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THE EUROPEAN UNION**

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NOTE

From:	Secretariat
To:	Coreper / Council
No. Cion prop.:	7641/12 DROIPEN 29 COPEN 57 CODEC 656
No. prev. doc.:	17287/12 DROIPEN 185 COPEN 272 CODEC 2918
Subject:	Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union [first reading] - Approval of the final compromise text

1. On 13 March 2012, the Commission submitted to the European Parliament and to the Council a proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union¹. The directive aims at making it easier for national authorities to confiscate and recover the proceeds of criminal conduct.
2. On 7 December 2012, the Council reached a general approach on the draft Directive.²

¹ 7641/12 DROIPEN 29 COPEN 57 CODEC 656 + ADD 1 + ADD 2.

² 17287/12 DROIPEN 185 COPEN 272 CODEC 2918.

3. On 7 May 2013, the LIBE Committee of the European Parliament adopted its orientation vote.¹ Subsequently, the Presidency, acting on behalf of the Council, entered into negotiations with the European Parliament in order to reach an agreement on the text of the draft Directive.
4. Six trilogues were held. Further, various technical and other informal meetings took place. The Member States were regularly updated on the state of play of the negotiations during meetings of the Council, Coreper, the Working Party on Substantive Criminal Law, the Friends of the Presidency and the JHA Counsellors. During these meetings, the Presidency verified in each case that it had a mandate for conducting the negotiations.
5. On 27 November 2013, the negotiating parties reached agreement on a final compromise text of the draft Directive, as well as on two accompanying declarations. The text of the draft Directive is set out in the Annex, and the two declarations are set out in ADD 1 (addendum 1) to this document.
6. The Presidency considers that the text represents a well-balanced compromise that takes into account the major concerns and priorities of all parties involved. It therefore invites Coreper to approve the agreement and take the procedural decision, according to Article 19(7)(k) of the Council's rules of procedure, to inform the Parliament accordingly through a letter.
7. For these reasons, Coreper is invited:
 - a) to approve the final compromise text of the Directive and the text of the declarations, as set out in the Annex to this note and in ADD 1 respectively;
 - b) to mandate the Presidency to inform the European Parliament that, should the European Parliament adopt its position at first reading in the exact form as set out in the final compromise text, the Council would approve the European Parliament's position and the Directive shall be adopted in the wording which corresponds to the European Parliament's position, subject to legal-linguist revision of the text.

¹ DS 1459/13.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the freezing and confiscation of proceeds of crime in the European Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(2) and Article 83(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee ⁴,

Having regard to the opinion of the Committee of the Regions ⁵,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The main motive for cross-border organised crime, including mafia-type criminal organization, is financial gain. As a consequence, competent authorities should be given the means to trace, freeze, manage and confiscate the proceeds of crime. However, the effective prevention of and fight against organized crime should be reached by neutralizing the proceeds of crime and be extended, in other cases, to any property deriving from activities of a criminal nature.

⁴ OJ C , , p. .

⁵ OJ C , , p. .

- (2) Organised criminal groups operate without borders and increasingly acquire assets in other Member States and in third countries. There is an increasing need for effective international cooperation on asset recovery and mutual legal assistance.
- (3) Among the most effective means of combating organised crime is putting in place severe legal consequences, effective detection, and the freezing and confiscation of the instrumentalities and proceeds of crime.
- (4) Although existing statistics are limited, the amounts recovered from criminal proceeds in the Union seem insufficiently low compared to the estimated proceeds of crime. Studies have shown that, although regulated by EU legislation and national laws, confiscation procedures remain underutilised.
- (5) The adoption of minimum rules will approximate the Member States' freezing and confiscation regimes, thus facilitating mutual trust and effective cross-border cooperation.
- (6) The Stockholm Programme and the Justice and Home Affairs Council Conclusions on confiscation and asset recovery adopted in June 2010 emphasise the importance of a more effective identification, confiscation and re-use of criminal assets.
- (7) The current Union legal framework on freezing, seizure and confiscation of assets consists of Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime; Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence; Council Framework Decision 2005/212/JHA of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property; Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

- (8) The Commission implementation reports on Framework Decisions 2005/212/JHA, 2003/577/JHA and 2006/783/JHA show that existing regimes for extended confiscation and for the mutual recognition of freezing and confiscation orders are not fully effective. Confiscation is hindered as a result of differences between Member States' legislation.
- (9) This Directive aims to amend and expand the provisions of Framework Decisions 2001/500/JHA and 2005/212/JHA. Those Framework Decisions should be partially replaced in relation to Member States participating in the adoption of this Directive.
- (10) Member States are free to take confiscation procedures which are linked to a criminal case in front of any competent court.
- (11) There is a need to clarify the existing concept of proceeds to include the direct proceeds from criminal activity and all indirect benefits, including subsequent reinvestment or transformation of direct proceeds. Thus proceeds may include any property including when it has been transformed or converted, fully or in part, into other property, or when it has been intermingled with property acquired from legitimate sources, up to the assessed value of the intermingled proceeds. It may also include the income or other benefits derived from proceeds of crime, or from property into which such proceeds have been transformed, converted or intermingled.
- (12) This Directive provides for a broad definition of property that could be subject to freezing and confiscation. It includes legal documents or instruments evidencing title or interest in such property. Such documents or instruments could constitute, for example, financial instruments, or documents that may give rise to creditor claims and are normally found in possession of the person affected by the relevant procedures. This Directive is without prejudice to the existing national procedures for keeping legal documents or instruments evidencing title or interest in property, as they are applied by the competent national authorities or public bodies in accordance with national law.

- (13) Confiscation and freezing under this Directive are autonomous concepts, which should not prevent Member States to implement the provisions of this Directive with instruments which in accordance with national legislation would be considered as sanctions or other types of measures.
- (14) Confiscation of instrumentalities and proceeds following a final decision of a court and of property of equivalent value to those proceeds should refer to this broadened concept for the criminal offences covered by this Directive. Framework Decision 2001/500/JHA required Member States to enable the confiscation of instrumentalities and proceeds of crime following a final conviction and to enable the confiscation of property of equivalent value to the proceeds of crime. Such obligations should be maintained for the criminal offences not covered by this Directive, and the concept of proceeds as defined in this Directive should be interpreted similarly as regards criminal offences not covered by this Directive. Member States are free to define the confiscation of property of equivalent value as subsidiary or alternative to direct confiscation, as appropriate in accordance with national legislation.
- (15) It should be possible to confiscate instrumentalities and proceeds, or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence. Such final conviction could also result from *in absentia* proceedings. When confiscation is not possible on the basis of a final conviction, it should under certain circumstances still be possible to confiscate proceeds and instrumentalities, at least in cases of illness or flight of the suspect or accused person. Member States are, however, not obliged to implement such rules when they have *in absentia* proceedings for cases of illness and flight. When the person has fled, Member States should take all reasonable steps and may require that the person is summoned to or made aware of the confiscation proceedings.

- (16) For the purposes of this Directive, illness exists when it is impossible for the suspect or accused person to attend the criminal proceedings for a longer period of time, as a result of which the proceedings cannot continue under normal conditions. Suspects or accused persons may be requested to prove illness, for example by a medical certificate, which the court should be able to disregard if it finds this unsatisfactory. The right of the person to be represented at the proceedings by a lawyer should not be prejudiced.
- (17) When implementing this Directive in respect of confiscation of property the value of which corresponds to instrumentalities, such provisions could be applicable where in view of the particular circumstances of the case at hand, such a measure is proportionate, having regard notably to the value of the instrumentalities concerned. Member States may also take into account whether and to what extent the convicted person is responsible for making the confiscation of the instrumentalities impossible.
- (18) When implementing this Directive, Member States may provide that, in exceptional circumstances, confiscation should not be ordered, insofar as according to national legislation this would represent an undue hardship for the affected person, whereby the circumstances of the respective individual case should be decisive. Member States should make a very restricted use of this possibility, and only allow that confiscation should not be ordered in cases such as where confiscation would put the person concerned in a situation in which it would be very difficult for him to survive.

- (19) Criminal groups engage in a wide range of criminal activities. In order to effectively tackle organised criminal activities there may be situations where it is appropriate that a criminal conviction is followed by the confiscation not only of property associated with a specific crime, but also of additional property which the court determines are the proceeds of other crimes. This approach is referred to as extended confiscation. Framework Decision 2005/212/JHA provided for three different sets of minimum requirements that Member States could choose in order to apply extended confiscation. As a result, in the process of transposition, Member States have chosen different options which resulted in divergent concepts of extended confiscation in national jurisdictions. That divergence hampers cross-border cooperation relevant for confiscation cases. It is therefore necessary to further harmonise the provisions on extended confiscation by setting a single minimum standard.
- (20) When determining whether a criminal offence is liable to give rise to economic benefit, Member States may take into account the modus operandi, for example if a condition for the offence is that it was committed in the context of an organised crime or with the intention to generate regular profits from criminal offences. In general, however, this should not prejudice the possibility to proceed to extended confiscation.
- (21) Extended confiscation should be possible where a court is satisfied that the property in question has derived from criminal conduct. This does not mean that it must be established that the property in question has derived from criminal conduct. Member States may provide that it could, for example, be sufficient that the court considers on the balance of probabilities or can reasonably presume that it is substantially more probable that the property in question has been obtained from criminal conduct than from other activities. In this context, the court has to consider the specific circumstances of the case, including facts and available evidence based on which a decision on extended confiscation could be issued. The fact that the property of the person is disproportionate to his lawful income could be among those facts giving rise to a conclusion of the court that the property derives from criminal conduct. Member States could also determine a requirement for a certain period of time in which the property could be deemed to have originated from criminal conduct.

- (22) This Directive sets up minimum rules. It does not prevent Member States from providing more extensive powers in national law, including, for example, in relation to its rules on evidence.
- (23) This Directive applies to criminal offences which fall under the scope of the instruments listed in this Directive. Within the scope of those instruments, Member States should apply extended powers of confiscation at least to the criminal offences as defined in this Directive.
- (24) The practice by a suspect or accused person of transferring property to a knowing third party with a view to avoiding confiscation is common and increasingly widespread. The current Union legal framework does not contain binding rules on the confiscation of property transferred to third parties. Therefore it is becoming increasingly necessary to allow for confiscation of property transferred to or acquired by third parties. Acquisition by a third party refers to situations where, for example, property has been acquired, directly or indirectly, e.g. through an intermediary, by the third party from a suspect or accused person, including when the criminal offence has been committed on their behalf or to their benefit when an accused person does not have property that can be confiscated. Such confiscation should be possible at least in cases where third parties knew or should have known that the purpose of the transfer or acquisition was to avoid confiscation, based on concrete facts and circumstances, including that the transfer was carried out for free or in exchange for an amount significantly lower than the market value. The rules on third party confiscation are extending to both natural and legal persons. In any case the rights of bona fide parties should not be prejudiced.
- (25) Member States are free to define third party confiscation as subsidiary or alternative to direct confiscation, as appropriate in accordance with national legislation.

- (26) Confiscation leads to the final deprivation of property. Preservation of property could be a prerequisite to confiscation and of importance to the enforcement of a confiscation order. Property is preserved by means of freezing. In order to prevent the dissipation of property before a freezing order can be issued the competent authorities in the Member States should be empowered to immediately take action in order to secure property.
- (27) Since property is often preserved for the purposes of confiscation, freezing and confiscation are closely linked. In some legal systems freezing for the purposes of confiscation is regarded as a separate procedural measure of a provisional nature, which may be followed by a decision to confiscate. Without prejudice to the various national legal systems and the Framework decision on freezing (2003/577/JHA) the Directive should approximate some aspects of the national systems of freezing for the purposes of confiscation.
- (28) Freezing measures are without prejudice to the possibility for a specific property to be considered evidence throughout the proceedings, as long as it would be made available for effective execution of the confiscation order at the end.
- (29) Property may be frozen in the context of criminal proceedings also with a view to possible later restitution or in order to safeguard compensation for damages caused by a criminal offence.

- (30) Suspects or accused persons often hide property throughout the entire duration of criminal proceedings. As a result confiscation orders cannot be executed, leaving those subject to confiscations orders to benefit from their property once they have served their sentence. It is accordingly necessary to enable the determination of the precise extent of the property to be confiscated even after a final conviction for a criminal offence, in order to permit the full execution of confiscation orders when no property or insufficient property was initially discovered and the confiscation order remains unexecuted. Given the limitation of the right to property by freezing orders, such provisional measures should not be maintained longer than necessary to preserve the availability of the property with a view of possible later confiscation. This may require a review by the court in order to ensure that their purpose of preventing the dissipation of property remains valid.
- (31) Property frozen with a view to later confiscation should be managed adequately in order not to lose its economic value. Member States should take the necessary measures including the possibility to sell or transfer the property to minimise such losses. Member States should take relevant measures, such as for example the establishment of national centralised Asset Management Offices, set of specialised offices or equivalent mechanisms, in order to effectively manage the assets frozen before confiscation and preserve their value, pending judicial determination.
- (32) The measures provided for in this Directive affect substantially the rights of persons, not only of suspects or accused persons but also of third parties who are not being prosecuted. It is therefore necessary to provide for specific safeguards and judicial remedies in order to guarantee the preservation of their fundamental rights in the implementation of the provisions of this Directive. This includes the right to be heard for third parties who claim that they are the owner of the property concerned, or who claim that they have other property rights ("real rights", "ius in re"), such as the right of usufruct. The decision to freeze property should be communicated to the affected person as soon as possible after its execution. Nevertheless, competent authorities may postpone communicating such decision to the affected person due to the needs of the investigation.

- (33) The purpose of communicating the decision to freeze property is *inter alia* to allow the person to contest the decision if he so wishes. Therefore, such communication should indicate, at least briefly, the reason or reasons for the decision concerned, it being understood that such indication could be very succinct.
- (34) Member States should consider taking measures allowing that confiscated property be used for public interest or social purposes. Such measures could *inter alia* comprise earmarking property for law enforcement and crime prevention projects, as well as for other projects of public interest and social utility. The obligation to consider taking measures entails a procedural obligation for Member States, such as making a legal analysis or discussing the advantages and disadvantages of introducing measures. When managing frozen property and when taking measures concerning the use of confiscated property, Member States should take appropriate action to prevent criminal or illegal infiltration.
- (35) Reliable data sources on the freezing and confiscation of the proceeds of crime are scarce. In order to allow for the evaluation of this Directive, it is necessary to collect a comparable minimum set of appropriate statistical data on asset tracing, judicial and asset disposal activities.
- (36) Member States should endeavour to collect data for certain statistics at a central level, with a view to sending them to the Commission. This means that the Member States should do reasonable efforts to collect the data concerned. It does not mean, however, that the Member States are under an obligation to reach the result of collecting these data where there is a disproportionate administrative burden or when there are high costs for the Member State concerned.

- (37) This Directive respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights and Fundamental Freedoms (ECHR), as interpreted in the case-law of the European Court of Human Rights. This Directive has to be implemented in accordance with these rights and principles. This Directive should be without prejudice to national laws in relation to legal aid and does not create any obligations for Member States' legal aid systems, which should apply in accordance with the Charter of Fundamental Rights of the European Union and the ECHR.
- (38) Specific safeguards should be put in place, so as to ensure that as a general rule reasons are given for decisions to confiscate, unless when, in simplified criminal proceedings in minor cases, the affected person has waived his right of reasons to be given.
- (39) This Directive should be implemented taking account of the provisions of Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings ⁶, Directive 2012/13/EU on the right to information in criminal proceedings ⁷ and Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty on the right of access to a lawyer in criminal proceedings ⁸.
- (40) Since the objective of this Directive, namely facilitating confiscation of property in criminal matters, cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

⁶ OJ L 280, 26.10.2010, p. 1.

⁷ OJ L 142, 1.6.2012, p. 1.

⁸ OJ L 294, 6.11.2013, p. 1.

- (41) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified its wish to take part in the adoption and application of this Directive. In accordance with that Protocol, Ireland should be bound by this Directive only in respect of the offences covered by the instruments in the adoption and implementation of which it participates.
- (42) In accordance with Articles 1 and 2 of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Directive and is not bound by it or subject to its application. Subject to the notification under Article 4 of that Protocol, the United Kingdom should be bound by this Directive only in respect of the offences covered by the instruments in the adoption and implementation of which it participates.
- (43) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Directive and is not bound by it or subject to its application,

Article 1

Subject matter

1. This Directive establishes minimum rules on the freezing of property with a view to possible later confiscation and on the confiscation of property in criminal matters.
2. This Directive is without prejudice to the procedures that Member States may use to confiscate the property in question.

Article 2

Definitions

For the purpose of this Directive, the following definitions shall apply:

- (1) ‘proceeds’ means any economic advantage derived, directly or indirectly from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits;
- (2) ‘property’ means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property;
- (3) ‘instrumentalities’ means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;

- (4) 'confiscation' means a final deprivation of property ordered by a court in relation to a criminal offence;
- (5) 'freezing' means the temporary prohibition of the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property;
- (6) 'criminal offence' means a criminal offence covered by any of the instruments listed in Article 3.

Article 3

Scope

This Directive shall apply to criminal offences covered by: ⁹

- a. the Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty of the European Union on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union ¹⁰,
- b. Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro ¹¹,
- c. Council Framework Decision 2001/413/JHA of 28 May 2001 on combating fraud and counterfeiting on non-cash means of payment ¹²,

⁹ Jurist-linguists will be asked to place these instruments in the appropriate order.

¹⁰ OJ C 195, 25.6.1997, p.2.

¹¹ OJ L 140, 14.6.2000, p.1.

¹² OJ L 149, 2.6.2001, p.1.

- d. Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism ¹³, as amended by Council Framework Decision 2008/919/JHA of 9 December 2008 ¹⁴,
- e. Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime¹⁵,
- f. Council Framework Decision 2003/568/JHA on combating corruption in the private sector ¹⁶,
- g. Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking ¹⁷,
- h. Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime ¹⁸,
- i. Directive 2011/36/EU of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA¹⁹,

¹³ OJ L 164, 22.6.2002, p.3.

¹⁴ OJ L 330, 9.12.2008, p.21.

¹⁵ OJ L 182 of 5.7.2001, p.1.

¹⁶ OJ L 192, 31.7.2003, p. 54.

¹⁷ OJ L 335, 11.11.2004, p. 8.

¹⁸ OJ L 300, 11.11.2008, p. 42.

¹⁹ OJ L 101, 15.4.2011, p. 1.

- j. Directive 2011/92/EU of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography and replacing Council Framework Decision 2004/68/JHA²⁰,
- k. Directive 2013/40/EU of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA²¹,

as well as other legal instruments if those instruments provide specifically that this Directive applies to the criminal offences harmonised therein.

²⁰ OJ L 335, 17.12.2001, p. 1.

²¹ OJ L 218, 14.8.2013, p. 8.

Article 4

Confiscation

1. Member States shall take the necessary measures to enable confiscation, either wholly or in part, of instrumentalities and proceeds or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence, which may also result from *in absentia* proceedings.
2. Where confiscation on the basis of paragraph 1 would not be possible, at least where such impossibility is the result of illness or flight of the suspect or accused person, Member States shall take the necessary measures to enable confiscation of proceeds and instrumentalities in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspect or accused person had been able to stand trial.

Article 5

Extended powers of confiscation

1. Member States shall adopt the necessary measures to enable confiscation, either wholly or in part, of property belonging to a person convicted of a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, where a court, on the basis of the circumstances of the case, including specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person, is satisfied that the property in question has derived from criminal conduct.
2. For the purpose of paragraph 1, the notion of "criminal offence" shall at least include the following:
 - a) active and passive corruption in the private sector, as referred in Article 2 of Framework Decision 2003/568/JHA, as well as active and passive corruption involving officials of EU institutions or of the Member States, as referred in Articles 2 and 3 of the Convention drawn up on the basis of Article K.3 (2) (c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union;
 - b) offences relating to participation in a criminal organisation, as referred to in Article 2 of Council Framework Decision 2008/841/JHA, at least in cases where the offence has led to economic benefit;

- c) causing or recruiting a child to participate in pornographic performances, or profiting from or otherwise exploiting a child for such purposes if the child is over the age of sexual consent, as referred to in Article 4(2) of Directive 2011/93/EU; distribution, dissemination or transmission of child pornography, as referred to in Article 5(4) of Directive 2011/93/EU; offering, supplying or making available child pornography, as referred to in Article 5(5) of Directive 2011/93/EU; production of child pornography, as referred to in Article 5(6) of Directive 2011/93/EU;

- d) illegal system interference and of illegal data interference, as referred to in Articles 4 and 5 of Directive 2013/40/EU, where a significant number of information systems have been affected through the use of a tool, referred to in Article 7 of that Directive, designed or adapted primarily for that purpose; the intentional production, sale, procurement for use, import, distribution or otherwise making available of tools used for committing offences, at least for cases which are not minor, as referred to in Article 7 of Directive 2013/40/EU;

- e) a criminal offence that is punishable, according to the relevant instrument in Article 3 or, in case that instrument does not contain a threshold, according to the relevant national law, by a custodial sentence of a maximum of at least four years.

Article 6

Confiscation from a third party

1. Member States shall take the necessary measures to enable confiscation of proceeds, or other property the value of which corresponds to proceeds, which, directly or indirectly, were transferred by a suspect or accused person to third parties, or which were acquired by third parties from a suspect or accused person, at least if these parties knew or should have known that the purpose of the transfer or acquisition was to avoid confiscation, based on concrete facts and circumstances, including that the transfer was carried out for free or in exchange for an amount significantly lower than the market value.
2. Paragraph 1 shall be construed so as not to prejudice the rights of bona fide third parties.

Article 7

Freezing

1. Member States shall take the necessary measures to enable the freezing of property with a view to possible later confiscation. Those measures, which shall be ordered by a competent authority, shall include urgent action to be taken when necessary in order to preserve property.
2. Property in the possession of a third party, as referred to under Article 6, can be subject to freezing measures for the purposes of eventual confiscation.

Article 8
Safeguards

1. Member States shall take the necessary measures to ensure that the persons affected by the measures provided for under this Directive have the right to an effective remedy and a fair trial in order to preserve their rights.
2. Member States shall take the necessary measures to ensure that the decision to freeze property is communicated to the affected person as soon as possible after its execution. Such communication shall indicate, at least briefly, the reason or reasons for the decision concerned. When it is necessary to prevent prejudice to a criminal investigation, the competent authorities may postpone communicating the decision to freeze property to the affected person.
3. The decision to freeze property shall remain in force only for as long as it is necessary to preserve the property with a view to possible later confiscation.
4. Member States shall provide for the effective possibility for the person whose property is affected to contest the decision to freeze before a court, in accordance with procedures in national law. Such procedures may provide that when the initial decision to freeze has been taken by a competent authority other than a judicial authority, such decision must firstly be submitted for validation or review to a judicial authority before it can be contested before a court.
5. Frozen property which is not subsequently confiscated shall be returned immediately. The conditions or procedural rules under which such property is returned shall be determined by national law.

6. Member States shall take the necessary measures to ensure that reasons are given for any decision to confiscate and that the decision is communicated to the person affected. Member States shall provide for the effective possibility to contest the decision to confiscate before a court by the person to whom confiscation is directed.
7. Without prejudice to Directive 2012/13/EU and Directive 2013/48/EU, the persons whose property is affected by the decision to confiscate shall have the right of access to a lawyer throughout the confiscation proceedings relating to the determination of the proceeds and instrumentalities in order to pursue their rights. The persons concerned shall be informed that they have this right.
8. In proceedings referred to in Article 5, the affected person shall have an effective possibility to contest the circumstances of the case, including specific facts and available evidence on the basis of which the property concerned is considered to be property that has derived from criminal conduct.
9. Third parties shall be entitled to claim title of ownership or other property rights, including in the cases referred to in Article 6.
10. Where as a result of a criminal offence victims have claims against the person who is subject to a confiscation measure provided for under this Directive, Member States shall take the necessary measures to ensure that the confiscation measure does not prevent these victims from seeking compensation for their claims.

Article 9

Effective confiscation and execution

Member States shall take the necessary measures to enable the identification and tracing of property to be frozen and confiscated even after a final conviction for a criminal offence or following proceedings in application of the measures foreseen in Article 4(2) and to ensure the effective execution of a confiscation order, if such an order has already been issued.

Article 10

Management of frozen and confiscated property

1. Member States shall take the necessary measures, for example by the establishment of centralised offices, a set of specialised offices or equivalent mechanisms, to ensure the adequate management of property frozen with a view to possible later confiscation.
2. Member States shall ensure that the measures referred to in paragraph 1 include the possibility to sell or transfer property where necessary.
3. Member States shall consider taking measures allowing that confiscated property be used for public interest or social purposes.

Article 11

Statistics

1. Member States shall regularly collect and maintain comprehensive statistics from the relevant authorities. The statistics collected shall be sent to the Commission each year and shall include:
 - a. the number of freezing orders executed,
 - b. the number of confiscation orders executed,
 - c. the estimated value of property frozen, at least of property frozen with a view to possible later confiscation at the time of the freezing,
 - d. the estimated value of property recovered at the time of confiscation.

2. Member States shall also send each year the following statistics to the Commission, if these statistics are available at a central level in the Member State concerned:
 - a. the number of requests for freezing orders to be executed in another Member State,
 - b. the number of requests for confiscation orders to be executed in another Member State,
 - c. the value or estimated value of the property recovered following execution in another Member State.

3. Member States shall endeavour to collect data referred to in paragraph 2 at a central level.

Article 12

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [*thirty months from the date of adoption of the Directive*]. They shall forthwith transmit to the Commission the text of those provisions.
2. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 13

Reporting

The Commission shall, by [three years after the date mentioned in Article 12(1)] submit a report to the European Parliament and the Council, assessing the impact of existing national law on confiscation and asset recovery, accompanied, if necessary, by adequate proposals.

In its report, the Commission shall also assess whether there is any need to revise the list of offences contained in Article 5(2).

Article 14

Replacement of Joint Action 98/699/JHA and of Framework Decisions 2001/500/JHA and 2005/212/JHA

1. Joint Action 98/699/JHA, point (a) of Article 1 and Articles 3 and 4 of Framework Decision 2001/500/JHA, and Articles 1 and 3 of Framework Decision 2005/212/JHA, are hereby replaced in relation to Member States participating in the adoption of this Directive, without prejudice to the obligations of the Member States relating to the time limit for transposition of the Framework Decisions into national law.
2. In relation to Member States participating in the adoption of this Directive, references to the Joint Action and to the provisions of the Framework Decisions referred to in paragraph 1 shall be construed as references to this Directive.

Article 15

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 16

Addressees

This Directive is addressed to the Member States in accordance with the Treaties.