



GUIDE TO STRENGTHENING THE EU'S ASSET RECOVERY FRAMEWORK

The EU is a safe haven for dirty money. Illegal activities generate 110 billion euros annually [according to](#) some estimates, which is around 1% of the bloc's GDP. Even when investigations are started against criminals, only 2.2% of the proceeds of crime are ever frozen or seized, and even less, just 1.1%, is confiscated, [according to Europol](#). Consequently, criminals keep 98% of their illegally acquired gains. The current revision of the asset recovery directive provides a good opportunity to ensure crime does not pay and criminals, kleptocrats and members of organised crime will not be able to hide their ill-gotten wealth in the EU. The following recommendations from Transparency International EU cover all stages of asset recovery: including tracing, seizing, confiscating and returning the proceeds of crimes.

The current legal framework for recovering assets in criminal cases is governed by the [2014 Asset Recovery Directive](#). The system of asset recovery differs substantially across the Union and contains multiple gaps and loopholes. The responsible authorities are also often underfunded. Transparency International EU [has been calling](#) for a better legislative system with strengthened operational practices for years. In May 2022 the European Commission [presented](#) its draft proposal for the revision of the asset recovery directive. Transparency International EU [welcomed](#) this, as it improves the system in a number of key areas, with provisions including widening the scope of the directive, empowering Asset Recovery Offices with stronger mandates and creating Asset Management Offices in all member states. However, the proposal does not go far enough in facilitating confiscations via non-conviction based confiscation and does not sufficiently address the question of returning assets to victim populations and social reuse of them. The

proposal has a strong focus on organised crime. While this aspect is crucial, a strong emphasis on corruption would be an important addition.

Russia's illegal war against Ukraine demonstrated that it is high time to deliver improved rules of freezing and confiscating assets. The new draft directive was presented along with a proposal to make the violation of sanctions a crime across the EU, and other steps are expected to address the question of confiscating the assets of Russian kleptocrats. Currently, the EU has a unique opportunity to improve its asset recovery system and put in place measures to fight crime more effectively in the future.

Asset tracing

When a criminal investigation takes place, one key difficulty is linking the assets with their real owners. Assets are often owned by legal entities with complex ownership structures, by using a number of companies registered in various offshore jurisdictions and shell companies. This problem [needs to be addressed](#) by having better anti-money laundering rules.

To ensure a functioning system, police and other competent authorities need to have timely and unrestricted access to accurate ownership information, which is currently not always the case. In the wake of sanctions against Russian oligarchs and individuals, it has become obvious that many national authorities do not have the capacity to trace assets and plan their seizure in complex cases. All member states have a designated Asset Recovery Office (ARO), which is responsible for tracing the proceeds of crime. These offices often lack the necessary human and financial

resources. Cross-border cases also show that more cooperation is needed when authorities attempt to identify proceeds of crimes or assets belonging to sanctioned individuals or entities. Cooperation and exchange between authorities intensified when the European Commission [established](#) the Freeze and Seize Task Force in March 2022 to ensure coordination to implement sanctions against listed Russian and Belarusian oligarchs. This should not be a standalone instrument and international cooperation should be the norm, not the exception.

Freezing and seizing assets

During a criminal investigation or via enforcement of sanctions, authorities can seize physical items and freeze financial assets. Seizure means taking control or possession of an asset, but it is not always final. Once authorities seize assets, they still belong to the legal owner until a court decision is made. The seizing and maintenance of the assets is not always straightforward and when there are no clear roles, authorities can face difficulties. Maintaining real estate or even just a car needs special expertise, which local police offices might not have. State authorities are obliged to maintain the state of the physical assets because if a court dismisses a case, the asset is returned to the owner. If a seized asset lost value because of depreciation or worsening condition, the owner could try to claim compensation. Member states already have designated Asset Management Offices, but the upcoming directive will streamline their responsibilities. States need to ensure they have necessary expertise to maintain and manage assets, so must provide necessary resources to these offices. Currently, very little information on seized assets is being collected by member states. Information should be collected more systematically and shared with the European Commission, and aggregated data should be published in a unified format.

Confiscation of assets

The current low level of confiscation is due to criminal convictions being lengthy and burdensome to obtain. Under conviction-based confiscation, also sometimes referred to as forfeiture, the State confiscates the proceeds or instrumentalities of a crime for which a conviction of an offender has been recorded. In these cases, it is essential for the authorities to prove a direct link between the crime and a person. As the burden

of proof is quite high (“beyond reasonable doubt”), investigators might struggle to gather sufficient evidence against a defendant for confiscation to be ordered.

It would therefore be beneficial for member states to also explore alternative avenues for the confiscation of illicitly acquired assets by means of non-conviction based confiscation, i.e. without the holder of the assets having been convicted of a crime first. Non-conviction based confiscation requires proof that the asset in question is associated with a crime: evidence of unlawful conduct must be provided and must be judged based on the “balance of probabilities”. This is currently only possible in exceptional cases, such as when perpetrators of crimes are dead or missing, but these procedures have much higher potential for use. When coupled with necessary human rights and rule of law safeguards, non-conviction based confiscation can be a useful tool in the fight against grand corruption. Many corrupt foreign (former or serving) politicians and their cronies hide their stolen wealth in Europe: they invest in real estate, expensive cars and luxury goods, and store millions of euros in EU banks - in the knowledge they are unlikely be investigated while in (or associated with) power. Even after being toppled from power, it can take over a decade to secure a conviction and return the assets, as we have seen in the [case of Tunisia's Ben Ali](#).

Some countries, [such as the UK](#), already make use of so-called “[unexplained wealth orders](#)”. A competent authority can trigger this procedure where a person’s wealth and/or possessions appear to be out of step with their legitimate sources of income. In such cases, the person needs to prove that they acquired the asset(s) legally. Transparency International EU believes that it should be possible to resort to such a procedure for foreign and domestic politically exposed persons (PEPs). Banks, auditors, company service providers and other actors sectors that are required to follow anti-money laundering rules need to pay extra attention to PEPs, who are entrusted with prominent public functions, as they pose a higher risk for potential involvement in corruption. Unexplained wealth orders are useful in bringing cases against kleptocrats participating in grand corruption. The text of the draft directive needs to be expanded to cover PEPs, not just members of organised crime groups.

Return and reuse

What should be done with assets that are successfully confiscated? These ill-gotten gains were stolen from society, and the best course of action is to [give it back to the victims](#). Authorities should put the resources they collect from confiscation into a separate budget with a targeted social reuse. In cases where selling an asset is not financially beneficial, the physical assets can be given to the local population, like in [Italy](#) when confiscated real estate became a community house. This can also help to engage with the community and show them that the state institutions and the law enforcement authorities are committed to fighting criminals and protecting the interest of the general public.

When the daughter of the former president of Uzbekistan purchased luxury items in Europe, she stole that money from the people of Uzbekistan. Now, after lengthy procedures, some of these [assets have been recovered](#). It is important that this wealth is now returned to those it was stolen from. However, without proper safeguards, repatriated funds could end up being diverted by other corrupt officials. It is critical that a wide range of stakeholder, including civil society organisations, are involved in the return process, and that there is proper follow-up to ensure that returned resources are being distributed in a transparent and accountable manner. [Recent French legislation](#) allows for the value of recovered assets to be handed to development organisations. Social reuse and return needs to be included as a key principle in the new EU directive. Finally, member states currently don't have a good overview of ongoing procedures. Information about asset recovery cases needs to be collected into a single database to ensure transparency and a clear commitment to fighting corruption.



Our key recommendations

The Commission's proposal for an updated directive is an important step forward, but there is still much room for improvement. The Council and the European Parliament have an opportunity to make sure the new system is fit for purpose.

- + Member States need to collect more information at all stages of the asset recovery processes
- + Competent authorities need to have necessary financial and human resources
- + Legal frameworks should be updated to make it easier, in certain well-defined cases, to resort to non-conviction based confiscation
- + The return process should be based on the principle of social reuse, the value should be repatriated to the original victim population
- + If the wealth was stolen from a third country, it should be returned to the country of origin, following a transparent procedure with the inclusion of civil society. Anti-corruption safeguards need to be included in the restitution agreements with third countries.



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