

*AROs' Activities and Pre-evaluation of the
Opportunity of Mutual Recognition Procedure
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*The role of ARO in the Reg. (EU) 2018/1805 and in the new Directive
(EU) 2014/1260 on Asset Recovery and Confiscation*

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Recital 54 Regulation 1805/2018

- Member States should **ensure** that, in accordance with Council Decision 2007/845/JHA [\(16\)](#),
- their Asset Recovery Offices **cooperate with each other**
- **to facilitate the tracing and identification**
- of **proceeds** of crime and other crime-related **property**
- which may become the object of a freezing order or confiscation order.

in the Commission Work Programme for 2021/24

- was announced the intention not only to revise Directive 42/2014, but also to introduce a Directive on Asset Recovery Offices, **which should replace Framework Decision 2007/845/JHA**,
- in view of the **limited successes still recorded in the confiscation of criminal proceeds in Europe** and with the aim of supporting Member States' fight against organised crime and its infiltration into the legal economy and public institutions:
- "The initiative will contribute to increasing the low confiscation rates across the European Union, which currently only reach around 2% of freezing and 1% of confiscation of criminal profits.
- **As the ability to freeze and confiscate assets depends directly on the capacity to trace and identify them,**
- **the specific objective of the initiative is to strengthen Asset Recovery Offices and**
- **to reinforce EU cooperation and informational exchange in order to increase confiscation rates".**

The Commission's report Asset Recovery and Confiscation: Ensuring that crime does not pay

- and the **previously commissioned studies on the implementation of Directive 2014/42/EU** (HOME/2017/ISFP/FW/LECO/0084 and Asset recovery and confiscation: what works and what doesn't work -HOME/2018/ISFP/FW/EVAL/0081)
- showed **some potential areas for improvement:**
- The poor results in confiscating criminal assets in cross-border cases is also attributed to the **malfunctioning of Asset Recovery Offices,**
- which currently have **limited powers to identify and trace criminal assets,**
- both at national and supranational level.

- Above all, it is complained that these offices have **limited information at their disposal**, lacking direct and immediate access to databases (e.g. business or land registries), as well as to Europol's Secure Information Exchange Network Application (SIENA);
- they have **insufficient operational powers**, e.g. in relation to urgent seizures,
- as well as **inadequate financial, human and technical resources** and
- also the **degree and quality of training courses is deemed deficient**;
- they are often **not sufficiently involved in confiscation proceedings** and **encounter problems in financial investigations**, also due to the lack of common rules in relation to cross-border investigations.
- Finally, **the regulations imposed on these offices for the protection of personal data are not in line with the Data Protection Police Directive** (Directive 2016/680).

- Despite the fact that Article 11 of the Directive 2014/42 required Member States to **collect statistical data on annual seizure and confiscation orders**, and
- on the value of seized and confiscated assets,
- **the data collected are limited and not comparable;**
- the Asset Recovery Offices often **do not have access to these data** and those of other States, and
- this, **together with the lack of a centralised European database**, prevented them from **knowing whether certain assets have already been seized and confiscated by another Member State.**

The first idea: the introduction of a directive on Asset Recovery Offices

- In light of the poor results in the recovery of the proceeds of crime, it was deemed necessary, in the first instance, to revise Directive 42/2014,
- the introduction of a directive on Asset Recovery Offices and the introduction of Asset Management Offices;
- in the end, it was decided in the Proposal for a Directive presented in May 2022 to merge all these reforms into a single text.
- In fact, the proposal takes the form of a directive aimed at pursuing harmonisation
- not only in the provision of confiscation models, replacing Framework Decision 2005/212/JHA and Directive 42/2014,
- but also in relation to the phase of asset tracing, identification and management, introducing provisions also concerning Asset Recovery Offices, currently governed by Framework Decision 2007/845/JHA.
- The **bringing together in a single act** of obligations previously spread over several instruments would ensure
- **a more coherent and strategic approach to asset recovery and cooperation of all competent actors in the asset recovery system.**

Art. 36

- **Replacement of Joint Action 98/699/JHA, Framework Decisions 2001/500/JHA and 2005/212/JHA, Decision 2007/845/JHA and Directive 2014/42/EU**
- 1. Joint Action 98/699/JHA, Framework Decisions 2001/500/JHA and 2005/212/JHA, **Decision 2007/845/JHA** and Directive 2014/42/EU are replaced with regard to the Member States bound by this Directive, without prejudice to the obligations of those Member States with regard to the date for transposition of those instruments into national law.
- 2. With regard to the Member States bound by this Directive, references to the instruments referred to in paragraph 1 shall be construed as references to this Directive.

Article 4: Asset-tracing investigations

- 1.To facilitate cross-border cooperation, Member States shall take measures to enable the swift tracing and identification of instrumentalities and proceeds, or of property which is, or might become, the object of a freezing or confiscation order in the course of proceedings in criminal matters.
- 2.Property referred to in paragraph 1 shall also include property which is, or might become, the object of a freezing or confiscation order in accordance with Article 10(2) of Directive (EU) 2024/1226.
- **3.Where an investigation is initiated in relation to a criminal offence that is liable to give rise to substantial economic benefit,**
- **asset-tracing investigations pursuant to paragraph 1 shall be carried out immediately by competent authorities.**
- Member States may limit the scope of such asset-tracing investigations to investigations into offences liable to have been committed **within the framework of a criminal organisation.**

restitution and compensation of crime victims

- The European Parliament inserted art. 4(2 a) in order to include
- the **restitution and compensation of crime victims**
- among the **purposes for which asset investigations may be triggered**

Recital 37

- Considering that criminal activities can inflict great harm on victims, it is essential to protect their rights, including **the rights to compensation and restitution**.
- Therefore, Member States should take appropriate measures to ensure that **victims' claims to restitution and compensation** against the person who is subject to a confiscation measure as a result of a criminal **offence are taken into account in asset-tracing, freezing and confiscation proceedings, including in cross-border cases**.
- Moreover, in order to facilitate the compensation and restitution of property to victims, **it is necessary to facilitate the tracing of property that might become the object of such claims**
- **as well as the exchange of information between authorities competent for asset tracing and authorities competent for deciding upon claims by victims or executing such decisions.**

ASSET RECOVERY OFFICES

DIRECTIVE 1260/2024

- RECITAL (16)
- Considering that the effective tracing and identification of property might require tracing and identifying measures necessitating intervention by other authorities, **it is important that asset recovery offices are able to request the relevant authorities to cooperate.**
- The conditions for such requests are subject to national law.
- Member States can include **representatives from both**
- **law enforcement** and
- **judicial authorities**
- **in the staff of their asset recovery offices or**
- establish asset recovery offices **both within law enforcement authorities and the judiciary.**

Article 5: Asset recovery offices

- 1. Each Member State shall set up **at least one asset recovery office to facilitate cross-border cooperation in relation to asset-tracing investigations.**
- 2. Asset recovery offices shall have the following tasks:
 - a) **to trace and identify instrumentalities, proceeds or property where necessary to support other national competent authorities responsible for asset-tracing investigations pursuant to Article 4 or the European Public Prosecutors Office (the EPPO);**
 - b) **to trace and identify instrumentalities, proceeds or property which are or might become the object of a freezing or confiscation order issued by a competent authority in another Member State;**
 - c) **to cooperate and exchange information with asset recovery offices in other Member States and**
 - **the EPPO** in the tracing and identification of instrumentalities, proceeds or property which are or might become the object of a freezing or confiscation order

- 3) In order to perform their tasks pursuant to paragraph 2, point (b), asset recovery offices **shall be entitled**
- **to request the relevant competent authorities**, in accordance with national law, **to cooperate with them where necessary for the tracing and identification of instrumentalities, proceeds or property;**

Art. 11: Freezing

- **3.** Without prejudice to the powers of other competent authorities, **Member States shall enable asset recovery offices to take immediate action** pursuant to paragraph 2
- where there is **an imminent risk of the disappearance of the property that those offices have traced and identified** in the exercise of their tasks pursuant to Article 5(2), point (b).
- The validity of such immediate action **shall not exceed seven working days.**
- **2.** Immediate action shall be taken where necessary in order **to preserve the property until a freezing order has been issued.** Where immediate action does not take the form of a freezing order, Member States shall limit the temporary validity of that immediate action

Recital 22

- In order to prevent the disappearance of property, the competent authorities of the Member States, which might include asset recovery offices, should be empowered to take immediate action, which could take the form of an order, to secure such property until a freezing order has been issued.
- Given the exceptional nature of such action, **Member States should limit its temporary validity.**

In WP3 some arguments emerged in favour of the competence of AROs to take immediate measures (by ROMANIA):

- **Arguments in favour of conferring jurisdiction on the ARO for immediate measures:**
- **ARO has access to the national registers** containing the assets and
- **the freezing of these assets for a short period could be carried out immediately**, precisely as a result of a single procedure carried out by a single institution.
- **In terms of international cooperation, it would eliminate administrative obstacles caused by the lack of communication between the competent authorities of different Member States.**
- **The ARO structures have, over time, developed secure and constant channels of communication**, which are a real advantage in terms of providing the fastest possible support.
- **Furthermore, in terms of international cooperation, if the financial information is provided by the ARO structures on the basis of Art. 6 and art. 9,**
- **taking immediate action on the assets just identified during the cooperation is the option that ensures the greatest coherence of the entire architecture underlying the financial investigation.**

RECITAL 17: NO obligation to recognise such orders pursuant to Regulation (EU) 2018/1805

- The requirement for asset recovery offices to trace and identify instrumentalities, proceeds or property which is or might become the object of a freezing or confiscation order issued by another Member State
- **aims to facilitate the preparation or execution of freezing orders** from other Member States,
- **but does not imply an obligation to recognise such orders pursuant to Regulation (EU) 2018/1805.**

Art. 11 Freezing: competent authority

- immediate measures and **freezing orders** are allowed to be taken by a competent authority (Art. 11(4) 'Member States shall ensure that freezing measures are taken only by a competent authority ...'), and therefore not necessarily judicial;
- The new Directive confirms the efficient approach of the Directive allowing the freezing order to be taken by a non-judicial authority (Art. 11),
- But art. 24 (3) **Legal remedies**: Member States shall provide for the **effective possibility for the person whose property is affected to challenge the freezing order pursuant to Article 11 before a court**,
- in accordance with procedures provided for in national law.
- **Where the freezing order has been issued by a competent authority other than a judicial authority, national law may provide that such an order is first to be submitted for validation or review to a judicial authority**
- before it can be challenged before a court.

Art. 5

- 4) Asset recovery offices shall be empowered to trace and identify **property of persons and entities subject to Union restrictive measures** where necessary to facilitate the detection of criminal offences referred to in Article 2(1), point (p), of this Directive, **upon a request by national competent authorities based on indications and reasonable grounds for believing that a criminal offence pursuant to Article 3 of Directive (EU) 2024/1226 was committed.**
- Such powers shall be **without prejudice to relevant procedural requirements and safeguards established under national procedural law**, including rules on the initiation of criminal proceedings or, where necessary, the requirement to obtain a judicial authorisation.

Article 6: Access to information

- 1. For the purposes of performing the tasks referred to in Article 5, Member States shall ensure that asset recovery offices **have access to the information referred to in this Article**
- to the extent that **such information is necessary** for the tracing and **identification of instrumentalities, proceeds or property.**
- 2. Member States shall ensure that asset recovery offices have **immediate and direct access to the following information,**
- provided that such information is stored **in centralised or interconnected databases or registers held by public authorities:**

- a) national real-estate registers or electronic data retrieval systems and land and cadastral registers;
- b) national citizenship and population registers of natural persons;
- c) national motor vehicle, aircraft and watercraft registers;
- d) commercial registers, including business and company registers;
- e) **national beneficial-ownership registers in accordance with Directive (EU) 2015/849** and data available through the interconnection of beneficial-ownership registers in accordance with that Directive;
- f) **centralised bank-account registers** in accordance with Directive (EU) 2019/1153.

- 3. For the purposes of paragraph 1, Member States shall ensure that asset recovery offices can swiftly obtain, either immediately and directly or upon request, the following information:
- a) fiscal data, including data held by tax and revenue authorities;
- b) national social security data;
- C) relevant information which is held by authorities competent for preventing, detecting, investigating or prosecuting criminal offences;
- (d) information on mortgages and loans;
- (e) information contained in national currency databases and currency exchange databases;
- (f) information on securities;
- (g) customs data, including cross-border physical transfers of cash;
- (h) information on annual financial statements by companies;
- (i) information on wire-transfers and account balances;
- (j) information on crypto-asset accounts and crypto-asset transfers as defined in Article 3 of Regulation (EU) 2023/1113 of the European Parliament and of the Council
- k) in accordance with Union law, data stored in the Visa Information System (VIS), Schengen Information System (SIS II), Entry/Exit System (EES), European Travel Information and Authorisation System (ETIAS), and European Criminal Records Information System for Third-Country Nationals (ECRIS-TCN).

Information not in centralised or interconnected databases

- 4. Where the information referred to in paragraphs 2 and 3 is not stored in centralised or interconnected databases or registers held by public authorities,
- Member States shall take **the necessary measures to ensure that asset recovery offices can swiftly obtain that information from relevant institutions**
- by other means in a streamlined and standardised manner.

Reasoned request and the refute

- 5. Member States **may decide** that access to the information referred to in paragraph 3, points (a), (b) and (c), requires a **reasoned request**, and
- that such a request **can be denied** where the provision of the requested information would:
 - (a) **jeopardise the success of an ongoing investigation;**
 - (b) be clearly **disproportionate** to the legitimate interests of a natural or legal person with regard to the purposes for which access has been requested; or
 - (c) **comprise information provided by another Member State or third country** and it is not possible to obtain consent for its further transmission.

Procedural safeguards and judicial authorisation

- 6. Access to information referred to in this Article shall be **without prejudice to the procedural safeguards established under national law**,
- including, where necessary, the requirement to obtain a **judicial authorisation**.
- **RECITAL 18: Granting access to that information does not prevent Member States from making access subject to procedural safeguards as established under national law while taking due account of the need for asset recovery offices to be able to swiftly reply to cross-border requests.**
- The implementation of procedural safeguards **should not affect the ability of asset recovery offices to respond to requests from other Member States, especially in the case of urgent requests.**

minimum rules

- In any case the Directive sets minimum standards and Member States, at national level,
- have the possibility to grant asset recovery offices **access to more information**,
- such as employment data or information on bank accounts, e.g. balance and transaction data

Article 7: Conditions for access to information by asset recovery offices

- 1. Information referred to in Article 6 shall be accessed on a **case-by-case basis**, only **where necessary and proportionate** for the performance of the tasks pursuant to Article 5 and by staff specifically designated and authorised to access such information.
- 2. Member States shall ensure that **staff of the asset recovery offices comply with the rules on confidentiality and professional secrecy** as provided for under applicable national law as well as the Union data protection *acquis*.
- Member States shall ensure that staff of asset recovery offices have the necessary **specialised skills** and abilities to perform their roles effectively.
- 3. Member States shall ensure that **appropriate technical and organisational measures are in place to ensure a level of security appropriate to the risk of processing data** in order for asset recovery offices to access and search the information referred to in Article 6.

Article 8: Monitoring access and searches by asset recovery offices

- Member States shall provide for logs of access and search activities by asset recovery offices under this Directive to be kept in accordance with Article 25 of Directive (EU) 2016/680.

Art. 8 establishes a monitoring framework

- Art. 8 establishes a **monitoring framework for access to information by competent national authorities**,
- recalling **Article 25 of Directive (EU) 2016/680**
- and aim **to prevent possible misconduct or inappropriate access to information**
- Recital 53 emphasises the importance of **the protection of personal data, in accordance with Union law**, and that to this end,
- **the provisions of this Directive must be aligned with those of Directive (EU) 2016/680**
- and specifies that **this guarantee must be observed in relation to «all exchanges of information under this Directive»**

Recital 53: the protection of personal data

- **It is particularly important that the protection of personal data, in accordance with Union law, be ensured in connection to all exchanges of information under this Directive.**
- To that aim, insofar as the processing of personal data for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties is concerned, **the data protection rules as set out in Directive (EU) 2016/680 are applicable in relation to measures taken under this Directive.**
- Directive (EU) 2016/680 **lays down the rules relating to the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties,**
- in line with a set of **principles** relating to the processing of personal data, in particular **lawfulness, fairness and transparency, purpose limitation, data minimisation, accuracy, storage limitation, integrity and confidentiality, and accountability.**

Art. 9 regulate the exchange of information between AROs in detail

- In Article 9, the **content** that requests addressed to a foreign counterpart must have **is more detailed than in the previous legislation**.
- In particular, the **requesting office must specify the reasons** for its request,
- **identifying its relevance** to the activity to be carried out.

Article 9: Exchange of information

- 1. Member States shall take the necessary measures to ensure that their asset recovery offices provide, upon request from an asset recovery office in another Member State, any information that those asset recovery offices have access to, and that is necessary for the performance of the tasks pursuant to Article 5, of the asset recovery office requesting that information (the 'requesting asset recovery office').
- It shall only be possible to provide those categories of personal data listed in Section B, point 2, of Annex II to Regulation (EU) 2016/794, with the exception of forensic identification information listed in Section B, point 2(c)(v), of that Annex.
- Any personal data to be provided shall be determined on a case-by-case basis, in light of what is necessary for the performance of the tasks pursuant to Article 5, and in accordance with Directive (EU) 2016/680.

- 2. When making a request pursuant to paragraph 1, the requesting asset recovery office shall specify as precisely as possible the following:
 - (a) the object of the request;
 - (b) **the reasons for the request**, including **the relevance of the information** requested for the tracing and identification of the relevant property;
 - (c) the nature of the proceedings;
 - (d) the type of criminal offence to which the request relates;
 - (e) the link between the proceedings and the Member State in which the asset recovery office receiving the request is located;
 - (f) details on the property targeted or sought, such as bank accounts, real estate, vehicles, vessels, aircraft, companies and other high-value items;
 - (g) where necessary for the identification of the natural or legal persons presumed to be involved, **any identification documents if available**, details such as name, nationality, place of residence, national identification numbers or social security numbers, addresses, date and place of birth, date of registration, country of establishment, shareholders, headquarters and subsidiaries, as appropriate;
 - (h) where applicable, **reasons for the urgency of the request**.

Art. 9, n. 3

- It is provided that, where a **national authority becomes aware that it is in possession of information that may be necessary for a foreign counterpart,**
- the **exchange** of information must also take place **ex officio, without a specific request**
- This seems to be an **important clarification in a logic of fruitful cooperation**
- “3. Member States shall take the necessary measures to enable their asset recovery offices to provide information to an asset recovery office in another Member State, **without a request to that effect,**
- where those offices are aware of information on instrumentalities, proceeds or property that they consider necessary, for the performance of the tasks pursuant to Article 5, of the asset recovery offices of that other Member State.
- When providing such information, **asset recovery offices shall set out the reasons why the information provided is considered necessary”.**

Member States must ensure that information provided by their AROs can be used as **evidence** before the Courts of another MS

- **This rule also seems very important in a logic of efficiency of the system**
- **“4.Unless otherwise indicated by the asset recovery office providing binformation pursuant to paragraph 1 or 3, the information provided may be presented as evidence before a national court or competent authority of the Member State in which the asset recovery office receiving that information is located,**
- **in accordance with procedures under national law, including procedural rules on the admissibility of evidence in proceedings in criminal matters**
- **in line with the Charter of Fundamental Rights of the European Union and**
- **with obligations of Member States as set out in Article 6 of the Treaty on European Union”.**

Art. 9(5) establishes that the exchange of information must take place through the network application called SIENA

- **which is able to guarantee the security** of the exchange (it is, in fact, a **system managed directly by Europol**, in accordance with Chapter V of Regulation 2016/794/EU)
- “5. Member States shall ensure that asset recovery offices **have direct access** to the Secure Information Exchange Network Application (SIENA) and
- use the specific fields designed for the asset recovery offices in SIENA
- that correspond to the information required under paragraph 2 or,
- **where necessary on an exceptional basis,**
- **other secure channels for exchanging information pursuant to this Article”.**
- One Guideline of the WP3 emphasises, for example, **the opportunity of increasing contacts with and between the so-called FIUs (Financial Intelligence Units)** of the Member States or the **networks** of such FIUs.

WP3 Guideline stress the need for

- **Avoiding “simultaneous transmission of EIOs/LoRs for banking and financial information through parallel channels”,**
- **because this has occasionally hindered, rather than expedited,**
- **the initiation of the process of execution by creating duplicities,**
- **overlapping and**
- **internal confusion as to its reception (Spain)”**

Art. 9(6) regulates the refusal to provide the requested information

- The refusal must be **justified** on the basis of the reasons expressly provided for (6. Asset recovery offices may refuse to provide information to a requesting asset recovery office if there are factual reasons to assume that the provision of information would:):
- «(a) **harm the fundamental national security** interests of the Member State in which the asset recovery office receiving the request is located;
- (b) **jeopardise an ongoing investigation or criminal intelligence operation**, or pose an **imminent threat to the life or physical integrity of a person**; or
- (c) **be clearly disproportionate or irrelevant with regard to the purposes for which it has been requested**”. This last case was envisaged by the Council.

a further case of refusal

- The Parliament wanted to introduce a further case of refusal:
- The hypothesis that it might not be in accordance with the principles of national law, the Charter of Fundamental Rights or Article 6 TEU (9(6))

the refusal should be reasoned and may be partial

- 7. Where an asset recovery office refuses, pursuant to paragraph 6, to provide information to a requesting asset recovery office,
- the Member State where the asset recovery office receiving the request is located **shall take the necessary measures to ensure that the reasons for refusal are given and**
- **that the requesting asset recovery office is consulted in advance.**
- Refusals shall affect **only the part** of the requested information to which the reasons set out in paragraph 6 relate and shall not affect the obligation to provide other parts of that information, where applicable, in accordance with this Directive.

Article 10 lays down the deadlines for responding to requests for information,

- **without changing the general deadlines set in the Council Decision on AROs,**
- which, in turn, **refers to Framework Decision 2006/960/JHA** on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union;
- in addition to the existing legislation, it distinguishes between
 - **non-urgent requests**, to be fulfilled within **seven days**, and
 - **urgent requests**, to be fulfilled within **eight hours**, extendable by up to **three days**.
- These time-limits - which, it should be noted, **run from the receipt of the request** –
- in the Council's version become 14 days for non-urgent requests,
- remain eight hours for urgent requests, with the clarification that **they concern information 'to which they have direct access'** (specification included in the final version),
- and **directly 'three calendar days, for urgent requests concerning information to which they do not have direct access'**: this rule has been introduced.

Article 10: Time limits for provision of information

- 1. Member States shall ensure that asset recovery offices respond to requests for information made pursuant to Article 9 (1) **as soon as possible** and in any event within the following time limits:
 - (a) **seven calendar days**, for all requests that are **not urgent**;
 - (b) **eight hours**, for **urgent** requests relating to information **referred to in Article 6 that is stored in databases and registers** to which those asset recovery offices **have direct access**;
 - (c) **three calendar days**, for **urgent requests relating to information to which those asset recovery offices do not have direct access**.
- 2. Where the information requested pursuant to paragraph 1, point (b), is not directly available or the request made pursuant to paragraph 1, point (a), imposes a disproportionate burden on the asset recovery office receiving the request, that asset recovery office may delay the provision of the information. In such a case, the asset recovery office receiving the request shall immediately inform the requesting asset recovery office of that delay and shall provide the requested information as soon as possible and within seven days of the initial deadline established pursuant to paragraph 1, point (a), or within three days of the initial deadline established pursuant to paragraph 1, points (b) and (c).
- 3. The time limits set out in paragraph 1 shall start to run as soon as the request for information is received.

tracing and identification of assets after a final criminal conviction, or following proceedings pursuant to Articles 15 and 16

- Article 17 obliges Member States to take the necessary measures to ensure the tracing and identification of assets,
- including after a final criminal conviction,
- or following proceedings pursuant to Articles 15 and 16;
- this should involve **subsequent investigations aimed at identifying the assets to be confiscated** as proceeds or instrumentalities of crime, or otherwise of equivalent value.

*Article 17:*Effective confiscation and execution

- 1. Member States shall take the necessary measures to enable the tracing and identification of property to be frozen and confiscated **even after a final conviction** for a criminal offence or
- **following proceedings for confiscation pursuant to Articles 15 and 16.**
- 2. For the purpose of paragraph 1, Member States shall ensure that competent authorities are able to use tracing and identification tools that are as effective as those available for the tracing and freezing of assets under Chapter II of this Directive.
- 3. Member States may conclude cost-sharing agreements with other Member States on the execution of freezing and confiscation orders.

Recital 36

- Tracing and identification of property to be frozen and confiscated should be possible even **after a final conviction** for a criminal offence, or following proceedings involving non-conviction-based confiscation.
- That does not prevent Member States from establishing **reasonable time limits** after a final conviction or final decision in proceedings involving non-conviction-based confiscation,
- following expiration of which tracing and identification would no longer be possible.

The iposition of a reasonable time limit responds

- the need to avoid the continuous search for more assets to confiscate hangs like a **sword of Damocles indefinitely over the freedom of economic initiative** of those confiscated.
- **As regards in rem proceedings**, such as preventive confiscation or non-conviction-based confiscation,
- the problem of setting a reasonable time limit for the subsequent identification and recovery of the assets **arises upstream**,
- because in this case, irrespective of the time of commission of the source offence,
- **it will be possible to initiate subsequently and without time limit an in rem procedure aimed at proving the illicit origin of the assets and thus at confiscating them.**

ECourtHR, 3 June 2015, *Dimitrovi v. Bulgaria*, n. 12655/09, § 46

- the European Court already in the case *Dimitrovi v. Bulgaria* contested in relation to a form of **extended confiscation, without conviction**,
- the possibility to apply confiscation also with reference to **absolutely prior facts (without prescription and without a judgement)**
- pointing out that the measure in question **is substantially outside the statute of limitations** with the consequence that
- *“that individuals being investigated under it could be required to provide evidence of the income they had received and their expenditure many years earlier and without any reasonable limitation in time”;*
- *“the prosecution authorities were free to “open, suspend, close and open again proceedings at will at any time”.*
- All of which means that such discipline does not allow for foreseeability of the consequences of one's actions, ECourtHR, 8 gennaio 2009, *Bullen and Soneji v. the United Kingdom*, n. 3383/06, § 48; Corte EDU, *Piper*, cit., § 52.

ECourtHR, 21 July 2015, *Piper v. the United Kingdom*, n. 44547/10, § 51

- Not only that but, indeed, the European Court has condemned the United Kingdom for
- **violation of the right to reasonable time as an expression of the right to a fair trial, Art. 6(1) ECHR**
- precisely with reference to proceedings intended to apply a form of extended confiscation - the UK confiscation - following conviction, **stating that**
- **the period to be taken into account starts to run from the delivery of the conviction .**

ECourtHR, 13 October 2021, *Todorov and others v. Bulgaria*, n. 50705/11, 201.

- In the same direction, recently, in *Todorov v. Bulgaria*, the European Court of Human Rights highlighted
- the **long time period** over which the relevant legislation is applied and, in particular, emphasised that
- "However, account will be taken of the difficulties that the applicants may have encountered in meeting their burden of proof due to **the long periods of time** covered by the confiscation procedure and the other factors described above".
- Among other things, in this case the Court is dealing with a **retroactive** application of the 2005 law on confiscation,
- legislation that also applies to assets acquired up to 25 years before the beginning of confiscation proceedings,
- imposing a **heavy burden on the defence** who must provide proof of the legal income or source of their assets. Also Court of Human Rights, *Xhoxhaj v. Albania*, 31 May 2021, no. 15227/19, § 345.

RECITAL 60 REITERATES THE IMPORTANCE OF COMBINING EFFICIENCY WITH SAFEGUARDS

In order to ensure that there is a **common understanding and minimum standards for asset tracing and identification**, freezing, confiscation and management,

this Directive should lay down **minimum rules for the relevant measures as well as related safeguards**.

The adoption of minimum rules does not prevent Member States from **granting more extensive powers to asset recovery offices or to asset management offices**,

from providing for **more extensive rules on freezing and confiscation**, or from **providing for additional safeguards under national law**,

provided that such national measures and provisions **do not undermine the objective of this Directive**