criminal activities and possibilities to infiltrate the legal economy and the consequences for competition is not measurable.	
Administrative cost savings related to the ‘one in, one out’ approach		
By creating more detailed requirements for information exchange between Asset Recovery Offices, including the creation of templates and the introduction of asset registries, the current costs associated with informal lines of communication would be reduced. In addition, the creation of Asset Management Offices in all Member States and the application of efficient asset management practices would reduce overall management costs.	No data available. For asset management the cost savings can be significant, with one Member State being able to reduce the costs by more than half by selling off assets when costs exceed the value of property.	

<i>II. Overview of costs – Preferred option</i>							
		Citizens/Consumers		Business		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Adoption of a national plan on asset recovery	Direct costs	NA	NA	NA	NA	EUR 600,000€	
	Indirect costs	NA	NA	NA	NA		EUR 100,000€
Additional resources for Asset Recovery Offices	Direct costs	NA	NA	NA	NA	NA	EUR 4.39 million
	Indirect costs	NA	NA	NA	NA	NA	NA
Asset Recovery Offices' access to relevant databases	Direct costs	NA	NA	NA	NA	EUR 2.43 million	NA
	Indirect costs	NA	NA	NA	NA	NA	NA
Requirements on asset tracing - financial investigations	Direct costs	NA	NA	NA	NA	EUR 585,000 – EUR 1.75 million ¹	EUR 2.8 million - EUR 5.54 million
	Indirect costs	NA	NA	NA	NA	NA	NA
Establishment of a specialised Asset Management Office	Direct costs	NA	NA	NA	NA	NA	EUR 2.8 million – EUR 7 million
	Indirect costs	NA	NA	NA	NA	NA	NA
Implementation of pre-seizure planning and interlocutory sales	Direct costs	NA	NA	NA	NA	EUR 585,000	NA
	Indirect costs	NA	NA	NA	NA	NA	NA
Implementation of new confiscation measures	Direct costs	NA	NA	NA	NA	EUR 1.17 million	
	Indirect costs	NA	NA	NA	NA	NA	NA
Implementation of requirements on the collection of statistics	Direct costs	NA	NA	NA	NA	1.05 million	NA
	Indirect costs	NA	NA	NA	NA	NA	NA
Establishment of asset registries	Direct costs	NA	NA	NA	NA	EUR 13.5 million	EUR 2.16 million
	Indirect costs	NA	NA	NA	NA	NA	

¹ Related to the development of guidelines and provision of training

II. Overview of costs – Preferred option

		Citizens/Consumers		Business		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Total Costs	Direct costs					EUR 19.32 million	EUR 12.15 million – EUR 19.09 million
	Indirect costs						EUR 100,000
	Direct + indirect					EUR 31.57 million – 38.42 million	