

Brussels, 19 November 2025
(OR. en)

15617/25
ADD 1

LIMITE

COPEN 352
JAI 1714
ENFOPOL 432

NOTE

From: General Secretariat of the Council

To: Delegations

Subject: AOB for the meeting of the Justice and Home Affairs Council of 8-9
December 2025
Bridging the Gap: Investigative Measures for Cross-Border Asset
Recovery in the Execution Phase
- Information from Belgium

Non-paper by Belgium

Bridging the gap: Investigative measures for cross-border asset recovery in the execution phase

Summary

This non-paper addresses a critical weakness in EU criminal justice: the **failure to effectively recover criminal assets**, with less than 2% of estimated illicit proceeds confiscated annually. This devastating inefficiency is caused by a **legal gap in the post-conviction execution phase**. Existing instruments like the **European investigation order (EIO)** and the **Asset recovery office (ARO)** network are fundamentally unsuitable for tracing assets hidden after a final judgment.

We propose creating a **dedicated EU legal instrument for cross-border investigative measures in the execution phase** (e.g., bank inquiries, searches). This is a strategic imperative at the crossroads of organised crime and drug trafficking enforcement. Support for this initiative ensures that the mutual recognition principle is fully effective in executing financial sanctions, translating political will into tangible financial recovery and increasing deterrence against transnational criminal networks.

Belgium calls upon the European Commission to give priority to this critical issue by forming an expert working group to thoroughly examine the identified gaps and develop and implement the necessary legislative and practical tools to build a robust and effective EU framework for cross-border asset recovery in the execution phase.

Introduction

Organised crime continues to pose a fundamental threat to the rule of law and our societies. Criminal organisations generate vast illicit proceeds, yet, in 2023, Europol estimated the criminal proceeds across the EU at 188 billion euros annually, indicating that this is likely a vast underestimation. Less than 2 % of this amount is ultimately confiscated¹. One can only wonder what happens to the other 184 billion euros. These unrecovered billions not only finance further criminal activities but are also used to infiltrate the legal economy and society, undermining fair competition and public trust. The urgent need to effectively tackle these illicit financial flows is a shared political priority at the highest level, essential for safeguarding our internal security.

While significant progress has been made in strengthening cross-border cooperation during the investigation and prosecution phases, discussions among practitioners² have consistently highlighted a critical weak link: the execution phase, particularly concerning the tracing and recovery of criminal assets post-conviction. Investigation, prosecution, and execution are equally important aspects of criminal law enforcement. For criminal policy to have a true deterrent effect, the effective execution of sentences is essential.

¹ [The Other Side of the Coin – An Analysis of Financial and Economic Crime – Europol Crime Threat Assessment 2023.](#)

² Including notably at the 62nd Plenary Meeting of the European Judicial Network (EJN) in June 2024.

I. A critical gap in the execution phase

Experience shows that sophisticated criminals exploit existing limitations in cross-border cooperation during the execution phase to hide assets through complex schemes – including shell companies – and via malicious third parties. Once a conviction is final and a confiscation order or financial penalty is issued, authorities face significant hurdles in tracing and recovering assets not identified or frozen during the investigation.

Key gaps and challenges include:

- **Insufficient legal instruments:** There is no specific, dedicated EU instrument providing a clear legal basis for applying cross-border investigative measures (such as searches, bank investigations, interrogations of third parties) after a conviction is final. Existing instruments are primarily focused on the mutual recognition of judgments and judicial decisions³ or cooperation in the investigation and prosecution phase⁴. These instruments are often unsuitable for this purpose, as they are designed for a different legal phase governed by principles like the presumption of innocence, which differ fundamentally from the execution phase where a conviction is enforceable.
- **Challenges in information exchange:** Information gathered during the investigation may be outdated for post-conviction tracing. Current EU instruments⁵ have limited scope, often excluding the execution phase. This includes newer instruments like the e-evidence package, which is limited to executing prison sentences, thereby missing opportunities for tracing assets via digital data (e.g., location data linked to online activity) when executing financial penalties. Obtaining information via channels like the ARO network is hampered by inconsistent interpretations of “reasonable grounds” and provides only snapshots of a convict's financial situation, which can quickly become obsolete as assets are moved.

³ e.g., Framework Decisions 2008/909, 2005/214, Regulation 2018/1805.

⁴ e.g., EIO, MLA.

⁵ For example, Directive 2023/977

- **Practical limitations:** Piercing through deliberate asset concealment by criminals requires robust investigative tools. While some Member States have national post-conviction investigation possibilities, these are hampered by the absence of an international legal basis for cross-border application. This lack of means benefits convicted persons seeking to evade the execution of financial penalties.
- **Fragmentation and administrative burden:** The execution of a single sentence may involve multiple instruments (e.g., for imprisonment, fines, confiscation), each with different certificates, rules, and requirements. This fragmentation is labour-intensive, increases the risk of errors, and causes delays in effective execution.

II. The limits of the current framework

Following initial discussions and consultations within the European Judicial Network (EJN), it has become clear that national legal frameworks for the execution phase are highly fragmented.

Crucially, Member States are split into two distinct systems: while some retain judicial investigative powers post-conviction, a significant number transfer execution to administrative bodies (e.g., tax authorities or bailiffs) that lack the power to use coercive measures. This creates a structural mismatch: a judicial authority in one State often has no equivalent counterpart in another, rendering cooperation via existing judicial tools impossible. While we share the principle, a closer look at the existing EU acquis reveals inherent limitations for post-conviction asset tracing:

- **The European investigation order (EIO):** The EIO is a powerful tool, but it was designed for the pre-conviction phase. Its legal framework, safeguards, and proportionality tests are tied to the logic of an ongoing criminal investigation where the presumption of innocence applies. Consultations with Member States confirm that applying the EIO post-conviction is legally uncertain and often impractical. Using an instrument designed for one legal phase to another risks rejection by executing authorities.

- **Asset recovery offices (AROs):** The ARO network is essential but has structural limitations. AROs are primarily information-exchange hubs, not investigative bodies, and cannot execute coercive measures. Crucially, practitioners face a “reasonable grounds paradox”: requests must be specific to avoid being considered “fishing expeditions”, yet practitioners lack the investigative tools to find the initial assets needed to obtain the reasonable grounds required to use the network effectively. This renders the system powerless against sophisticated criminals who use complex legal structures and proxies.
- **The new asset recovery and confiscation Directive (2024/1260):** While Article 17 of this Directive is a welcome step towards enabling post-conviction asset tracing, it primarily establishes a principle for Member States to implement at the national level. It does not create a cross-border mechanism or a mutual recognition instrument to apply these investigative measures in another Member State. Without a bridge between these national systems, the promise of Article 17 risks remaining ineffective against transnational organised crime. It effectively creates 27 separate national tracing systems without building the necessary bridge between them. The proposal in this non-paper is therefore not contradictory but complementary: it serves as the missing link to ensure the Directive’s national powers can be applied across borders.

The current framework leaves a gap that organised crime networks expertly exploit. While national tools exist, they stop at the border, leaving practitioners with no effective means to “follow the value” post-conviction in a cross-border context. A detailed analysis of these national divergences and the specific limitations of the EU acquis is provided in the Annex to this paper.

III. The Belgian perspective

Recognising these shortcomings in ensuring the effective execution of patrimonial penalties, Belgium introduced the so-called “criminal execution investigation” in 2014. This instrument could serve as an illustration of how the gap in post-conviction asset tracing and recovery can be addressed.

The criminal execution investigation (CEI) is a unique legal mechanism enabling dedicated post-conviction investigations specifically aimed at tracing, identifying, and seizing criminal assets for executing financial penalties, confiscation orders, or court costs. Its core rationale is to fill the void after the investigation and trial, allowing authorities to “follow the value” against convicted persons attempting fraudulent insolvency and against malicious third parties.

Under the authority of the public prosecutor, the CEI grants specific investigative powers in the execution phase, including interrogations of convicted persons, witnesses, and malicious third parties; access to information on bank accounts and financial instruments; and specific execution acts requiring judicial authorisation, such as house searches or intercepting communications, specifically aimed at uncovering hidden assets. It also includes seizure of assets (movable, immovable, intangible) and provisional measures against legal persons.

While the CEI is a valuable tool, its effectiveness is limited by the absence of an international legal basis for applying these investigative measures across borders.

IV. Legal basis

To effectively bridge the identified gap, a solid legal basis within the EU Treaties is required. We are confident that such a basis exists.

- **Article 82(1) of the TFEU** establishes the principle of mutual recognition of judgments and judicial decisions as the cornerstone of judicial cooperation in criminal matters. For this principle to be effective, it is not enough to simply recognise a confiscation order; Member States must also have the tools to enforce it effectively. A new instrument for cross-border investigative measures in the execution phase would be a logical and necessary extension to give full effect to the principle of mutual recognition.

- **Article 83(1) of the TFEU** provides a legal basis for establishing minimum rules concerning the definition of criminal offences and sanctions in areas of particularly serious crime with a cross-border dimension, such as organised crime and drug trafficking. If the Union can legislate on sanctions for these crimes, it must also have the competence to ensure these sanctions are not rendered meaningless by an inability to execute them across borders. Effective enforcement is an inseparable corollary of the power to harmonise sanctions.

Acknowledging a prudent position and the need for a thorough analysis, Belgium proposes a pragmatic, step-by-step approach. We fully support the suggestion to establish an expert working group to pave the way forward.

V. Proposals for action

To effectively deprive criminals of their illicit gains, strengthen the rule of law, and enhance the credibility of our criminal justice systems, Belgium proposes the following actions:

1. **Establish an expert working group to explore a new legal instrument:** The most crucial step is to launch a formal process. We call on the Commission to create an expert working group to (i) conduct a detailed mapping of the legislative and practical gaps at the EU level, (ii) confirm the legal feasibility of a new instrument, and (iii) develop options for a dedicated EU legal instrument for cross-border investigative measures in the execution phase. This instrument should complement existing frameworks and incorporate appropriate safeguards adapted to the post-conviction context.
2. **Improve information exchange:** Enhance mechanisms for efficient cross-border exchange of information relevant to the execution phase. Explore the potential of technologies like privacy-enhancing technologies (PETs) and facilitate cross-border access to essential national databases, making legally collected information readily available to practitioners in other Member States to support execution. Consider developing mechanisms, perhaps inspired by SIS II alerts or CIDaR, to flag assets linked to confiscation orders or financial penalties across the Union, acknowledging the need for broader discussion on such mechanisms.

3. **Modernise existing frameworks:** Urgently review and update instruments that touch upon asset recovery and financial penalties in a cross-border context, such as Framework Decision 2005/214 on financial penalties. This review should specifically address issues like the current lack of asset sharing possibilities for recovered financial penalties, the inability for the issuing state to continue execution once a certificate is sent (unlike Regulation 2018/1805), and the recovery of court costs, bringing the instrument more in line with modern asset recovery principles and Regulation 2018/1805.
4. **Streamline administrative processes:** Explore possibilities for streamlining the system of certificates required for the cross-border execution of sentences, ideally moving towards a more unified or digitally integrated approach (e.g., via e-EDES enhancements) to reduce complexity and delays.
5. **Leverage the EJM:** Further enhance the role of the EJM in supporting practitioners in the execution phase, including by updating practical tools like the Fiches Belges to include detailed information on post-conviction asset tracing possibilities in each Member State

Conclusion

The current limitations in applying cross-border investigative measures for asset recovery during the execution phase represent a significant vulnerability in the EU's fight against serious and organised crime. Addressing this gap is essential to ensure that confiscation orders and financial penalties are effectively enforced, thereby truly depriving criminals of their illicit gains and upholding the rule of law.

Belgium calls upon the European Commission and fellow Member States to give priority to this critical issue. We support the recommendation from the EJM Plenary for the Commission to take the initiative, potentially by forming an expert working group, to thoroughly examine the identified gaps and develop and implement the necessary legislative and practical tools to build a robust and effective EU framework for cross-border asset recovery in the execution phase. Without this new instrument, the promise of Article 17 of the new Directive will remain ineffective against sophisticated, transnational organised crime, and the EU's 2% confiscation rate will not improve.