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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the mutual recognition of freezing and confiscation orders

{SWD(2016) 468 final}
{SWD(2016) 469 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

One of the main motives for criminal activity is financial gain. Taking away the profit of criminal activity and making sure that "crime does not pay" is therefore a very effective mechanism to combat crime. The confiscation of assets generated by criminal activities aims at preventing and combatting crime, including organised crime, compensating victims, and provides additional funds to invest back into law enforcement activities or other crime prevention initiatives and to compensate victims. Freezing and confiscation of assets is also an important tool to combat terrorist financing. The terrorist attacks in 2015 and 2016 in the European Union and beyond underlined the urgent need to prevent and fight terrorism. The challenge to disrupt terrorist financing and its close link with organised crime networks requires determined, rapid and cohesive action to modernise relevant legislation, ensure its implementation and better cooperation between Member States and beyond.

The European Agenda on Security of 28 April 2015[1] highlighted the need for measures to address terrorist financing in a more effective and comprehensive manner. One of the priorities identified was the disruption of organised criminal networks and the ways they are financed. In this context the European Agenda on Security also attached strategic importance to the need for improving the mutual recognition of freezing and confiscation orders.

Recent research[2] estimates that illicit markets in the European Union generate about 110 billion EUR, i.e. approximately 1% of the EU's GDP in 2010. However, and although existing statistics are limited, the amount of money currently being recovered from proceeds of crime within the EU is only a small proportion: 98.9% of estimated criminal profits are not confiscated and remain at the disposal of criminals. A functioning asset recovery regime is a precondition if more criminal assets are to be seized. This includes an efficient mutual recognition framework for freezing and confiscation orders. Although legislation on mutual recognition of freezing and confiscation orders does exist at EU level, it is patchy, out of date, and leaves lacunae which can be exploited by criminals. The importance of confiscation of criminal assets has been recognised by the European Union. After the adoption in 1999 of the Tampere European Council conclusions, four legislative instruments on freezing and confiscation, including two mutual recognition instruments, were adopted between 2001 and 2006, which are all (at least in parts) still in force today.[3]

In parallel, efforts were made to strengthen the identification and tracing of the proceeds and instrumentalities of crime. Council Decision 2007/845/JHA[4] provides for the establishment of Asset Recovery Offices in all Member States.

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1 COM (2015)185 final. See also the Communication on Delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union (COM(2016) 230 final, p. 13).

2 Europol, Criminal asset recovery in the EU, Survey of Statistical Information 2010-2014, Key findings, p.4; see also Report of organised Crime Portfolio, 2015, From Illegal Markets to legitimate businesses: the portfolio of organised crime in Europe, http://www.ocportfolio.eu/.

3 Cf. Section 3.3.on the EU legal framework.

4 Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime (OJ L 332,18.12.2007, p. 103).

After the entry into force of the Lisbon Treaty, confiscation has been given strategic priority at EU level as an effective instrument to fight organised crime. Directive 2014/42/EU establishes common minimum rules for the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

When adopting Directive 2014/42/EU, the European Parliament and the Council, in a joint statement, called on the Commission "*to present a legislative proposal on mutual recognition of freezing and confiscation orders at the earliest possible opportunity (…) considering the need of putting in place a comprehensive system for freezing and confiscation of proceeds and instrumentalities of crime in the EU*"[5]. This call has been repeated on various occasions in bilateral contacts and expert meetings.

In this joint statement the European Parliament and the Council also called on the Commission to analyse the feasibility, opportunity and possible benefits of introducing common rules on non-conviction based confiscation taking into account the differences between the legal traditions and the systems of the Member States. In view of delivering this analysis the Commission has organised expert meetings in September and November 2016. It envisages to issue the feasibility analysis in 2017.

In its Communication of 2 February 2016 to the European Parliament and the Council on an "*Action Plan for strengthening the fight against terrorist financing*"[6], the Commission highlighted the need to ensure that criminals who fund terrorism are deprived of their assets. The Commission committed to strengthening the mutual recognition of criminal assets' freezing and confiscation orders by the end of 2016. It was underlined that the "*mutual recognition of judgments and judicial decisions is a key element in the security framework*".

In October 2016, the European Parliament, in the context of a report presented by MEP Laura Ferrara on the fight against corruption, has called again on the Commission to submit a proposal on the strengthening of mutual recognition of freezing and confiscation orders[7].

The current initiative is a response to identified deficiencies of the existing mutual recognition instruments[8] and to these calls. It builds on existing EU legislation on mutual recognition of freezing and confiscation orders and addresses the fact that Member States have developed new forms of freezing and confiscation of criminal assets. It also takes into account developments at EU level, including the minimum standards for freezing and confiscation orders set out in Directive 2014/42/EU. Whereas the Directive improves the domestic possibilities to freeze and confiscate assets, the proposal aims to improve the cross-border enforcement of freezing and confiscation orders. Together, both instruments should contribute to effective asset recovery in the European Union.

- **Consistency with existing EU legal framework in the policy area**

The current EU legal framework consists of five main instruments. Apart from Council Decision 2007/845/JHA on asset tracing, two of them are mutual recognition instruments and two harmonisation measures. Both types of instruments are necessary in order to have a functioning regime of recovery of criminal assets and they complement each other.

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5 Council doc. 7329/1/14 REV 1 ADD 1. In its final report of 11 June 2013, the Special Committee on Organised Crime of the European Parliament also called for European legislation providing for the full application of the existing mutual recognition instruments and the immediate enforceability of confiscation orders, cf. http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0245+0+DOC+XML+V0//EN

6 COM (2016)50 final, Chapter 1.3

7 Ferrara Report adopted by LIBE on 7 October 2016

8 Cf. Section 4 of the Impact Assessment.

Mutual recognition instruments:

Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence[9] and **Council Framework Decision 2006/783/JHA** of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders[10] are aimed at facilitating the recovery of assets in cross-border cases.

Both Framework Decisions are based on the principle of mutual recognition and work in a similar way. Both instruments require freezing or confiscation orders issued in one Member State to be recognised and executed in another Member State. The orders are transmitted alongside a certificate to the competent authorities in the executing State which must recognise them without further formalities and take the measures necessary for their execution.

Mutual recognition cannot be refused because of lack of dual criminality for a list of offences punishable by at least three years of imprisonment in the issuing State. In other cases, recognition can be refused if the crime to which the freezing or confiscation order relates is not a criminal offence under the laws of the executing State. The Framework Decisions allow for other grounds for refusal in certain situations. These two Framework Decisions will be replaced by one single instrument - the proposed Regulation.

Harmonisation measures:

Council Framework Decision 2005/212/JHA of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property[11] requires all Member States to put in place effective measures to enable the ordinary confiscation of criminal instrumentalities and proceeds for all criminal offences punishable by detention of at least one year. It also introduced provisions on extended confiscation. However, the level of harmonisation introduced by this instrument was very low, and it has not removed the diversity of national legal confiscation regimes.

Directive 2014/42/EU of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the EU[12] had to be implemented by Member States by October 2016. It replaces certain provisions of Council Framework Decision 2005/212/JHA. Whereas the Framework Decision 2005/212/JHA continues to apply to all criminal offences punishable by detention of at least one year, regarding ordinary confiscation, the Directive could only cover the so-called Eurocrimes[13].

Directive 2014/42/EU sets minimum rules for national freezing and confiscation regimes: it requires ordinary and value confiscation for Eurocrimes, including where the conviction results from proceedings in absentia. It provides rules for extended confiscation subject to certain conditions. It also enables confiscation where a conviction is not possible because the suspect or accused person is ill or has absconded. The Directive also enables for the first time

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9 OJ L 196/45 of 2.8.2003. To be noted that as regards freezing for the purpose of safeguarding evidence, Framework Decision 2003/577/JHA is replaced by Directive 2014/41/EU on the European Investigation Order.

10 OJ L 328/59 of 24.11.2006

11 OJ L 68/49 of 15.3.2005

12 OJ L 127/39 of 29.4.2014

13 According to Art. 83 TFEU, Eurocrimes are particularly serious crimes with a cross-border dimension resulting from the nature or impact of such offenses or from a special need to combat them on a common basis. They are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime. Because of the legal base of Article 83(1) TFEU, the scope of Directive 2014/42/EU is limited to Eurocrimes, and does not cover other criminal offences which generate proceeds.

the confiscation of assets in the possession of third parties. Finally, the Directive introduces a number of procedural safeguards[14], such as the right to be informed of the execution of the freezing order including, at least briefly, on the reason or reasons; the effective possibility to challenge the freezing order before a court; the right of access to a lawyer throughout the confiscation proceedings; the effective possibility to claim title of ownership or other property rights; the right to be informed of the reasons for a confiscation order and to challenge it before a court.

Summary of the proposed Regulation

A Europe-wide concept of justice is founded on increased legal co-operation in both civil and criminal matters, via the principle of "mutual recognition" when each legal system gradually acknowledged that the decisions adopted by the legal systems of other Member States are valid and should be recognised without further formalities.

A mutual recognition mechanism should allow a Member State to recognise and enforce the freezing or confiscation order issued by another Member State without any intermediate formalities. The proposed Regulation will cover mutual recognition of all types of freezing and confiscation orders issued in the framework of criminal proceedings, including extended confiscation, third-party confiscation and non-conviction based confiscation orders.[15]

This proposal for a Regulation improves the current mutual recognition legal framework in several ways:

- Directly applicable legal instrument:

  The proposed Regulation, once adopted, will be directly applicable in the Member States. This will bring clarity and eliminate problems with transposition into national systems. The experience has shown that not all the Member States have transposed the Framework Decisions on mutual recognition of freezing and confiscation orders until now.

- Extended scope compared to the current mutual recognition instruments:

  In addition to the types of confiscation already covered by the existing Framework Decisions (ordinary confiscation and extended confiscation, the latter with wide discretion to refuse recognition), the proposed Regulation will cover third-party confiscation and criminal non-conviction based confiscation and no longer provide for wide discretion to refuse recognition in case of extended confiscation.

- Extended scope compared to Directive 2014/42/EU:

  The proposed Regulation will cover mutual recognition of all types of freezing and confiscation orders covered by the Directive. In addition, it will also cover orders for non-conviction based confiscation issued within the framework of criminal proceedings: the cases of death of a person, immunity, prescription, cases where the perpetrator of an offence cannot be identified, or other cases where a criminal court can confiscate an asset without conviction when the court has decided that such asset is the proceeds of crime. This requires the court to establish that an advantage was derived from a criminal offence. In order to be included in the scope of the Regulation, these types of confiscation orders must be issued within the framework

[14] Cf. Article 8

[15] For further details regarding the scope see point 5.1 and explanation to Article 1.

of criminal proceedings, and therefore all safeguards applicable to such proceedings will have to be fulfilled in the issuing State[16].

- Clear deadlines for freezing and confiscation orders:

  While freezing as a precautionary measure needs to take place urgently and requires short deadlines for recognition and execution, the recognition and execution of confiscation orders can take place within a longer time period. Nevertheless, deadlines also need to be established for confiscation orders to ensure efficient cross-border procedures.

- One single instrument for mutual recognition of both freezing and confiscation orders containing directly applicable rules and deadlines will ensure that the orders are recognised and executed without delay within the Union.

- A standard certificate and a standard form:

  The speedy and efficient mechanism will also be ensured thanks to a standardised certificate for mutual recognition of confiscation orders and a standard form for freezing orders which are annexed to the proposal. They contain all the relevant information on the order, which will help the executing authority to reach precisely the property targeted and will facilitate the recognition and enforcement of the foreign measure by the competent national authorities. The standard form for freezing orders will simplify the mutual recognition procedure of freezing orders to the maximum extent as it will not be accompanied by another domestic freezing order. The procedure for recognition and execution of freezing and confiscation orders are regulated separately in the proposal to simplify direct application by competent national authorities.

- Communication between the competent authorities:

  Communication between the competent authorities to allow smooth and swift recognition and execution of freezing and confiscation orders has been emphasised throughout the proposal.

- Victims' rights:

  The victim's right to compensation and restitution has been duly taken into account in the Proposal. It is ensured that in cases where the issuing State confiscates property, the victim's right to compensation and restitution has priority over the executing and issuing States' interest.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The legal basis to support action in the field of mutual recognition of criminal assets' freezing and confiscation orders is Article 82(1) of the Treaty on the Functioning of the European Union, which specifies notably that judicial co-operation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions.

Measures may be adopted in accordance with the ordinary legislative procedure to lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions, and to facilitate cooperation between judicial or equivalent authorities

[16] See Section 3, Fundamental Rights.

of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

- **Choice of the instrument**

Article 82(1) TFEU gives the EU legislator the possibility to adopt regulations and directives.

As the proposal concerns cross-border procedures, where uniform rules are required, there is no need to leave a margin to Member States to transpose such rules. A regulation is directly applicable, provides clarity and greater legal certainty, and avoids the transposition problems that the Framework Decisions on mutual recognition of freezing and confiscation orders were subject to. For these reasons the most appropriate form to be used for this mutual recognition instrument is considered to be a regulation.

- **Subsidiarity and proportionality**

Under Article 5(3) TEU, the Union shall only act if the proposed action cannot be sufficiently achieved by the Member States. Article 67 TFEU provides that the Union shall provide citizens with a high level of security by preventing and combating crime. The assets of criminals are frequently invested in several countries. This cross-border dimension justifies European action.

While cross-border criminal and asset investigations may occur in several countries, prosecution and the judicial activities leading to confiscation normally take place in only one Member State and thus confiscation procedures remain essentially national. However, their cross-border dimension is evident in the enforcement of orders in other Member States. Thus, asset recovery requires effective cooperation among Member States. The most effective way of ensuring cross-border co-operation is on the basis of mutual recognition. Mutual recognition is in accordance with the principle of subsidiarity since it aims at recognising each other's decisions, and cannot be achieved by Member States acting alone.

The proposal does not cover all existing forms of confiscation orders (such as civil and administrative orders) and is limited to confiscation orders issued in criminal proceedings. It does not go beyond the minimum required in order to achieve the stated objective at European level and what is necessary for that purpose.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The implementation reports on Framework Decision 2003/577/JHA[17] and Framework Decision 2006/783/JHA[18] were adopted in 2008 and 2010. These Reports concluded at the time of their publication that the level of transposition of these Framework Decisions into the national legal systems of Member States was not satisfactory. The 2012 Impact Assessment accompanying the Commission proposal for Directive 2014/42/EU[19] concluded on the need for a legal instrument to improve mutual recognition in this area, namely that there is a

[17] Report from the Commission to the European Parliament and the Council of 22.12.2008 [COM(2008) 885 final - Not published in the Official Journal].

[18] Report from the Commission to the European Parliament and the Council of 23.8.2010 [COM(2010) 428 final – Not published in the Official Journal].

[19] Commission Staff Working paper accompanying document to the Proposal for a Directive of the European Parliament and the Council of the freezing and confiscation for proceeds of crime in the European Union, SWD(2012) 31 final.

fundamental problem with the scope of the existing measures and that a new mutual recognition instrument was justified.

A comparative law study on the implementation of mutual recognition of freezing and confiscation orders in the EU[20] was carried out in 2013 and concluded that one coherent instrument for mutual recognition could be envisaged. In addition, several expert meetings and conferences dedicated to the issue of mutual recognition of freezing and confiscation orders and in particular to non-conviction based confiscation were organised in the past years.

In view of the existing data, a separate ex post evaluation of the existing mutual recognition instruments was not carried out.

- **Stakeholder consultations**

All the relevant stakeholders were consulted. As this subject is dealt with by a rather limited number of experts targeted consultation was carried out instead of a public consultation which would have had very limited added value because of the complexity of the topic. Expert meetings and conferences were organised to discuss this subject.

Overall, there is large consensus on the need to improve mutual recognition of freezing and confiscation orders with a new legislative instrument. It has been repeatedly pointed out that confiscation is a very efficient tool in the fight against organised crime and terrorism and it has been acknowledged that there is an increased need for more effective cross-border cooperation within the EU and at an international level.

Experts repeatedly complained about the underuse of confiscation in cross-border situations. They underlined that the current system does not work and that the Framework Decisions on mutual recognition are not used. As an example it was mentioned that the proceeds from drug trafficking, invested by drug dealers in several Member States, could not be confiscated because of the lack of cross-border cooperation at judicial level.

Member States also acknowledge the need to improve mutual recognition of freezing and confiscation orders with a new legislative instrument.

- **Impact assessment**

The impact assessment supporting this proposal has been carried out[21] and a positive opinion with reservations has been issued by the Regulatory Scrutiny Board[22]. Following this opinion the impact assessment was amended to better explain the political context of this initiative and the political imperative to act now. More systematic references to relevant policy strategies were introduced. The structure of the problem section was revised in order to clarify the importance of the different problems and to illustrate better that the shortcomings of the current legal framework are mostly due to its limitations. The interplay of the issue of victims' restitution and compensation with other problems was clarified. The baseline scenario was further elaborated and reflects more realistically current trends in the use of confiscation and freezing orders. The report clarifies how the various options differ from each other (e.g. scope) or overlap/include each other (e.g. streamlining of procedures and simplification of certificates). Discarded options were added. Furthermore, the report has been amended to specify better the impacts of the various options. The discussions and conclusions of the

[20] Study carried out by DBB in November 2013 "*Comparative Law Study of the implementation of mutual recognition of orders to freeze and confiscate criminal assets in the EU*",

[21] http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2016_en.htm

[22] http://ec.europa.eu/smart-regulation/impact/ia_carried_out/cia_2016_en.htm

expert meeting of 17 November 2016 were integrated into the report and stakeholder views in general were presented more systematically throughout the report. Finally, a preferred option was added based on the comparative assessment of the options, their impacts, the conclusions of the expert meeting of 17 November 2016 and the political feasibility of the various options[23].

Four main policy options were considered: retention of the *status quo* (Option 1), a soft law option (Option 2) and two regulatory policy options (Options 3 and 4). The retention of the *status quo* would involve taking no action at EU level, while the other three alternative policy options would improve, to a different extent, the ability to seize and confiscate proceeds of crime on a cross-border basis. Option 2 (non-legislative action/soft-law) would support mutual recognition of freezing and confiscation orders by, for example, training and the dissemination of best practice, and the promotion of the use of international instruments to promote cross-border seizure and confiscation. However, its expected impact would be rather low and it would still be excluded for some EU Member States to act on certain requests from other Member States. Options 3 and 4 (minimal and maximal legislative action) would entail obligations to recognise and execute a range of orders to freeze and confiscate criminal assets. Option 3 would require the recognition of only those freezing and confiscation orders which are set out in Directive 2014/42/EU. Option 4 provides for two sub-options: Option 4a would cover all types of freezing and confiscation orders issued in the context of criminal proceedings including also criminal non-conviction based confiscation. Option 4b would require the recognition of all confiscation orders including those issued in civil and administrative proceedings where it is shown that the property is the proceeds of criminal conduct.

Member States support a policy option which entails new legislation (Options 3, 4a or 4b). There is, however, variation among the Member States' positions as to what kind of measures the instrument should cover. Option 3 would not raise particular concerns from Member States but would not be considered sufficient by those Member States which have more extensive forms of confiscation.

The European Parliament is in favour of a legislative proposal to strengthen the mutual recognition of freezing and confiscation orders.

The preferred option of the Commission is a mutual recognition instrument with an extended scope and improved provisions that ensure a wider circulation of freezing and confiscation orders issued within the framework of criminal proceedings in the European Union (Option 4a). This option tackles most of the identified problems and is also legally sound. It also appears to be more easily accepted by Member States than an instrument including administrative and civil confiscation. It also satisfies the proportionality principle as it is limited in its scope and does not go beyond the minimum necessary to achieve the objectives established at European level.

The economic and social impact of the preferred option is expected to be overall positive. The requirement to recognise a greater range of freezing and confiscation orders should increase the amount of criminal assets frozen and seized across Member State borders. It should, therefore, ultimately lead to reduced profits for organised criminals and would deny criminals the possibility to reinvest their profits to fund further criminality. Increasing the likelihood of confiscation also increases the deterrent effect on crime. It should also lead to a reduction in

[23] Annex 1 of the Impact Assessment describes in more detail the way in which the comments of the Regulatory Scrutiny Board have been addressed in the amended version of the Impact Assessment.

losses to Member State revenue. The social impact would be overall very positive as confiscated criminal assets can be given back to the victims from whom they are stolen, or reused for public or social purposes.

The requirement to recognise and execute a greater range of freezing and confiscation orders will lead to a limited increase in the costs for law enforcement and judicial authorities. However, this should be more than offset by the increased ability to recover – and reuse where appropriate – the proceeds of crime.

Businesses, SME's and micro-enterprises will not be directly affected by this proposal. However, seizing of criminal assets makes it more difficult for criminal business to operate, thus in the long term it should help legitimate business by decreasing competition by illegal actors.

- **Fundamental rights**

Freezing and confiscation measures may interfere with fundamental rights protected by the EU Charter of Fundamental Rights (the Charter) and the European Convention on Human Rights (ECHR).

In particular in relation to non-conviction based confiscation the European Court of Human Rights has repeatedly considered non-conviction based confiscation, including civil and administrative forms, and extended confiscation to be consistent with Article 6 ECHR and Article 1 of Protocol 1, if effective procedural safeguards are respected.

Shifts of the burden of proof concerning the legitimacy of assets have not been found in violation of fundamental rights by the ECtHR, as long as they were applied in the particular case with adequate safeguards in place to allow the affected person to challenge these rebuttable presumptions.

Some important safeguards are included in the proposed Regulation: the principle of proportionality needs to be respected, there are grounds for refusal based on the non-respect of the principle of 'ne bis in idem' and the rules on 'in absentia' proceedings. Moreover, the rights of bona fide third parties have to be respected, there is an obligation to inform interested parties of the execution of a freezing order including of the reasons thereof and the legal remedies available, and there is an obligation for Member States to provide for legal remedies in the executing State.

Furthermore, Article 8 of Directive 2014/42/EU includes a list of safeguards that need to be ensured by the Member States for those orders falling within the scope of the Directive.

Finally, all criminal law procedural safeguards are applicable. This includes in particular the right to a fair trial enshrined in Article 6 ECHR and Articles 47 and 48 of the Charter. It also includes the relevant legislation at EU level on procedural rights in criminal proceedings: Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, Directive 2012/13/EU on the right to information about rights and charges and access to the case file, Directive 2013/48/EU on the right of access to a lawyer and communication with relatives when arrested and detained, Directive 2016/343 on the strengthening of certain aspects of the presumption of innocence and the right to be present at one's trial, Directive 2016/800 on the procedural safeguards for children and Directive 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings.

If applied with proportionality and complemented with effective procedural safeguards as described above, the measures in this proposal are compatible with fundamental rights requirements.

4. BUDGETARY IMPLICATIONS

The legislative proposal for a Regulation does not have an impact on the EU Budget. One of the general objectives is to deprive criminals from their ill-gotten profits. It is designed to ensure compensation for victims and increase national treasury and EU incomes. It is also designed to reduce the collective cost of fraud and other social expenses. Finally, this proposal should have positive consequences for national and European economies.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Regulation is directly applicable within the EU. It will be directly applied by practitioners, with the result that orders issued by other Member States will have to be executed like domestic ones, without the need to modify their internal legal system and their way of working.

The Regulation will be reviewed and the Commission will submit a report five years after the entry into application.

- **Detailed explanation of the specific provisions of the proposal**

Chapter I: Subject-matter, definitions and scope

Article 1: Subject-matter

This proposal for a Regulation lays down rules under which a Member State recognises and executes freezing and confiscation orders issued within the framework of criminal proceedings. This Regulation covers all confiscation orders imposed by a court following proceedings in relation to a criminal offence and all freezing orders issued with a view to possible subsequent confiscation. It thus applies to all types of orders covered by Directive 2014/42/EU, as well as other types of orders issued without final conviction within the framework of criminal proceedings. This Regulation does not apply to freezing and confiscation orders issued within the framework of civil or administrative procedings.

This Regulation covers all criminal offences. It is not limited to the areas of particularly serious crime with a cross-border dimension so-called ‘Eurocrimes’ (unlike Directive 2014/42/EU which is based on 83 TFEU) as Article 82 TFEU (on which this proposal is based on) does not require such a limitation for mutual recognition of judgments in criminal matters. Therefore, the proposal covers mutual recognition of freezing and confiscation orders related to offences covered by Directive 2014/42/EU, as well as orders related to other offences which are not covered by that Directive.

Article 2: Definitions

Article 2 provides for the definition of several concepts used in the proposal.

The proposal lays down definition of confiscation order, freezing order, property, proceeds, instrumentalities, issuing State, executing State, issuing authority, and executing authority.

Confiscation order is a final penalty or measure imposed by a court following proceedings in relation to a criminal offence, resulting in the final deprivation of property. A freezing order is any judicial decision or decision validated by a judicial authority to provisionally prevent the destruction, transformation, moving, transfer or disposal of property with a view to possible subsequent confiscation.

The definition of issuing authority differs for freezing and confiscation orders. To take into account various national systems, the same approach is taken as in Directive 2014/41/EU with

respect to the definition of issuing authority for freezing orders. In cases where the competent issuing authority is not a judge, a court, an investigating judge or a public prosecutor, the freezing order must be validated by a judge, court, investigating judge or a public prosecutor before its transmission.

The definition of issuing and executing authority must be read together with Article 27 whereby Member States are required to notify to the Commission the competent issuing and executing authorities.

Article 3: Offences

A list of offences for which the mutual recognition and execution of freezing and confiscation orders cannot be refused based on dual criminality is the same as the list contained in other mutual recognition instruments with one exception only: point (y) of the list now reflects the existence of common minumum standards for combating fraud and counterfeiting of non-cash means of payment (Framework Decision 2001/413/JHA).

Dual criminality cannot be invoked for a list of offences punishable by at least three years of imprisonment in the issuing State. In cases of offences not included in this list, recognition can be refused if the crime to which the freezing or confiscation order relates is not a criminal offence under the laws of the executing State.

Chapter II - Transmission, recognition and execution of confiscation orders

Article 4 - 7: Transmission of confiscation orders

These articles set out a mechanism for transmission of confiscation orders. The proposal provides for a direct transmission of a confiscation order between competent national authorities but also allows for the possibility of assistance by central authorities. The rules on identification of the competent executing authority and on the possibility to transmit the confiscation order to more than one Member State are clarified.

In principle, a confiscation order may only be transmitted to one executing State at a time. However, some exceptions are laid down in Article 5. Where properties covered by the order are located in different executing States or the execution involves action in more than one executing State, the issuing authority may transmit the order to more than one executing State. The issuing authority may also transmit the order concerning an amount of money to several executing States where the property concerned has not been frozen or where the value of the property that may be recovered in the issuing State and any one executing State is not likely to be sufficient for the execution of the full amount covered by the order.

The transmission of the confiscation order by the issuing State does not limit that State's competence to execute the order itself. Rules are also set to ensure that the execution of the order will not exceed the maximum amount specified in the order.

The confiscation order must be accompanied by a standard certificate annexed to this proposal. The certificate must be translated into an official language of the executing State.

Article 8: Recognition and execution of confiscation orders

The executing authority must recognise the confiscation order without further formalities and must take the necessary measures for its execution in the same way as for a confiscation order made by an authority of the executing State unless it invokes one of the grounds for refusal or postponement. Detailed rules for a possibility to confiscate different type of property than the one specified in the confiscation order are laid down.

Article 9: Grounds for non-recognition and non-execution of confiscation orders

An exhaustive list of grounds for non-recognition and non-execution of confiscation orders on which basis the executing authority may refuse the recognition and execution of the confiscation order is laid down in Article 9. The list differs significantly from the list contained in the 2006 Framework Decision. Some grounds for refusal remain the same, e.g. the ground based on the principle 'ne bis in idem' or the ground based on immunity or privilege. However, the grounds for refusal linked to the type of the confiscation order (e.g. extended confiscation) have not been included in the proposal thus considerably broadening and strengthening the mutual recognition framework.

Regarding the ground for refusal based on the right to be present at the trial, it only applies to trials resulting in confiscation orders linked to a final conviction, and not to proceedings resulting in non-conviction based confiscation orders.

Article 10: Time limits for recognition and execution of confiscation orders

This Article establishes time limits for the recognition and execution of confiscation orders thus bringing added value compared to the 2006 Framework Decision which did not contain any time limits. Compared to freezing which must be carried out within a very short timeframe, confiscation can take place within a longer time period. Nevertheless, the experience with the 2006 Framework Decision has shown that establishing clear deadlines is needed to ensure efficient cross-border procedures.

Different time limits are set separately for the decision on the recognition and for the execution of the confiscation order. Firstly, the executing authority must take the decision on the recognition and execution of the confiscation order as soon as possible and not later than 30 days after the receipt of the confiscation order. Secondly, the executing authority must carry out the confiscation without delay and not later than 30 days after taking the decision to recognise and execute the confiscation order.

In specific cases where it is not possible for the executing authority to meet the time limits, it must inform the issuing authority without delay.

Article 11: Postponement of execution of confiscation orders

This Article provides a standard wording in mutual recognition instruments allowing for the possibility to postpone the recognition or execution of the confiscation order. The executing authority may postpone the execution of the confiscation order if there is a risk of damaging an ongoing criminal investigation or a risk that the total amount exceeds the amount specified in the order or in cases where legal remedies have been invoked in accordance with Article 33.

Article 12: Impossibility to execute a confiscation order

A situation may occur where it is impossible for the executing authority to execute the confiscation order. In such cases the executing authority must notify the issuing authority without delay. Where possible, the order may be executed on other property.

Chapter III - Transmission, recognition and execution of freezing orders

Article 13 - Conditions for issuing and transmitting a freezing order

This Article lays down conditions for issuing and transmitting a freezing order to ensure the proportionality principle is respected. This Article aligns the proposal with Article 6 of Directive 2014/41/EU, thereby ensuring that the same conditions apply to freezing for evidence and freezing for subsequent confiscation. The executing authority must execute the order within the time limits set in Article 19, but if it has reason to believe that these

conditions have not been met, it can consult the issuing authority once the order has been recognised and executed.

Article 14: Transmission of freezing orders

A freezing order is to be directly transmitted between competent national authorities, but assistance by central authorities is also allowed. The rules on identification of the competent executing authority are clarified. The freezing order must be accompanied by a request for enforcement of a confiscation order, or it must contain an instruction that the property remains in the executing State pending a request for confiscation, and the estimated date of such a request must be provided. The issuing authority must also inform the executing authority of any interested party, including bona fide third parties, affected by the freezing order that it is aware of.

Article 15: Transmission of a freezing order to one or more executing States

In principle, a freezing order can be transmitted to only one Member State at a time. This Article lays down rules on the possibility to transmit the freezing order to more than one Member State. These rules are very similar to the rules on transmission of confiscation orders.

Where properties covered by the order are located in different executing States or the execution involves action in more than one executing State, the issuing authority may transmit the order to more than one executing State. The issuing authority may also transmit the order concerning an amount of money to several executing States where the value of the property that may be frozen in the issuing State and any one executing State is not likely to be sufficient for the execution of the full amount covered by the order.

Article 16: Form of the freezing order

The proposal provides for a simplified procedure as it provides for a standard form for issuing a freezing order. The form is therefore not a 'certificate' which accompanies a separate decision. This is a simplification of the mutual recognition procedure as the 2003 Framework Decision on mutual recognition of freezing orders required that a certificate was attached to the national freezing order. Instead, the proposal provides in its Annex B a standard form for freezing order that the issuing authority must complete, sign and certify its content as accurate and correct and translate it into an official language of the executing State. This approach is the same as the one adopted in Directive 2014/41/EU.

Article 17: Recognition and execution of freezing orders

The executing authority must recognise a freezing order without further formalities and must take the necessary measures to execute it unless it invokes one of the grounds for refusal or postponement of its recognition and execution.

Article 18: Grounds for non-recognition and non-execution of freezing orders

The grounds for refusal are similar to the grounds for refusal concerning confiscation orders, with some obvious non-applicable exceptions.

Article 19: Time limits for recognition and execution of freezing orders

Freezing as a precautionary measure needs to take place urgently and requires short deadlines for recognition and execution. For this reason clear time limits are laid down by the proposed Regulation. This is a major improvement compared to the 2003 Framework Decision where no clear time limits were established.

Three different time limits are set separately for the decision on the recognition, for the execution of the freezing order and for the reporting back to the issuing authority. Short

deadlines are set to ensure that the executing State will recognise and execute the order and communicate the outcome to the issuing authority speedily and with the same celerity and priority as for similar domestic cases. In addition, the executing authority must take full account of particular requirements specified in the freezing order such as the necessity of the immediate freezing or a specific date for freezing.

Firstly, the executing authority must take the decision on the recognition and execution of the freezing order as soon as possible and at the latest within 24 hours after the receipt of the freezing order.

Secondly, the executing authority must carry out the freezing without delay and not later than 24 hours after taking the decision to recognise and execute the freezing order and it must communicate its decision without delay to the issuing authority.

In cases where a ground for refusal or postponement is invoked by the executing authority these strict time limits cannot be maintained. Therefore for such cases, the proposal clarifies that the executing authority must act without delay.

In addition to these deadlines, Article 25 provides for a deadline of 3 days within which the executing authority must report to the issuing authority about the measures taken.

Article 20: Postponement of execution of a freezing order

This Article provides a standard wording in mutual recognition instruments for a possibility to postpone the recognition or execution of the freezing order. The executing State may postpone the execution of a freezing order if there is a risk of damaging ongoing investigations or the property is already subject to a freezing order or the property is already subject to a freezing order issued in other criminal proceedings in the executing State. The executing authority must immediately report on the postponement of the freezing order to the issuing authority and as soon as the ground for postponement has ceased to exist, the executing authority must immediately execute the order and inform the issuing authority.

Article 21: Obligation to inform the interested party

Following the execution of the freezing order, the executing authority must notify its decision to the person against whom the freezing order has been issued and to any interested party taking due account of the confidentiality rules laid down in Article 22. This will allow the persons affected to take legal remedies, without endangering the freezing.

Article 22: Confidentiality

Most freezing orders contain information which has to be protected in order to safeguard the investigation. This Article is inspired by Article 19 of Directive 2014/41/EU on the European Investigation Order and it provides for the obligation of the issuing and the executing authorities to preserve the confidentiality of the investigation. The executing authority must inform the issuing authority without delay if it cannot comply with the confidentiality requirement.

Article 23: Duration of the freezing orders

In principle, the property should be frozen until a final decision on confiscation or discharge of the frozen property is issued by the issuing State. However, cases might occur where the freezing seems to be no longer justified or the duration seems to be excessive. This Article lays down rules for limitation of the period for which the property will be frozen following consultation between the executing and the issuing authority. There is no absolute time limit, as the duration of investigations and trial may justify a long freezing period. If the issuing

authority does not provide reasons for non-acceptance of the limitation proposed by the executing authority within 6 weeks, the executing authority may lift the freezing order.

Article 24: Impossibility to execute the freezing order

The executing authority must notify the issuing authority without delay where it is impossible to execute the freezing order for the reason that the property has already been confiscated, has disappeared, has been destroyed, cannot be found in the location indicated or the location has not been sufficiently precise.

Article 25: Reporting

This Article lays down a deadline of 3 days within which the executing authority must report on the measures taken and results of the execution of the freezing order.

Chapter IV - General provisions

This Chapter provides general rules for mutual recognition of both freezing and confiscation orders.

Article 26: Law governing execution

The executing State has competence to adopt and to enforce measures in that State following the recognition of a freezing or confiscation order. The law of the executing State applies to the enforcement of the decision, including rules on safeguards where decisions are adopted in the executing State relating to the freezing order or confiscation order.

A freezing order or a confiscation order issued against a legal person must be executed even if the executing State does not recognise the criminal liability of legal persons.

Unless the issuing State agreed, the executing State may not impose alternative measures to freezing and confiscation except for those provided for in Article 8 of the proposal.

Article 27: Notification on the competent authorities

Member States are required to notify to the Commission the competent issuing and executing authorities according to the definition of Article 2(8) and (9). In addition, Member States may designate one or more central authorities responsible for the administrative transmission and reception. The Commission will make sure that this information will be available to all Member States and the Council.

Article 28: Communication

This Article concerns communication between competent authorities throughout the mutual recognition procedure. There is a general obligation of competent authorities to consult each other where necessary during the mutual recognition procedure in addition to the specific obligations laid down by individual articles of the proposal.

Article 29: Multiple orders

If two or more orders concerning an amount of money are issued against the same person and there are not sufficient means to enable all the orders to be executed or if a specific property is covered by multiple orders, the executing State must decide which of the orders is or are to be executed with due consideration of the circumstances including the interest of victims, the involvement of frozen assets, the dates of the respective orders and the dates of transmission of the respective orders and if relevant the relative seriousness and the place of the offence.

Article 30: Termination of execution

The issuing authority must immediately inform the executing authority of any decision or measure as a result of which the order ceases to be enforceable or must be withdrawn from the executing State for any other reason.

Article 31: Management and disposal of frozen and confiscated property

The executing State shall manage the frozen or confiscated property before its definitive transfer with a view to prevent its depreciation in value.

This Article further clarifies the rules for disposal of the confiscated property. The victim's right to compensation and restitution has been duly taken into account in that Article as it ensures that the victim's right to compensation and restitution has priority over the states' interest. Firstly, it provides that the sum corresponding to the decision on compensation or restitution will accrue to the issuing State for purposes of compensation or restitution to the victim. Secondly, if a procedure to compensate or restitute the victim is pending in the issuing State, the executing State must withhold the disposition of the confiscation property until the decision is communicated to the executing authority. This is a major novelty in the EU legal framework as neither of the two Framework Decisions contains any provision on victims. The provisions ensure that victims are not losing their rights in cases where the assets are located in another Member States; at the same time, the provision does not introduce any new right for victims where such right does not exist under national law.

Unless agreed otherwise, taking also into account the need to provide assistance for the recovery of tax claims in accordance with Directive 2010/24/EU, the following rules inspired by a rule of equity between Member States as set out in Framework Decision 2006/783/JHA apply: If the amount of the confiscation order is below 10.000 euros, the amount accrues to the executing State. Above this amount, 50% of the confiscated property is transferred to the issuing State in cash, or the entire property where it is transferred in kind with the consent of the executing State. If it is not possible to apply these rules, the property is disposed of in another way in accordance with the law of the executing State.

Article 32: Costs

Costs must be borne either by the executing State when they arise on the territory of that State and by the issuing State in any other case. Where the executing State has had large or exceptional costs it may propose to the issuing State that the costs be shared.

Article 33: Legal remedies in the executing State against recognition and execution

This Article provides for a legal remedy in the executing State against the recognition and execution of a freezing or confiscation order. Any interested party including bona fide third parties can bring an action before a court in the executing State to preserve his or her rights in accordance with the law of that State. The action may have suspensive effect under the law of the executing State. However, substantive reasons for issuing the confiscation order in criminal matters cannot be challenged before a court in the executing State.

Article 34: Reimbursement

Except when the responsibility is exclusively due to the conduct of the executing State, the issuing State is liable to reimburse any sum of money paid in damages to any party following the execution of an order.

Article 35: Statistics

This Article concerns an obligation of the Member States to regularly collect from the relevant authorities and maintain comprehensive statistics regarding mutual recognition of freezing and confiscation orders. The statistics collected will be sent to the Commission each

year. As, currently, there is lack of comprehensive data regarding mutual recognition of freezing and confiscation orders this obligation appears to be necessary to allow a thorough assessment of the functioning of the mechanism laid down by this Regulation.

Chapter V - Final provisions

Article 36: Amendments to the certificate and the form

The standard certificate and the form contained in Annex I and II of this proposal should serve as a useful tool to simplify and speed up to the maximum extent possible the mutual recognition and execution of freezing and confiscation orders. For this reason, it is necessary in the future to be able to address identified problems regarding the content of the certificate and the form as quickly as possible. Amending the two annexes through a complex fully-fledged legislative procedure does not correspond to this requirement. Therefore, a faster and more flexible procedure for amendments through delegated acts is laid down in Article 37.

Article 37: Exercise of delegation

This article lays down the conditions under which the Commission has the power to adopt delegated acts to provide for necessary amendments of the certificate and the form annexed to the proposal. It lays down a standard procedure for adoption of such delegated acts.

Article 38: Review clause

The Commission will report to the European Parliament and the Council on the application of this proposed Regulation five years after the entry into force.

Article 39: Replacement

This Regulation will replace Framework Decisions 2003/577/JHA and 2006/783/JHA for the Member States that are bound by it. Framework Decisions 2003/577/JHA and 2006/783/JHA will continue to apply in relation to those Member States that are not bound by this Regulation.

Article 40: Entry in force and application

The proposed Regulation will enter into force the twentieth day after its publication in the Official Journal. The Regulation will then apply six months after its date of entry into force with the exception of Article 27, which will apply from the date of entry into force of the Regulation.

2016/0412 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the mutual recognition of freezing and confiscation orders

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 (1) (a) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) The European Union has set itself the objective of maintaining and developing an area of freedom, security and justice.

(2) Judicial cooperation in criminal matters in the Union is based on the principle of mutual recognition of judgments and judicial decisions, which is, commonly referred to as a cornerstone of judicial cooperation in criminal matters within the Union since the Tampere European Council of 15 and 16 October 1999.

(3) Freezing and confiscation of instrumentalities and proceeds of crime are among the most effective means of combatting crime. The European Union is committed to ensuring more effective identification, confiscation and re-use of criminal assets[24].

(4) As crime is often transnational in nature, effective cross-border cooperation is essential in order to seize and confiscate the proceeds and instrumentalities of crime.

(5) The current Union legal framework in relation to the mutual recognition of freezing and confiscation orders is composed of Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence[25] and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders[26].

(6) The Commission's implementation reports on Framework Decisions 2003/577/JHA and 2006/783/JHA show that the existing regime for the mutual recognition of freezing and confiscation orders is not fully effective. The current instruments have not been implemented and applied uniformly in the Member States, leading to insufficient mutual recognition.

(7) The Union legal framework on mutual recognition of freezing and confiscation orders has not kept up with recent legislative developments at Union and national levels. In

[24] "The Stockholm programme – An open and secure Europe serving and protecting the citizens", OJ C 115, 4.5.2010, p.1.

[25] OJ L 196, 2.8.2003, p. 45.

[26] OJ L 328, 21.11.2006, p. 59.

particular, Directive 2014/42/EU[27] sets out common minimum rules on freezing and confiscation of property. These common minimum rules concern the confiscation of proceeds and instrumentalities of crime, including in case of illness and absconding of the suspect or accused person where criminal proceedings have been initiated regarding a criminal offence, extended confiscation and third party confiscation. Those common minimum rules also concern the freezing of property with a view to possible subsequent confiscation. The types of confiscation and freezing covered by Directive 2014/42/EU should also be covered by the legal framework on mutual recognition.

(8) When adopting Directive 2014/42/EU, the European Parliament and the Council stated that an effective system of freezing and confiscation in the European Union is inherently linked to well-functioning mutual recognition of freezing and confiscation orders. Considering the need of putting in place a comprehensive system for freezing and confiscation of proceeds and instrumentalities of crime, the European Parliament and the Council called on the Commission to present a legislative proposal on mutual recognition of freezing and confiscation orders.

(9) In the European Agenda on Security[28], the Commission considered that judicial cooperation in criminal matters relies on effective cross-border instruments and that mutual recognition of judgments and judicial decisions is a key element in the security framework. The Commission also recalled the need to improve mutual recognition of freezing and confiscation orders.

(10) In its Communication to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing[29], the Commission highlighted the need to ensure that criminals who fund terrorism are deprived of their assets. In order to disrupt organised crime activities that finance terrorism, it is essential to deprive those criminals of the proceeds of crime. To this end, it is necessary to ensure that all types of freezing and confiscation orders are enforced to the maximum extent possible throughout the Union through the application of the principle of mutual recognition.

(11) In order to ensure effective mutual recognition of freezing and confiscation orders, the rules on recognition and execution of those orders should be established by a legally binding and directly applicable legal act of the Union.

(12) It is important to facilitate the mutual recognition and execution of orders to freeze and to confiscate property by establishing rules obliging a Member State to recognise and execute in its territory freezing and confiscation orders issued by another Member State within the framework of criminal proceedings.

(13) This Regulation should apply to all confiscation orders imposed by a court following proceedings in relation to a criminal offence and all freezing orders issued with a view to possible subsequent confiscation. It should therefore cover all types of orders covered by Directive 2014/42/EU, as well as other types of orders issued without final conviction within the framework of criminal proceedings. This Regulation should not

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[27] Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

[28] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The European Agenda on Security*, COM(2015) 185 final.

[29] COM(2016) 50 final.

apply to freezing and confiscation orders issued within the framework of civil or administrative procedings.

(14) This Regulation should cover confiscation and freezing orders related to offences covered by Directive 2014/42/EU, as well as orders related to other offences. The offences should therefore not be limited to the areas of particularly serious crime with a cross-border dimension, as Article 82 TFEU does not require such limitation for measures laying down rules and procedures for ensuring mutual recognition of judgments in criminal matters.

(15) Cooperation between Member States, based on the principle of mutual recognition and immediate execution of judicial decisions, presupposes confidence that the decisions to be recognised and executed will always be taken in compliance with the principles of legality, subsidiarity and proportionality. It also presupposes that the rights granted to the parties or *bona fide* interested third parties will be preserved.

(16) This Regulation does not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the TEU.

(17) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union (the Charter) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR). This Regulation should be applied in accordance with those rights and principles.

(18) This Regulation should be applied taking into account Directives 2010/64/EU[30], 2012/13/EU[31], 2013/48/EU[32], 2016/343[33], 2016/800[34] and 2016/1919 of the European Parliament and of the Council[35], which concern procedural rights in criminal proceedings.

(19) While ensuring that fundamental rights are respected, the rules for the transmission, recognition and execution of freezing orders and confiscation orders should ensure the efficiency of the process of recovering criminal assets.

(20) To this end, freezing and confiscation orders should be transmitted directly by the issuing authority to the executing authority or, where applicable, to a central authority.

(21) A confiscation order should be transmitted together with a standard certificate.

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30 Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

31 Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

32 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 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 (OJ L 294, 6.11.2013, p. 1).

33 Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

34 Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

35 Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p.1).

(22) The executing authority should recognise a confiscation order without further formalities and should take the necessary measures for its execution. The decision on the recognition and execution of the confiscation order should be taken and the confiscation should be carried out with the same celerity and priority as for a similar domestic case. Time limits should be set out in order to ensure a quick and efficient decision and execution of the confiscation order.

(23) In light of the urgency of freezing and of its provisional nature, a freezing order should be issued in a standard form. The issuing authority should ascertain whether issuing the freezing order is necessary and proportionate for the purpose of provisionally preventing the destruction, transformation, moving, transfer or disposal of property. To align the conditions for issuing freezing orders in domestic and cross-border cases, a freezing order under this Regulation should be issued only when it could have been ordered in a similar domestic case.

(24) The executing authority should recognise a freezing order without further formalities and should immediately take the necessary measures for its execution. The decision on the recognition and execution of the freezing order should be taken and the freezing should be carried out with the same celerity and priority as for a similar domestic case. Time limits should be set out in order to ensure a quick and efficient decision and execution of the freezing order.

(25) In the execution of a freezing order, the issuing authority and the executing authority should take due account of the confidentiality of the investigation. In particular, the executing authority should guarantee the confidentiality of the facts and the substance of the freezing order.

(26) The recognition and execution of a freezing order or a confiscation order should not be refused on grounds other than those stated in this Regulation. In particular, it should be possible for the executing authority not to recognise and execute a confiscation order on the basis of the principle ne bis in idem, of the rights of any interested party, or of the right to be present at the trial.

(27) Before deciding to apply a ground for non-recognition and non-execution, the executing authority should consult the issuing authority, in order to obtain any necessary additional information.

(28) It should be possible for the executing authority to postpone the execution of a confiscation or a freezing order, notably where its execution might damage an ongoing criminal investigation. As soon as the ground for postponement has ceased to exist, the executing authority should take the necessary measures for the execution of the order.

(29) The issuing authority should be notified without delay of the impossibility to execute an order. Such impossibility might arise from the reason that the propery has already been confiscated, has disappeared, cannot be found in the location indicated by the issuing authority or the location of the property has not been indicated in a sufficiently precise manner.

(30) The execution of a confiscation or a freezing order should be governed by the law of the executing State and its authorities should alone be competent to decide on the procedures for execution.

(31) The proper practical operation of this Regulation presupposes close communication between the competent national authorities involved, in particular in cases of simultaneous execution of a confiscation order in more than one Member State. The

competent national authorities should therefore consult each other whenever necessary.

(32) The victims' rights to compensation and restitution should not be prejudiced in cross-border cases. Rules for disposal of the confiscated property should give priority to the compensation and restitution of property to the victims. Member States should also take into account their obligations to assist in the recovery of tax claims from other Member States in accordance with Directive 2010/24/EU[36].

(33) Member States should not be able to claim from each other the refund of costs resulting from the application of this Regulation. However, where the executing State has had large or exceptional costs, a proposal by the executing authority that the costs be shared should be taken into account by the issuing authority.

(34) Any interested party, including *bona fide* third parties, should have legal remedies against the recognition and execution of a freezing or confiscation order to preserve his or her rights, including the effective possibility to challenge the order before a court or claim title of ownership or other property rights in accordance with Directive 2014/42/EU. The action should be brought before a court in the executing State.

(35) In order to amend the certificate and the form set out in Annexes I and II to this Regulation , the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work for delegated acts, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

(36) Since the objective of this Regulation, namely the mutual recognition and execution of freezing and confiscation orders, cannot be achieved by the Member States but can rather, by reason of its scale and its effects, 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 Regulation does not go beyond what is necessary in order to achieve that objective.

(37) Provisions of Framework Decision 2003/577/JHA have already been replaced by Directive 2014/41/EU[37] as regards freezing of evidence. Provisions of Framework Decision 2003/577/JHA should be replaced by this Regulation between Member States bound by it as regards freezing in view of subsequent confiscation of property . Provisions for freezing of evidence and in view of subsequent confiscation should be aligned. This Regulation should also replace Framework Decision 2006/783/JHA between Member States bound by it.

(38) In accordance with Article 3 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, *[the United Kingdom /Ireland has notified its wish to take part in the adoption*

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36 Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84, 31.3.2010, p. 1).

37 Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

and application of this Regulation] or [and without prejudice to Article 4 of that Protocol, the United Kingdom/Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]

(39) 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 Regulation, and is therefore not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT-MATTER, DEFINITIONS AND SCOPE

Article 1

Subject-matter

1. This Regulation lays down the rules under which a Member State shall recognise and execute in its territory a freezing or a confiscation order issued by another Member State within the framework of criminal proceedings.

2. This Regulation shall not have the effect of amending the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 TEU.

Article 2

Definitions

For the purpose of this Regulation, the following definitions apply:

(1) ‘confiscation order’ means a final penalty or measure imposed by a court following proceedings in relation to a criminal offence, resulting in the final deprivation of property from a natural or legal person;

(2) ‘freezing order’ means a judicial decision issued or validated by an authority referred to in point (8) in respect of a freezing order in the issuing State in order to provisionally prevent the destruction, transformation, moving, transfer or disposal of property with a view to possible subsequent confiscation;

(3) '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, which the issuing authority considers to be :

(a) the proceeds of an offence, or its equivalent, to either the full value or part of the value of such proceeds,

(b) the instrumentalities of such an offence, or the value of such instrumentalities,

(c) liable to confiscation resulting from the application in the issuing State of any of the powers of confiscation provided for in Directive 2014/42/EU, or

(d) liable to confiscation under any other provisions relating to powers of confiscation under the law of the issuing State;

(4) 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;

(5) '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 ;

(6) 'issuing State' means the Member State in which a freezing order or a confiscation order is issued within the framework of criminal proceedings;

(7) 'executing State' means the Member State to which a freezing order or a confiscation order is transmitted for the purpose of recognition and execution;

(8) 'issuing authority' means:

(a) in respect of a freezing order:

(1) a judge, a court, an investigating judge or a public prosecutor competent in the case concerned; or

(2) any other competent authority as defined by the issuing State which has competence in criminal proceedings to order the freezing of property or to execute a freezing order in accordance with national law. In addition, before it is transmitted to the executing authority the freezing order shall be validated, after examination of its conformity with the conditions for issuing such an order under this Regulation, in particular the conditions set out in Article 13(1), by a judge, court, investigating judge or a public prosecutor in the issuing State. Where the order has been validated by such an authority, that authority may also be regarded as an issuing authority for the purposes of transmission of the order;

(b) in respect of a confiscation order, a competent authority as defined by the issuing State which, in criminal proceedings, has competence to enforce a confiscation order issued by a court in accordance with national law;

(9) 'executing authority' means an authority having competence to recognise a freezing or confiscation order and ensure its execution in accordance with this Regulation and the procedures applicable in a similar domestic case.

Article 3

Offences

1. A freezing order or confiscation order shall give rise to execution without verification of the double criminality of the acts if the acts giving rise to the freezing or confiscation order constitute one or more of the following offences, as defined by the law of the issuing State, and are punishable in the issuing State by a custodial sentence of a maximum of at least three years: :

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,

- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud and fraud-related criminal offences as defined in Directive 2017/xxx/EU on the fight against fraud to the Union's financial interests by means of criminal law,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,
- forgery of administrative documents and trafficking thereof,
- fraud and counterfeiting of non-cashmeans of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft or ships,
- sabotage.

2. For offences other than those covered by paragraph 1, the executing State may make the recognition and execution of a freezing order or confiscation order subject to the condition that the acts giving rise to the freezing order or confiscation order constitute an offence under the law of the executing State, whatever its constituent elements or however it is described under the law of the issuing State.

CHAPTER II

TRANSMISSION, RECOGNITION AND EXECUTION OF CONFISCATION ORDERS

Article 4

Transmission of confiscation orders

1. A confiscation order, or a certified copy of it, shall be transmitted together with the certificate provided for in Article 7 by the issuing authority directly to the executing authority or, where applicable, to the central authority referred to in Article 27(2) by any means capable of producing a written record under conditions allowing the executing authority to establish authenticity.

2. As regards a confiscation order concerning an amount of money, the order shall be transmitted to the Member State in which the issuing authority has reasonable grounds to believe that the natural or legal person against whom the order has been issued has property or income.

3. As regards a confiscation order concerning specific items of property, the order shall be transmitted to the Member State in which the issuing authority has reasonable grounds to believe that property covered by the confiscation order is located.

4. Where there are no reasonable grounds which would allow the issuing authority to determine the Member State to which the confiscation order shall be transmitted, the order shall be transmitted to the Member State where the natural or legal person against whom the order has been issued is habitually resident or has its registered seat respectively.

5. Where the competent executing authority is unknown, the issuing authority shall make all necessary inquiries, including through the contact points of the European Judicial Network[38], in order to obtain the information from the executing State.

6. Where the authority in the executing State which receives a confiscation order has no competence to recognise it and to take the necessary measures for its execution, it shall immediately transmit the confiscation order to the competent executing authority in its Member State and shall inform the issuing authority accordingly.

Article 5

Transmission of a confiscation order to one or more executing States

1. A confiscation order may only be transmitted pursuant to Article 4 to one executing State at any one time.

2. A confiscation order concerning specific items of property may be transmitted to more than one executing State at the same time where:

   (a) the issuing authority has reasonable grounds to believe that different items of property covered by the confiscation order are located in different executing States,

   (b) the confiscation of a specific item of property covered by the confiscation order involves action in more than one executing State, or

   (c) the issuing authority has reasonable grounds to believe that a specific item of property covered by the confiscation order is located in one of two or more specified executing States.

[38] Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, OJ L 348, 24.12.2008, p. 130.

3. A confiscation order concerning an amount of money may be transmitted to more than one executing State at the same time, where the issuing authority deems that there is a specific need to do so, in particular where:

(a) the property concerned has not been frozen under this Regulation, or

(b) the value of the property which may be confiscated in the issuing State and any one executing State is not likely to be sufficient for the execution of the full amount covered by the confiscation order.

Article 6

Consequences of transmission of confiscation orders

1. The transmission of a confiscation order to one or more executing States in accordance with Articles 4 and 5 shall not restrict the right of the issuing State to execute the order itself.

2. Where a confiscation order concerning an amount of money is transmitted to one or more executing States, the total value derived from its execution may not exceed the maximum amount specified in the confiscation order.

3. The issuing authority shall immediately inform the executing authority by any means capable of producing a written record:

(a) if it considers that there is a risk that execution beyond the maximum amount may occur, in particular on the basis of information notified to it by the executing authority pursuant to Article 11(1)(b) ;

(b) if all or a part of the freezing or confiscation order has been executed in the issuing State or in another executing State, specifying the amount for which the freezing or confiscation order has not yet been executed;

(c) if, after the transmission of an order in accordance with Article 4, an authority of the issuing State receives any sum of money which the person concerned has paid voluntarily in respect of the order.

Where point (b) applies, the issuing authority shall inform the executing authority as soon as possible whether the risk referred to has ceased to exist.

4. Where the issuing State has indicated that it wishes to withdraw the order from the executing State for any reason, the executing State shall terminate the execution of the confiscation order immediately.

Article 7

Standard certificate

1. The issuing authority shall complete the certificate set out in Annex I, sign it and certify its content as being accurate and correct.

2. The issuing authority shall translate the certificate into an official language of the executing State or any other language indicated by that Member State in accordance with paragraph 3.

3. Any Member State may, at any time, state in a declaration submitted to the Commission, that it will accept a translation in one or more other official languages of the Union.

Article 8

Recognition and execution of confiscation orders

1. The executing authority shall without further formalities recognise a confiscation order transmitted in accordance with Article 4 and shall take the necessary measures for its execution in the same way as for a confiscation order made by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition and non-execution provided for in Article 9 or one of the grounds for postponement provided for in Article 11.

2. If a confiscation order concerns a specific item of property, the issuing and executing authorities may, if provided for under the law of the issuing State, agree that confiscation in the executing State may take the form of a requirement to pay a sum of money corresponding to the value of the property.

3. If a confiscation order concerns an amount of money, the executing authority shall, if payment is not obtained, execute the confiscation order in accordance with paragraph 1 on any item of property available for that purpose.If necessary, the executing authority shall convert the amount of money to be confiscated into the currency of the executing State at the rate of exchange obtained at the time when the confiscation order was issued.

4. As soon as the execution of the order has been completed the executing authority shall inform the issuing authority by any means capable of producing a written record.

Article 9

Grounds for non-recognition and non-execution of confiscation orders

1. The executing authority may decide not to recognise and not to execute confiscation orders only if:

(a) the certificate provided for in Article 7 is incomplete, manifestly incorrect or manifestly does not correspond to the confiscation order, and has not been completed following the consultation in accordance with paragraph 2;

(b) the execution of the confiscation order would be contrary to the *ne bis in idem* principle;

(c) there is immunity or privilege under the law of the executing State which would prevent the execution of a domestic confiscation order on the property concerned;

(d) the confiscation order is based on a criminal offence committed outside the territory of the issuing State and wholly or partially on the territory of the executing State and the conduct in connection with which the confiscation order is issued is not an offence in the executing State;

(e) the rights of any bona fide third party make it impossible under the law of the executing State to execute the confiscation order, including where that impossibility is a consequence of the application of legal remedies in accordance with Article 31;

(f) if, in a case referred to in Article 3(2), the conduct on which the confiscation order is based does not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, execution of the confiscation order shall not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State;

(g) according to the certificate provided for in Article 7, the person did not appear in person at the trial resulting in a confiscation order linked to a final conviction.

That ground for non-recognition and non execution shall not apply where the certificate states that the person, in accordance with further procedural requirements defined in the national law of the issuing State:

(1) was summoned in due time in person and thereby informed of the scheduled date and place of the trial which resulted in the confiscation order, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed in due time that such a confiscation order could be handed down if he or she did not appear for the trial;

(2) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial and was indeed defended by that counsellor at the trial;or

(3) after being served with the confiscation order and being expressly informed of the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which could lead to the original decision being reversed:

- expressly stated that he or she does not contest the confiscation order, or

- did not request a retrial or appeal within the applicable time frame.

2. In the cases referred to in paragraph 1, before deciding not to recognise and execute the confiscation order, either in whole or in part, the executing authority shall consult the issuing authority by any appropriate means and shall, where appropriate, request the issuing authority to supply any necessary information without delay.

3. Any decision not to recognise and to execute shall be taken without delay and notified immediately to the issuing authority by any means capable of producing a written record.

Article 10

Time limits for recognition and execution of confiscation orders

1. The decision on the recognition and execution of the confiscation order shall be taken and the confiscation be carried out with the same celerity and priority as for a

similar domestic case and, in any case, within the time limits provided for in this Article.

2. The executing authority shall take the decision on the recognition and execution of the confiscation order without delay and, without prejudice to paragraph 5, no later than 30 days after the executing authority has received the confiscation order.

3. The executing authority shall communicate the decision on a confiscation order to the issuing authority without delay by any means capable of producing a written record.

4. Unless grounds for postponement pursuant to Article 11 exist, the executing authority shall carry out the confiscation without delay and without prejudice to paragraph 5 of this Article , not later than 30 days following the taking of the decision referred to in paragraph 2 of this Article.

5. Where it is not possible in a specific case to meet the time limits set out in paragraphs 2 or 4, the executing authority shall, without delay, inform the issuing authority by any means, giving the reasons for the delay and shall consult with the issuing authority on the appropriate timing to carry out the confiscation. In such a case, the time limit laid down in paragraphs 2 or 4, may be extended by a maximum of 30 days.

Article 11

Postponement of execution of confiscation orders

1. The executing authority may postpone the execution of a confiscation order transmitted in accordance with Article 4 where:

   (a) its execution might damage an ongoing criminal investigation, until such time as it deems reasonable;

   (b) as regards a confiscation order concerning an amount of money, it considers that there is a risk that the total value derived from its execution may considerably exceed the amount specified in the confiscation order because of the simultaneous execution of the confiscation order in more than one Member State;

   (c) where the property is already the subject of confiscation proceedings in the executing State;

   (d) in the cases of legal remedies referred to in Article 33.

2. The executing authority shall without delay make a report to the issuing authority by any means capable of producing a written record on the postponement of the execution of the order, including the grounds for the postponement and, if possible, the expected duration of the postponement.

3. As soon as the ground for postponement has ceased to exist, the executing authority shall without delay take the necessary measures for the execution of the order and inform the issuing authority thereof by any means capable of producing a written record.

Article 12

Impossibility to execute a confiscation order

Where it is impossible to execute the confiscation order because the property to be confiscated has already been confiscated, has disappeared, has been destroyed, or cannot be found in the location indicated in the certificate or because the location of the property has not been indicated in a sufficiently precise manner, even after consultation with the issuing authority, the issuing authority shall be notified without delay. Where possible, the order may be executed on other property in accordance with Article 8(2) or (3).

CHAPTER III

TRANSMISSION, RECOGNITION AND EXECUTION OF FREEZING ORDERS

Article 13

Conditions for issuing and transmitting a freezing order

1. The issuing authority may issue a freezing order provided that the following conditions are met:

(a) the issuing of the order is necessary and proportionate in order to provisionally prevent the destruction, transformation, moving, transfer or disposal of property with a view to possible subsequent confiscation taking into account the rights of the person concerned;

(b) the order could have been ordered under the same conditions in a similar domestic case; and

(c) the reason or reasons for the order are properly indicated, at least briefly.

2. The conditions referred to in paragraph 1 shall be assessed by the issuing authority in each case.

3. Where the executing authority has reason to believe that the conditions referred to in paragraph 1 have not been met, it may, after executing the order, consult the issuing authority on the importance of continuing the freezing. Such consultation shall not delay the execution of the freezing order. After that consultation the issuing authority may decide to withdraw the order.

Article 14

Transmission of freezing orders

1. A freezing order shall be transmitted in the form referred to in Article 16 by the issuing authority directly to the executing authority, or where applicable to the central authority referred to in Article 27(2), by any means capable of producing a written record under conditions allowing the executing authority to establish authenticity.

2. As regards a freezing order concerning an amount of money, the order shall be transmitted to the Member State in which the issuing authority has reasonable grounds to believe that the natural or legal person against whom the order has been issued has property or income.

3. As regards a freezing order concerning specific items of property, the order shall be transmitted to the Member State in which the issuing authority has reasonable grounds to believe that property covered by the freezing order is located.

4. If there are no reasonable grounds which would allow the issuing authority to determine the Member State to which the freezing order shall be transmitted, the order shall be transmitted to the Member State where the natural or legal person against whom the order has been issued is habitually resident or has its registered seat respectively.

5. The freezing order referred to in paragraph 1:

   (a) shall be accompanied by a confiscation order transmitted in accordance with Article 4 , or

   (b) shall contain an instruction that the property shall remain in the executing State pending the transmission of a confiscation order in accordance with Article 4. The issuing authority shall indicate the estimated date for this transmission in the form referred to in Article 16.

6. The issuing authority shall inform the executing authority if it is aware of any interested party, including bona fide third parties, that are affected by the freezing order.

7. If the competent executing authority is unknown, the issuing authority shall make all necessary inquiries, including through the contact points of the European Judicial Network[39], in order to obtain the information from the executing State.

8. Where the executing authority which receives a freezing order has no competence to recognise it and take the necessary measures for its execution, it shall immediately transmit the freezing order to the competent executing authority in its Member State and shall inform the issuing authority accordingly.

Article 15

Transmission of a freezing order to one or more executing States

1. A freezing order may only be transmitted pursuant to Article 14 to one executing State at any one time.

2. A freezing order concerning specific items of property may be transmitted to more than one executing State at the same time where:

   (a) the issuing authority has reasonable grounds to believe that different items of property covered by the freezing order are located in different executing States;

   (b) the freezing of a specific item of property covered by the freezing order involves action in more than one executing State;or

   (c) the issuing authority has reasonable grounds to believe that a specific item of property covered by the freezing order is located in one of two or more specified executing States.

[39] Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, OJ L 348, 24.12.2008, p. 130.

3. A freezing order concerning an amount of money may be transmitted to more than one executing State at the same time, where the issuing authority deems there is a specific need to do so, in particular where the estimated value of the property which may be frozen in the issuing State and in any one executing State is not likely to be sufficient for the execution of the full amount covered by the freezing order.

Article 16

Form of the freezing order

1. The freezing order shall be issued in the form set out in Annex II.

2. The issuing authority shall complete the form, sign it and certify its content as accurate and correct.

3. The issuing authority shall translate the freezing order into an official language of the executing State or any other language indicated by that Member State in accordance with paragraph 4.

4. Any Member State may, at any time state in a declaration submitted to the Commission, that it will accept a translation in one or more other official languages of the Union.

Article 17

Recognition and execution of freezing orders

The executing authority shall recognise a freezing order transmitted in accordance with Article 14 without further formalities and shall take the necessary measures to execute it unless that authority decides to invoke one of the grounds for non-recognition and non-execution provided for in Article 18 or one of the grounds for postponement provided for in Article 20.

Article 18

Grounds for non-recognition and non-execution of freezing orders

1. The executing authority may decide not to recognise and not to execute the freezing order only if:

(a) the form provided for in Article 16 is incomplete or manifestly incorrect, and has not been completed following the consultation in accordance with paragraph 2;

(b) the execution of the order would be contrary to the *ne bis in idem* principle

(c) there is immunity or privilege under the law of the executing State which would prevent the execution of a domestic freezing order on the property concerned;

(d) the order is based on a criminal offence committed outside the territory of the issuing State and wholly or partially on the territory of the executing State, and the conduct in connection with which the freezing order is issued is not an offence in the executing State;

(e) in a case referred to in Article 3(2), the conduct on which the freezing order is based does not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, execution of the freezing order shall not be refused on the grounds that the law of the executingState does not impose the

same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State;

2. In the cases referred to in paragraph 1, before deciding not to recognise or not to execute the freezing order either in whole or in part, the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, request the issuing authority to supply any necessary information without delay.

3. The executing authority may decide to lift the freezing order if, during the execution, it becomes aware that one of the grounds for non-recognition and non-execution applies.

Article 19

Time limits for recognition and execution of freezing orders

1. The decision on the recognition and execution of the freezing order shall be taken and the freezing shall be carried out with the same celerity and priority as for a similar domestic case and, in any case, within the time limits provided in this Article.

2. Where the issuing authority has indicated in the freezing order that there are legitimate grounds to believe that the property in question will imminently be moved or destroyed and that immediate freezing is necessary, or if the issuing authority has indicated in the freezing order that the freezing measure has to be carried out on a specific date, the executing authority shall take full account of this requirement.

3. The executing authority shall take the decision on the recognition and execution of the freezing order, or on consulting the issuing authority in accordance with Article 18(2), as soon as possible and, without prejudice to paragraph 7 of this Article, no later than 24 hours after the executing authority has received the freezing order.

4. If the executing authority consults the issuing authority in accordance with Article 18(2), the executing authority shall take the decision on the recognition and execution of the freezing order without delay.

5. The executing authority shall communicate the decision on a freezing order to the issuing authority without delay by any means capable of producing a written record.

6. Unless grounds for postponement pursuant to Article 20 exist, the executing authority shall carry out the freezing without delay and without prejudice to paragraph 7 of this Article, not later than 24 hours after taking the decision referred to in paragraph 3 of this Article.

7. Where it is not possible in a specific case to meet the time limits set out in paragraphs 3 or 6, the executing authority shall immediately inform the issuing authority by any means, giving the reasons for the delay and shall consult with the issuing authority on the appropriate timing to carry out the freezing.

Article 20

Postponement of execution of freezing orders

1. The executing authority may postpone the execution of a freezing order transmitted in accordance with Article 14 where :

   (1) its execution might damage an ongoing criminal investigation, until such time as it deems reasonable;

(2) the property is already the subject of a freezing order and until such orders are lifted; or

(3) the property is already subject to an order issued in the course of other proceedings in the executing State and until that order is lifted.

(4) However, this point shall only apply where such an order would have priority over subsequent national freezing orders in criminal proceedings under national law.

2. The executing authority shall immediately report to the issung authority by any means capable of producing a written record on the postponement of the execution of the order, including the grounds for the postponement and, if possible, the expected duration of the postponement. As soon as the ground for postponement has ceased to exist, the executing authority shall immediately take the necessary measures for the execution of the order and inform the issuing authority thereof by any means capable of producing a written record.

Article 21

Obligation to inform the interested parties

1. Without prejudice to Article 22, following the execution, the executing authority shall notify its decision to the person against whom the freezing order has been issued and to any interested party including bona fide third parties of which the executing authority has been informed in accordance with Article 14(6).

2. The notification shall contain information, at least briefly, on the reasons of the freezing order, on the authority who issued the order and on the existing legal remedies under the national law of the executing State.

Article 22

Confidentiality

1. In the execution of a freezing order the issuing authority and the executing authority shall take due account of the confidentiality of the investigation.

2. The executing authority shall, in accordance with its national law, guarantee the confidentiality of the facts and the substance of the freezing order, except to the extent necessary to execute it. If the executing authority cannot comply with the requirement of confidentiality, it shall notify the issuing authority immediately.

3. For the purpose of safeguarding ongoing investigations, the issuing authority may request the executing authority to keep the execution of the freezing order confidential for a limited period of time.

Article 23

Duration of freezing orders

1. The property shall remain frozen in the executing State until the competent authority of that State has responded definitively to a confiscation order transmitted in accordance with Article 4 or the issuing authority has informed the executing authority of any decision or measure as a result of which the order ceases to be enforceable or shall be withdrawn, in accordance with Article 30(1).

2. After consulting the issuing authority, the executing authority, taking into account the circumstances of the case, may make a reasoned request to the issuing authority to limit the period for which the property shall be frozen. If the issuing authority does not agree to such a limitation, it shall inform the executing authority thereof, stating its reasons. If the issuing authority does not do so within six weeks of receiving the request, the executing authority may lift the freezing order.

Article 24

Impossibility to execute a freezing order

Where it is impossible to execute the freezing order because the property to be frozen has already been confiscated, has disappeared, has been destroyed or cannot be found in the location indicated in the certificate or because the location of the property has not been indicated in a sufficiently precise manner, even after consultation with the issuing authority, the issuing authority shall be notified without delay.

Article 25

Reporting

The executing authority shall report on the measures taken for the execution of the freezing order and the results thereof, including a description of the property frozen and an estimation of its value, to the issuing authority within three days of the execution of the order by any means capable of producing a written record.

CHAPTER IV

GENERAL PROVISIONS

Article 26

Law governing execution

1. The execution of the freezing or confiscation order shall be governed by the law of the executing State and its authorities shall be solely competent to decide on the procedures for execution and to determine all the measures relating thereto.
2. A freezing or confiscation order issued against a legal person shall be executed even if the executing State does not recognise the principle of criminal liability of legal persons.
3. Notwithstanding Article 8 (2) and (3), the executing State may not impose measures as an alternative to the freezing or confiscation order as a result of a transmission pursuant to Articles 4, and 14, unless the issuing State has given its consent.

Article 27

Notification on the competent authorities

1. By *[date of application of this Regulation]*, each Member State shall inform the Commission which authority or authorities as defined in Article 2 (8) and (9) are competent under its national law, when that Member State is:

   (a) the issuing State, or

   (b) the executing State.

2. Each Member State may designate, if it is necessary as a result of the organisation of its internal system, one or more central authorities responsible for the administrative transmission and reception of the freezing or confiscation orders and to assist the competent authorities. The Member States shall inform the Commission thereof.

3. The Commission shall make the information received available to all Member States.

Article 28

Communication

1. Where necessary, the issuing authority and the executing authority shall consult each other, by any appropriate means, in order to ensure the efficient application of this Regulation.

2. All communications, including those intended to deal with difficulties concerning the transmission or authenticity of any document needed for the execution of the freezing or confiscation order, shall be made by direct contact between the issuing State and the executing authority involved or, where the Member State has designated a central authority in accordance with Article 27(2), with the involvement of that central authority.

Article 29

Multiple orders

1. If the competent authorities of the executing State are processing two or more freezing or confiscation orders concerning an amount of money which have been issued against the same natural or legal person, and the person concerned does not have sufficient means in the executing State to enable all the orders to be executed, the decision on which of the orders is or are to be executed shall be taken by the executing authority according to the law of the executing State, with due consideration of all of the circumstances.

   Those circumstances may include the interest of victims, the involvement of frozen assets, the dates of the respective orders and their dates of transmission and the relative seriousness and place of the offence.

2. Paragraph 1 shall also apply where the competent authorities of the executing State are processing two or more freezing or confiscation orders concerning the same specific item of property.

Article 30

Termination of execution

The issuing authority shall immediately inform the executing authority by any means capable of producing a written record of any decision or measure as a result of which the order ceases to be enforceable or shall be withdrawn for any other reason.

The executing State shall terminate the execution of the order as soon as it is informed by the issuing authority of that decision or measure.

Article 31

Management and disposal of frozen and confiscated property

1. The executing State shall manage the frozen or confiscated property with a view to preventing its depreciation in value, and in accordance with Article 10 of Directive 2014/42/EU.

2. Unless the confiscation order is accompanied by a decision to compensate the victim, or unless agreed otherwise by the Member States involved, taking also into account the need to provide assistance for the recovery of tax claims in accordance with Directive 2010/24/EU, money which has been obtained from the execution of the confiscation order shall be disposed of by the executing State as follows:

   (a) if the amount obtained from the execution of the confiscation order is equal to or less than EUR 10 000, the amount shall accrue to the executing State;

   (b) if the amount obtained from the execution of the confiscation order is more than EUR 10 000, 50 % of the amount shall be transferred by the executing State to the issuing State.

3. Where a judicial authority of the issuing State has issued a decision to compensate or restitute the victim, the corresponding sum, in so far as it is does not exceed the confiscated sum, shall accrue to the issuing State for the purposes of compensation or restitution of the victim. Any remaining property is to be disposed of in accordance with paragraph 2.

4. Property other than money, which has been obtained as a result of the execution of the confiscation order, shall be disposed of in accordance with the rules set out in points (a) to (e).

   (a) The property may be sold; in that case, the proceeds of the sale shall be disposed of in accordance with paragraph 2.

   (b) The property may be transferred to the issuing State; if the confiscation order covers an amount of money, the property may only be transferred to the issuing State when the issuing authority has given its consent.

   (c) The property may be used for public interest or social purposes in the executing State in accordance with its laws, subject to the agreement of the issuing State.

   (d) When it is not possible to apply point (a) or (b), the property may be disposed of in another way in accordance with the law of the executing State.

   (e) Where a judicial authority of the issuing State has issued a decision to restitute the property to the victim, the executing authority shall take necessary measures to ensure the property is restituted to the victim; where it is not possible to restitute the property to the victim, the value of the property shall accrue to the issuing State for the purposes of restitution to the victim and any remaining property shall be disposed of in accordance with paragraph 2.

5. The issuing authority shall communicate the decision referred to in paragraph 3 and 4(d) to the executing authority. If a procedure to compensate or restitute the victim is

pending in the issuing State, the executing State shall withhold the disposition of the confiscated property until the decision is communicated to the executing authority.

Article 32

Costs

1. Member States may not claim from each other the refund of costs resulting from the application of this Regulation.

2. Where the executing State has had costs which it considers large or exceptional, the executing authority may propose to the issuing authority that the costs be shared. The issuing authority shall take into account such a proposal on the basis of detailed specifications given by the executing authority.

Article 33

Legal remedies in the executing State against recognition and execution

1. Any interested party, including *bona fide* third parties, shall have legal remedies, including those provided for in Article 8 of Directive 2014/42/EU, against the recognition and execution of an order pursuant to Article 8 and 17, in order to preserve their rights. The legal remedy shall be brought before a court in the executing State in accordance with its national law. The action may have suspensive effect under the law of the executing State.

2. The substantive reasons for issuing the freezing or confiscation order shall not be challenged before a court in the executing State.

3. The competent authority of the issuing State shall be informed of any legal remedy filed in accordance with paragraph 1 .

Article 34

Reimbursement

1. Where the executing State is responsible under its national law for injury caused to one of the interested parties referred to in Article 33 by the execution of a freezing or confiscation order transmitted to it pursuant to Articles 4 and 14, the issuing State shall reimburse the executing State of any sums paid in damages by virtue of that responsibility to the interested party except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of the executing State.

2. Paragraph 1 is without prejudice to the law of the Member States on claims by natural or legal persons for compensation of damage.

CHAPTER V

FINAL PROVISIONS

Article 35

Statistics

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, in addition to those foreseen in Article 11(2) of Directive 2014/42/EU:

(a) the number of freezing orders and confiscation orders received from another Member State;

(b) the number of freezing orders and confiscation orders received from another Member State, the recognition and execution of which were refused;

(c) the number of cases where a victim was compensated or restituted from the property obtained by the execution a confiscation order in accordance with this Regulation;

(d) the average duration of the execution of freezing and confiscation orders in accordance with this Regulation.

Article 36

Amendments to the certificate and the form

The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning any amendment to the certificate and to the form set out in Annexes I and II.

Article 37

Exercise of delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 36 shall be conferred for an indeterminate period of time from the *[Date of application of this Regulation]*.

3. The delegation of powers referred to in Article 36 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affet the validity of ay delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 36 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by *[2 months]* at the initiative of the European Parliament or the Council.

Article 38

Review clause

By [*five years from the date of application of this Regulation*] at the latest, the Commission shall submit a report to the European Parliament, the Council and the European Economic and Social Committee on the application of this Regulation. If necessary, the report shall be accompanied by proposals for adaptation of this Regulation.

Article 39

Replacement

This Regulation replaces Framework Decision 2003/577/JHA and Framework Decision 2006/783/JHA between the Member States bound by this Regulation as from *[date of application of this Regulation]* .

Article 40

Entry into force

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

It shall apply from [*date of entry into force of the Regulation plus six months*], with the exception of Article 27, which shall apply from *[date of entry into force of the Regulation]*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*