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**NOTE**

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From:	Presidency
To:	Delegations
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders - Revised draft consolidated text

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Following the meeting of the Friends of the Presidency on 13 April and the meeting of the JHA Counsellors on 2 May, delegations will find attached a draft consolidated text by the Presidency.

Texts in **bold** and *italics* refer to texts that have been discussed during the political and/or technical trilogues and that either have been provisionally agreed during those trilogues, or that result from the compromise package that was proposed by the EP (see WK 4801/2018); texts in **bold** and normal letters are the latest suggestions by legal-linguists; texts that have been marked by underlining are new and are still to be agreed.

*Texts in the recitals in blue have not been discussed yet, but the EP informally indicated that they will most probably be happy with the texts concerned.*

To be noted that the text contains two suggestions by Eurojust, in recitals 30 and 31. The Presidency is still analysing if, and to what extent, (minor) modifications should be made in order to align the text of the draft Regulation with the revised certificates (as set out in 8597/18).

In view of the meeting of the Friends of the Presidency on 14 May 2018, delegations are invited to scrutinise the text carefully. The Presidency aims at establishing a final compromise text that could be offered to the European Parliament for the fifth trilogue, which is scheduled to take place on 30 May 2018.

To be noted that the texts in yellow, relating to the ground for non-recognition based on fundamental rights, will already be discussed during the meeting of the JHA Counsellors on 8 May 2018.

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**DRAFT REGULATION ON THE MUTUAL RECOGNITION OF FREEZING AND  
CONFISCATION ORDERS**

- (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) **The freezing and the confiscation of instrumentalities and proceeds of crime are among the most effective means of combatting crime. The Union is committed to ensuring more effective identification, confiscation and re-use of criminal assets *in accordance with the "The Stockholm programme – An open and secure Europe serving and protecting the citizens"*.<sup>1</sup>**
- (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<sup>2</sup> and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

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<sup>1</sup> OJ C 115, 4.5.2010, p.1.

<sup>2</sup> OJ L 196, 2.8.2003, p. 45.

- (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 *and sub-optimal cross-border cooperation*.
- (7) The Union legal framework on mutual recognition of freezing orders and confiscation orders has not kept up with recent legislative developments at Union and national levels. In particular, Directive 2014/42/EU *of the European Parliament and of the Council*<sup>3</sup> sets out common minimum rules on *the* freezing and *the* confiscation of property. These common minimum rules concern: (i) the confiscation of proceeds and instrumentalities of crime, including in cases of illness *or* absconding of the suspect or accused person, where criminal proceedings have already been initiated *regarding a criminal offence*; (ii) extended confiscation; *and* (iii) third party confiscation. Those common minimum rules also concern the freezing of property with a view to possible subsequent confiscation. The types of freezing and confiscation 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 *in a declaration* that an effective system of freezing and confiscation in the Union is inherently linked to the well-functioning mutual recognition of freezing orders and confiscation orders. Considering the need to put in place a comprehensive system for freezing and confiscation of the 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 orders and confiscation orders.

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<sup>3</sup> 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).

- (9) In *its communication on the "European Agenda on Security" of 28 April 2015*, 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 orders and confiscation orders.
- (10) In its communication on an "Action Plan for strengthening the fight against terrorist financing" *of 2 February 2016*, 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 orders 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 orders 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 *orders* to confiscate property by establishing rules *that oblige* a Member State to recognise *without further formalities* the freezing *orders* and confiscation orders issued by another Member State within the framework of proceedings in criminal *matters and to execute those orders in its territory*.

- (13) This Regulation should apply to all freezing orders and to all confiscation orders issued within the framework of proceedings *in criminal matters*. *'Proceedings in criminal matters' is an autonomous concept of Union law interpreted by the Court of Justice of the European Union, notwithstanding the case-law of the European Court of Human Rights*. It should therefore cover all types of *freezing orders and confiscation orders issued following proceedings in relation to a criminal offence, not only orders* covered by Directive 2014/42/EU, *but also* other types of orders issued without a final conviction. *While such orders might not exist in the legal system of a Member State, the Member State concerned should be able to recognise and execute the order issued by another Member State. Proceedings in criminal matters could also encompass criminal investigations by the police and other law enforcement authorities. Freezing orders and confiscation orders that are issued within the framework of proceedings in civil or administrative matters are excluded from the scope of this Regulation.*
- (14) This Regulation should cover freezing *orders* and confiscation orders related to offences covered by Directive 2014/42/EU, as well as such orders related to other offences. The offences should therefore not be limited to particularly serious crimes *that have* a cross-border dimension, as Article 82 of the *Treaty on the Functioning of the European Union (TFEU)* does not require such limitation for measures laying down rules and procedures for ensuring the mutual recognition of judgments in criminal matters.
- (15) Cooperation between Member States, *which is* 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 of persons *that are affected by a freezing order or a confiscation order should be preserved. Such affected persons, who could be natural persons or legal persons, should include the person against whom a freezing order or a confiscation order was issued, or the person owning the property that is covered by that order, as well as any third parties whose rights in relation to that property are directly prejudiced by that order, including bona fide third parties. Whether such third parties are directly prejudiced by a freezing order or a confiscation order, is to be decided in accordance with the law of the executing State.*

- (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 *Treaty on European Union* (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 includes that any discrimination based on any ground such as sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinion, or disability should be prohibited.* This Regulation should be applied in accordance with those rights and principles.
- (18) *The procedural rights set out in Directives 2010/64/EU<sup>4</sup>, 2012/13/EU<sup>5</sup>, 2013/48/EU<sup>6</sup>, 2016/343<sup>7</sup>, 2016/800<sup>8</sup> and 2016/1919<sup>9</sup> of the European Parliament and of the Council should apply, within the scope of these Directives, to criminal proceedings covered by this Regulation as regards the Member States bound by those Directives. In any case, the safeguards under the Charter should apply to all proceedings covered by this Regulation. In particular, the essential safeguards of criminal proceedings set out in the Charter should apply to proceedings in criminal matters covered by this Regulation, which are not criminal proceedings.*

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<sup>4</sup> 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).

<sup>5</sup> 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).

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> 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).

<sup>9</sup> 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).

*(18a) While 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, fundamental rights should be respected.*

*(18b) When assessing double criminality, the competent authority of the executing State should verify whether the factual elements underlying the offence, as reflected in the freezing certificate or confiscation certificate submitted by the competent authority of the issuing State, would also, per se, be subject to a criminal penalty in the executing State if they were present in that State at the time of the decision on the recognition.*

*(18c) The issuing authority should ensure that, when issuing a freezing order or a confiscation order, the principles of necessity and proportionality are respected. In application of this Regulation, a freezing order or a confiscation order should only be issued and transmitted to the executing authority in another Member State when it could have been issued and used solely in a domestic case. The issuing authority should be responsible for assessing the necessity and proportionality of such orders in each case, as the recognition and execution of freezing orders and confiscation orders should not be refused on grounds other than those provided for in this Regulation.*



**(18d) Member States should be able to present a declaration stating that, when a freezing certificate or a confiscation certificate is transmitted to them with a view to the recognition and execution of a freezing order or a confiscation order, the issuing authority should transmit, together with the freezing certificate or the confiscation certificate, the original freezing order or confiscation order, or a certified copy thereof. Member States should inform the Commission when they present or withdraw such a declaration. The Commission should make the information received available to all Member States and to the European Judicial Network created by Joint Action 98/428/JHA.<sup>10</sup> The EJN should make the information available on the website referred to in Article 9 of Council Decision 2008/976/JHA.<sup>11</sup>**

(19) Where a freezing order is issued by a court, the issuing authority could also include an authority, designated by the issuing State, which is competent in criminal matters to execute or enforce the freezing order in accordance with national law.

**(20) The issuing authority should transmit a freezing certificate or a confiscation certificate, together with the freezing order or confiscation order where applicable, directly to the executing authority or, where applicable, to the central authority of the executing State by any means capable of producing a written record under conditions that allow the executing authority to establish authenticity, including by registered mail and by secured e-mail. The issuing authority should be able to make use of any relevant means of transmission, including the secure telecommunications system of the European Judicial Network (EJN), Eurojust, or other channels used by judicial authorities.<sup>12</sup>**

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<sup>10</sup> Joint Action 98/428/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

<sup>11</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

<sup>12</sup> Addition comes from EP's AM 17.

*(20a) The issuing authority should transmit the freezing certificate or the confiscation certificate, relating to an order concerning an amount of money, to the Member State where the issuing authority has reasonable grounds to believe that the person against whom the order was issued has property or income. On this basis, the certificate could be transmitted to the Member State in which the natural person, against whom the order was issued, is residing or, if this person has no permanent or settled address, is habitually residing. If the order was issued against a legal person, the certificate could be transmitted to the Member State where the legal person is domiciled.*

*(20b) With a view to the administrative transmission and reception of certificates relating to freezing orders and confiscation orders, Member States could designate one or more central authorities if this is necessary because of the structure of their internal legal system. Such central authorities could also provide administrative support, play a coordination role and assist in the collection of statistics, thus facilitating and promoting the mutual recognition of freezing orders and confiscation orders.*

*(21) Where a confiscation certificate concerning an amount of money is transmitted to more than one executing State, the issuing State should seek to avoid that more property is confiscated than necessary so that the total value would go beyond the maximum amount. To that end, the issuing authority should, among other things, (i) indicate in the confiscation certificate the value of assets, if known, in each executing State, so that the executing authorities can take account thereof; (ii) maintain the necessary contacts and dialogue with the executing authorities on the property to be confiscated; and (iii) inform the relevant executing authority or authorities immediately if it considers that there could be a risk that execution beyond the maximum amount might occur. Where appropriate, Eurojust could exercise a coordinating role within its remit in order to avoid excessive confiscation.*

*(21a) Member States should be encouraged to make a declaration, stating that, as executing States, they would accept freezing certificates or confiscation certificates, or both, in one or more official language(s) of the European Union other than their official language(s).*

- (22) The executing authority should recognise *a freezing order or* a confiscation order and should take the measures necessary for its execution. The decision on the recognition and execution of *the freezing order or* the confiscation order should be taken, and the freezing or confiscation should be carried out, with the same *speed* and priority as for similar domestic cases. Time limits, *which should be calculated in accordance with Regulation 1182/71*,<sup>13</sup> should be set out in order to ensure a quick and efficient decision and execution of the *freezing order or* the confiscation order. *As regards freezing orders, the executing authority should, no later than 48 hours after the decision on the recognition and execution of such an order has been taken, start taking the concrete measures necessary to execute that 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 substance of the freezing order. *This is without prejudice to the obligation to inform affected persons of the execution of a freezing order in accordance with this Regulation.*
- (26) The recognition and execution of a freezing order or a confiscation order should not be refused on grounds other than those provided for 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 *ne bis in idem* principle, on the basis of the rights of any interested party, or on the basis of the right to be present at the trial.

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<sup>13</sup> Regulation 1182/71 of the Council of 3 June 1971 on determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

*(26a) There should be a ground for non-recognition of confiscation orders based on the fact that the person did not appear in person at the trial resulting in a confiscation order linked to a final conviction. This ground for non-recognition only applies to trials resulting in confiscation orders linked to a final conviction and does not apply to proceedings resulting in non-conviction based confiscation orders. However, in order for such ground to be able to apply, one or more hearings should be held. The ground cannot apply if the relevant national rules of procedure do not provide for a hearing. Such national rules should comply with the Charter and with the ECHR, in particular with regard to the right to a fair trial. This is the case, for example, where the proceedings are conducted in a simplified manner following, solely or in part, a written procedure or a procedure in which no hearing is provided for.*

*(26b) In exceptional circumstances only, it should be possible not to recognize or execute a freezing order or confiscation order where such recognition or execution would prevent the executing State from applying its constitutional rules relating to freedom of the press and freedom of expression in other media.*

*(26c) The creation of an area of freedom, security and justice within the Union is based on mutual trust and a presumption of compliance by other Member States with Union law and, in particular, with fundamental rights. However, in exceptional situations, when there are substantial grounds to believe, on the basis of objective, reliable, specific and properly updated evidence, that the execution of a freezing order or a confiscation order would, in the particular circumstances of the case, entail a manifest breach of the executing State's obligations in accordance with Article 6 TEU and the Charter, the executing authority should be able to decide not to recognize or execute the order concerned.*

- (27) Before deciding *not to recognise or execute a freezing order or a confiscation order on the basis of any ground for non-recognition or non-execution*, the executing authority should consult the issuing authority, in order to obtain any necessary additional information.
- (27a) *When examining a request from the executing authority to limit the period for which the property should be frozen, the issuing authority should take into account all circumstances of the case, in particular whether the continuation of the freezing order could cause unjustified damage in the executing State. The executing authority is encouraged to consult with the issuing authority on this issue before making a formal request.*
- (27b) *The issuing authority should inform the executing authority when the authority of the issuing State receives any sum of money which the person concerned has paid in respect of the confiscation order, it being understood that the executing State must only be notified if the amount of payment towards the order impacts on the amount that should be confiscated pursuant to the order.*
- (28) It should be possible for the executing authority to postpone the execution of *a freezing order or a confiscation order, in particular* where its execution might damage an ongoing criminal investigation. As soon as there is no longer a ground for postponement, the executing authority should take the measures *necessary* to execute the order.

*(28a) After the execution of a freezing order, and following the decision to recognise and execute a confiscation order, the executing authority should, in so far as possible, inform affected persons known to it of such execution or such decision. This means that the executing authority should do all reasonable efforts to determine who the affected persons are, verify how they can be reached and inform those persons of the execution of the freezing order or of the decision to recognise and execute a confiscation order. In carrying out these obligations, the executing authority could ask the issuing authority for assistance, for example when the affected persons appear to reside in the issuing State. The obligation under this Regulation for the executing authority to provide information to affected persons is without prejudice to any obligation incumbent on the issuing authority to provide information to persons under the law of the issuing State, for example regarding the issue of a freezing order or regarding existing legal remedies under the law of the issuing State.*

*(28b) In order to ensure the adequate management of the frozen property, the executing authority has the possibility to sell or transfer the property, where necessary, in accordance with Article 10 of Directive 2014/42/EU, in particular where the property is frozen for a considerable period of time.*

(29) The issuing authority should be notified without delay *if it is impossible* to execute an order. Such impossibility might arise *because* the property has already been confiscated, has disappeared, *has been destroyed*, cannot be found at the location indicated by the issuing authority, or *because* the location of the property has not been indicated in a sufficiently precise manner *despite consultations between the executing authority and the issuing authority. In such circumstances, the executing authority should no longer be under the obligation to execute the freezing order.*

*(29a) Where mandatory provisions of law in the executing State make the execution of a freezing order or a confiscation order legally impossible, the executing authority should contact the issuing authority in order to discuss the situation and to find a solution. Such a solution could consist in the issuing authority withdrawing the order concerned.*

- (29b) *As soon as the execution of a confiscation order has been completed, the executing authority should inform the issuing authority of the results of the execution. Where practically possible, the executing authority should, at this occasion, also inform the issuing authority of the amount of money or the property that has been confiscated, and of other details that it considers relevant.*
- (30) The execution of *a freezing order or* a confiscation order should be governed by the law of the executing Member State and *only* its authorities should be competent to decide on the procedures for execution. *Where appropriate, the issuing and executing authority could invite Eurojust or EJM to provide assistance, within their remit, concerning issues relating to the execution of freezing orders and confiscation orders.* <sup>14</sup>
- (31) The proper operation of this Regulation presupposes close communication between the competent national authorities involved, in particular in cases of *the* simultaneous execution of a confiscation order in more than one Member State. The competent national authorities should therefore consult each other whenever necessary, *directly or, where appropriate, via Eurojust.* <sup>15</sup>
- (32) The victims' rights to compensation and restitution should not be prejudiced in cross-border cases. Rules for the disposal *of frozen and* confiscated property should give priority to the compensation and restitution of property to victims. *The notion of victim is to be interpreted in accordance with the national law of the issuing State, which could also provide that a legal person could be a victim for the purpose of this Regulation. This Regulation should be without prejudice to rules on compensation and restitution of property to victims in national proceedings.*

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<sup>14</sup> Additional sentence proposed by Eurojust.

<sup>15</sup> Refinement proposed by Eurojust.

*(32a) Where an executing authority has received information on a decision, issued by the issuing authority or by another competent judicial authority in the issuing State, to reconstitute frozen property to the victim, it should take the necessary measures to ensure that the property concerned is frozen and reconstituted to the victim as soon as possible. The executing authority could transfer the property to the issuing State, so that the latter could reconstitute the property to the victim, or directly to the victim subject to the consent of the issuing State. The obligation to reconstitute frozen property to the victim should be subject to the following conditions: (I) the title of the victim to the property should not be contested, meaning that it is accepted that the victim is the rightful owner of the property and there are no serious claims putting this into question; (II) the property should not be required as evidence in criminal proceedings in the executing State; and (III) the rights of affected persons, in particular of bona fide third parties, should not be prejudiced. The executing authority should reconstitute frozen property to the victim only if these conditions are met. Where an executing authority considers that those conditions have not been met, it should consult with the issuing authority, for example to request for any additional information and discuss the situation, in order to find a solution. If no solution can be found, the executing authority could decide not to reconstitute the frozen property to the victim.*

*(32b) Each Member State should consider establishing a national centralised office responsible for the management of frozen properties with a view to possible later confiscation, as well as for the management of confiscated assets and properties. Frozen properties and confiscated properties could be earmarked as a matter of priority for law enforcement and organised crime prevention projects and for other projects of public interest and social utility.*

*(32c) Each Member State should consider establishing a national fund to guarantee appropriate compensation for victims of crime, such as families of police officers and public servants killed or permanently disabled in the line of duty. Member States could earmark a portion of confiscated assets for that purpose.*



- (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 Member State has *incurred* large or exceptional costs, *for example because the property has been frozen for a considerable period of time*, any proposal by the executing authority that the costs be shared should be taken into account by the issuing authority.
- (34) (deleted)
- (35) In order to *be able in the future to address identified problems regarding the content of* the certificates set out in Annexes I and II to this Regulation *as quickly as possible*, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission *in respect of amendments to such certificates*. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, *and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.*
- (36) Since the objective of this Regulation, namely the mutual recognition and execution of freezing orders 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 TEU. 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 of the European Parliament and of the Council as regards the freezing of evidence *for the Member States bound by that Directive*. Provisions of Framework Decision 2003/577/JHA should be replaced by this Regulation between Member States bound by it as regards freezing with a view to the subsequent confiscation of property. This Regulation should also replace Framework Decision 2006/783/JHA as between Member States bound by it. *The provisions of Framework Decision 2003/577/JHA as regards freezing with a view to the subsequent confiscation of property, as well as those of Framework Decision 2006/783/JHA, should therefore continue to apply not only between the Member States that are not bound by this Regulation, but also between any Member State that is not bound by this Regulation and any Member State that is bound by this Regulation.*
- (37a) *The legal form of this act should not constitute a precedent for future legislative instruments of the Union in the field of mutual recognition of judgments and judicial decisions in criminal matters. The choice of the legal form for future acts should be carefully assessed on a case-by-case basis taking into account, among other factors, the effectiveness of the instrument and the principles of proportionality and subsidiarity.*
- (37b) *Member States should ensure that in accordance with Council Decision 2007/845/JHA<sup>16</sup>, their Asset Recovery Offices cooperate with each other for the purposes of facilitating of the tracing and identification of proceeds of crime and other crime-related property which may become the object of a freezing order or confiscation order.*
- (38) In accordance with Article 3 and Article 4a(1) of Protocol No 21 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 has notified its wish to take part in the adoption and application of this Regulation.*

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<sup>16</sup> *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).*

- (38a) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, 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 Protocol No 22 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 not bound by it or subject to its application.

## 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 *order* or a confiscation order issued by another Member State within the framework of proceedings *in criminal matters*.
2. This Regulation shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 TEU.
3. *The issuing authority shall ensure that the principles of necessity and proportionality are respected, when issuing a freezing order or a confiscation order.*
4. *This Regulation does not apply to freezing orders and confiscation orders issued within the framework of proceedings in civil or administrative matters.*

#### 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 decision issued or validated by an issuing authority in order to prevent the destruction, transformation, removal, transfer or disposal of property with a view to *the* confiscation thereof;

- (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,<sup>17</sup> which the issuing authority considers to be:
- (a) the proceeds of a **criminal** offence, or its equivalent, **whether** the full amount of the value or only part of the value of such proceeds;
  - (b) the instrumentalities of such an offence, or the value of such instrumentalities;
  - (c) **subject** to confiscation **through** the application in the issuing State of any of the powers of confiscation provided for in Directive 2014/42/EU; or
  - (d) **subject** to confiscation under any other provisions relating to powers of confiscation, **including confiscation without a final conviction** under the law of the issuing State ***following proceedings in relation to a criminal offence.***
- (4) 'proceeds' means any economic advantage derived directly or indirectly from a criminal offence, consisting of any form of property and including 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;
- (6) 'issuing State' means the Member State in which a freezing order or a confiscation order is issued;
- (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;

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<sup>17</sup> Text identical to the corresponding text in Directive 2014/42/EU.

- (8) ‘issuing authority’ means:
- (a) in respect of a freezing order:
    - (i) a judge, a court, or a public prosecutor competent in the case concerned; or
    - (ii) any other competent authority ***which is designated as such*** by the issuing State ***and*** which has competence in ***criminal matters*** to order the freezing of property or to execute a freezing order in accordance with national law; **where the order has been validated by a judge, court or public prosecutor in the issuing State after having examined its conformity with the conditions for issuing such an order under this Regulation, that authority may also be regarded as an issuing authority for the purposes of transmitting the order;**
  - (b) in respect of a confiscation order, an authority ***which is designated as such*** by the issuing State ***and*** which is competent in ***criminal matters*** to enforce a confiscation order issued by a court in accordance with national law;
- (9) ‘executing authority’ means an authority ***that is*** competent to recognise a freezing ***order*** or a confiscation order and to ensure its execution in accordance with this Regulation and the procedures applicable ***under national law for the freezing and confiscation of property;*** **where such procedures require that a court registers the order and authorises the execution thereof, the executing authority also includes the authority that is competent to request such registration and authorisation by the court;**
- (10) ***'affected person' means the natural or legal person against whom a freezing order or a confiscation order was issued, or the natural or legal person owning the property that is covered by that order, as well as any third parties whose rights in relation to that property are directly prejudiced by that order in accordance with the law of the executing State.***

## Article 3

### Offences

1. A freezing order or a confiscation order shall *be executed* without verification of the double criminality of the acts giving rise to *such* order, if these acts are punishable in the issuing State by a custodial sentence of a maximum of at least three years and constitute one or more of the following offences under the law of the issuing State:
  - (1) participation in a criminal organisation,
  - (2) terrorism,
  - (3) trafficking in human beings,
  - (4) sexual exploitation of children and child pornography,
  - (5) illicit trafficking in narcotic drugs and psychotropic substances,
  - (6) illicit trafficking in weapons, munitions and explosives,
  - (7) corruption,
  - (8) fraud, including fraud and other criminal offences as defined in Directive (EU) 2017/1371 of the European Parliament and of the Council <sup>18</sup>,
  - (9) laundering of the proceeds of crime,
  - (10) counterfeiting currency, including the euro,
  - (11) computer-related crime,
  - (12) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
  - (13) facilitation of unauthorised entry and residence,

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<sup>18</sup> Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ L 198, 28.7.2017, p. 29).

- (14) murder, or grievous bodily injury,
- (15) illicit trade in human organs and tissue,
- (16) kidnapping, illegal restraint or hostage-taking,
- (17) racism and xenophobia,
- (18) organised or armed robbery,
- (19) illicit trafficking in cultural goods, including antiques and works of art,
- (20) swindling,
- (21) racketeering and extortion,
- (22) counterfeiting and piracy of products,
- (23) forgery of administrative documents and trafficking therein,
- (24) fraud and counterfeiting of non-cash means of payment,
- (25) illicit trafficking in hormonal substances and other growth promoters,
- (26) illicit trafficking in nuclear or radioactive materials,
- (27) trafficking in stolen vehicles,
- (28) rape,
- (29) arson,
- (30) crimes within the jurisdiction of the International Criminal Court,
- (31) unlawful seizure of aircraft or ships,
- (32) sabotage.



2. For offences other than those referred to in paragraph 1, the executing State may make the recognition and execution of a freezing order or a confiscation order subject to the condition that the acts giving rise to the freezing order or the 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 FREEZING ORDERS

#### Article 4

##### Conditions for issuing and transmitting a freezing order

*Deleted (entire article)*

#### Article 5

##### Transmission of freezing orders

1. A freezing order shall be transmitted *through a freezing certificate*. The issuing authority *shall transmit a freezing certificate* as referred to in Article 7 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. *Member States may present a declaration stating that, when a freezing certificate is transmitted to them with a view to the recognition and execution of a freezing order, the issuing authority must transmit, together with the freezing certificate, the original freezing order or a certified copy thereof. However, only the freezing certificate has to be translated, in accordance with Article 7(2).*
  - 2a. *Member States may present the declaration referred to in paragraph 2 at the moment of adoption of this Regulation, or at a later date. Member States may withdraw a declaration at any time. Member States shall inform the Commission when they present or withdraw a declaration. The Commission shall make the information received available to all Member States and to the European Judicial Network ("EJN") as set out in Council Decision 2008/976/JHA.*

3. As regards a freezing order concerning an amount of money, *the issuing authority* shall transmit the *freezing certificate* to the Member State *where* the issuing authority has reasonable grounds to believe that person against whom the order was issued has property or income.
4. As regards a freezing order concerning specific items of property, *the issuing authority shall transmit* the *freezing certificate* to the Member State where the issuing authority has reasonable grounds to believe that property covered by the freezing order is located.
5. The freezing *certificate* referred to in paragraph 1 shall:
  - (a) be accompanied by a confiscation *certificate* transmitted in accordance with Article 17, or
  - (b) contain an instruction that the property *is to* remain frozen in the executing State pending the transmission *and execution* of the confiscation order in accordance with Article 17, *in which case* the issuing authority shall indicate the estimated date for this transmission in the *freezing certificate* referred to in Article 7.
6. The issuing authority shall inform the executing authority if it is aware of any *person* that is *affected* by the freezing order. *The issuing authority shall, upon request, also inform the executing authority of any information relevant to any claim that such an affected person may have in relation to the property, including any information identifying that person.*
7. *Where, despite the information that is made available in accordance with Article 27(3), the competent executing authority is unknown, the issuing authority shall make all necessary inquiries, including through the contact points of the EJN, in order to obtain information about which authority is competent for the recognition and execution of the freezing order.*
8. Where the authority which receives a freezing order has no competence to recognise it or take the measures necessary for its execution, that authority shall immediately, transmit the freezing order to the competent executing authority in its Member State and shall inform the issuing authority accordingly.

## Article 6

### Transmission of a freezing order to one or more executing States

1. A freezing *certificate* shall only be transmitted pursuant to Article 5 to one executing State at any one time, *unless the conditions of paragraphs 2 or 3 apply*.
2. *Notwithstanding paragraph 1*, where a freezing order *concerns* specific items of property, the freezing *certificate* may be transmitted to more than one executing State at the same time *if*:
  - (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, or
  - (b) the freezing of a specific item of property covered by the freezing order *would require* action in more than one executing State.
3. *Notwithstanding paragraph 1, where* a freezing order *concerns* an amount of money, the freezing *certificate* 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 freezing of the full amount covered by the freezing order.

## Article 7

### Standard freezing certificate

1. The issuing authority shall complete the *freezing certificate set out in Annex I, shall* sign it and *shall* certify its content as *being* accurate and correct.
2. The issuing authority shall translate the freezing certificate into an official language of the executing State or into any other language *that the executing State will accept* 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 freezing orders**

1. The executing authority shall recognise a freezing order that has been transmitted in accordance with Article 5 and shall take the measures necessary to execute it *with the same speed and priority as for a domestic freezing order*, unless that authority invokes 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. The executing authority shall report to the issuing authority on the execution of the freezing order, including a description of the property frozen and, *where available*, an estimation of its value. *Such reporting shall be carried out using* any means capable of producing a written record, *without undue delay following the moment when the executing authority has been informed that the freezing order has been executed*.

## **Article 9**

### **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) executing the freezing order would be contrary to the ne bis in idem principle;

- (b) there is an immunity or privilege under the law of the executing State that would prevent the freezing of the property concerned or there are rules on the determination or limitation of criminal liability that relate to the freedom of the press and the freedom of expression in other media **that** prevent the execution of the order;
- (c) the *certificate* provided for in Article 7 is incomplete or manifestly incorrect, and has not been completed following the consultation **under** paragraph 2 *of this Article*;
- (d) the order is based on a criminal offence committed *wholly or partially* outside the territory of the issuing State and wholly or partially in the territory of the executing State and the conduct in connection with which the order was issued is not an offence in the executing State;
- (e) in a case falling under Article 3(2), the conduct giving rise to the order does not constitute an offence under the law of the executing State; however, in cases that involve taxes or duties, or customs and exchange regulations, the execution of the freezing order shall not be refused on the grounds that the law of the executing State does not impose the same kind of taxes or duties or does not contain the same type of rules as regards taxes and duties or the same type of customs and exchange regulations as the law of the issuing State;
- (f) there are substantial grounds to believe that the execution of the freezing order would, in the particular circumstances of the case, entail a manifest breach of the executing State's obligations in accordance with Article 6 TEU and the Charter.**

2. In [*any of*] the cases referred to in paragraph 1, before deciding not to recognise or not to execute the freezing order, whether 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.

## Article 10

### Time limits for recognition and execution of freezing orders

1. *The executing authority shall take a* decision on the recognition and execution of the freezing order and execute this decision *without delay* and the same *speed* and priority as for a similar domestic case *after the executing authority has received the freezing certificate*.
2. Where the issuing authority has indicated in the freezing certificate that the freezing measure is to be carried out on a specific date, the executing authority shall take as full account *as possible thereof*.
3. Without prejudice to paragraph 5, where the issuing authority has stated in the freezing certificate that immediate freezing is necessary since there are legitimate grounds to believe that the property in question will imminently be removed or destroyed, the executing authority shall decide on the recognition of the freezing order no later than **48** hours after it has been received by the executing authority. The executing State shall, no later than **48** hours after such decision has been taken, take concrete measures necessary to execute the order.
4. The executing authority shall communicate the decision *on the recognition and execution of a* freezing order to the issuing authority without delay **using** any means capable of producing a written record.
5. Where it is not possible in a specific case to meet the time limits set out in paragraph 3, 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 *schedule* to execute the freezing order. *The expiry of the time limits shall not relieve the executing authority of its obligation to adopt a decision on the recognition and execution of the freezing order and to execute that order without delay.*

**Article 11**  
**Postponement of execution of freezing orders**

1. The executing authority may postpone the execution of a freezing order transmitted in accordance with Article 5 where:
  - (a) its execution might damage an ongoing criminal investigation, in which case the execution of the freezing order may be postponed until such time as the executing authority deems reasonable;
  - (b) the property is already the subject of an existing freezing order, in which case the execution of the freezing order may be postponed until such existing orders are withdrawn; or
  - (c) the property is already subject to an existing order issued in the course of other proceedings in the executing State, in which case the execution of the freezing order may be postponed until that such existing order is withdrawn. However, this point shall only apply where such existing order would have priority over subsequent national freezing orders in criminal matters under national law.
2. The executing authority shall immediately report to the issuing authority on the postponement of the execution of the order, by any means capable of producing a written record, 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 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 12 Confidentiality

1. *During* the execution of a freezing order, the issuing authority and the executing authority shall take due account of the confidentiality of the investigation.
2. Except to the extent necessary to execute *the order*, the executing authority shall guarantee the confidentiality of the facts and substance of the freezing order in accordance with its national law. *As soon as the freezing order has been executed, affected persons shall be informed thereof in accordance with Article 32a, without prejudice to paragraph 3 of this Article.*
3. To protect ongoing investigations, the issuing authority may request the executing authority *to postpone informing affected persons of the execution of the freezing order in accordance with Article 32a. As soon as it is no longer necessary to postpone informing affected persons in order to protect ongoing investigations, the issuing authority shall inform the executing authority accordingly, so that it can inform affected persons of the execution of the freezing order in accordance with Article 32a.*
4. If the executing authority cannot comply with the *confidentiality obligations under* this Article, it shall notify the issuing authority immediately, and, where possible, prior to the execution of the freezing order.

## Article 14

### 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 17, or until the issuing authority has informed the executing authority of any decision or measure that causes the order to be unenforceable or to be withdrawn in accordance with Article 30(1).
  
2. The executing authority may, taking into account the circumstances of the case, make a reasoned request to the issuing authority to limit the period for which the property shall be frozen. *The request, including any relevant supporting information, shall be transmitted by any means capable of producing a written record, under conditions allowing the issuing State to establish the authenticity of the request. When examining such a request, the issuing authority shall take all interests into account, including those of the executing authority. The issuing authority shall react to the request as soon as possible.* If the issuing authority does not agree to the limitation, it shall inform the executing authority of its reasons. *In such case, the property shall remain frozen in accordance with paragraph 1.* If the issuing authority does not react within six weeks of receiving the request, *the executing authority is no longer obliged to execute the freezing order.*

**Article 15**  
**Impossibility to execute a freezing order**

1. Where *an executing authority considers that* it is impossible to execute a freezing order, *it shall notify* the issuing authority thereof without delay.
2. *Before notifying the issuing authority in accordance with paragraph 1, the executing authority shall, where appropriate, consult with the issuing authority.*
3. *The non-execution of a freezing order under this Article can only be justified if the property:*
  - (a) has already been confiscated;
  - (b) has disappeared;
  - (c) has been destroyed;
  - (d) cannot be found in the location indicated on the *freezing* certificate; **or**
  - (e) cannot be found because its location has not been indicated in a sufficiently precise manner, despite the consultations referred to in paragraph 2.
4. *As regards the situations under points (b), (d) and (e) of paragraph 3, if the executing authority subsequently obtains information allowing it to locate the property, the executing authority shall execute the freezing order without a new freezing certificate having to be transmitted, provided that the executing authority, prior to executing the freezing order, has verified with the issuing authority that the freezing order is still valid.*
5. *Notwithstanding paragraph 3, in case the issuing authority has indicated that property of equivalent value could be frozen, the non-execution of a freezing order under this Article can be justified if one of the circumstances set out in paragraph 3 exists and there is no property of equivalent value that can be confiscated.*

**Article 16 (Reporting)** - Transferred to Art. 17.

## CHAPTER III

### TRANSMISSION, RECOGNITION AND EXECUTION OF CONFISCATION ORDERS

#### Article 17

##### Transmission of confiscation orders

1. A confiscation order shall be transmitted *through a confiscation certificate*. *The issuing authority shall transmit the confiscation certificate provided for in Article 20* 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 that allow the executing authority to establish authenticity.
2. *Member States may present a declaration stating that, when a confiscation certificate is transmitted to them with a view to the recognition and execution of a confiscation order, the issuing authority must transmit, together with the confiscation certificate, the original confiscation order or a certified copy thereof. However, only the confiscation certificate has to be translated, in accordance with Article 20(2).*
  - 2a. *Member States may present the declaration referred to in paragraph 2 at the moment of adoption of this Regulation, or at a later date. Member States may withdraw a declaration at any time. Member States shall inform the Commission when they present or withdraw a declaration. The Commission shall make the information received available to all Member States and to the EJN.*
3. As regards a confiscation order concerning an amount of money, *the issuing authority shall transmit the confiscation certificate* to the Member State where the issuing authority has reasonable grounds to believe that person against whom the order was issued has property or income.
4. As regards a confiscation order concerning specific items of property, *the issuing authority shall transmit the confiscation certificate* to the Member State where the issuing authority has reasonable grounds to believe that property covered by the confiscation order is located.

5. Where, *despite the information that is made available in accordance with Article 27(3)*, the competent executing authority is unknown, the issuing authority shall make all necessary inquiries, including through the contact points of the EJN, in order to obtain information *about which authority is competent for the recognition and execution of the confiscation order*.
6. Where the authority in the executing State which receives a confiscation certificate *is not competent* to recognise it or to take the measures necessary for its execution, the authority shall immediately transmit the confiscation certificate to the competent executing authority in its Member State and shall inform the issuing authority accordingly.

## Article 18

### Transmission of a confiscation order to one or more executing States

1. A confiscation certificate *shall* only be transmitted pursuant to Article 17 to one executing State at any one time *unless the conditions of paragraphs 2 or 3 apply*.
2. *Notwithstanding paragraph 1, where* a confiscation order *concerns* specific items of property, *the confiscation certificate* 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, or
  - (b) the confiscation of a specific item of property covered by the confiscation order involves action in more than one executing State.
3. *Notwithstanding paragraph 1, where* a confiscation order *concerns* an amount of money, *the confiscation certificate* 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 in any one executing State is not likely to be sufficient for the execution of the full amount covered by the confiscation order.

## Article 19

### Consequences of transmission of confiscation orders

1. The transmission of a confiscation order, *through a certificate*, to one or more executing States in accordance with Articles 17 and 18 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 *shall* 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 *where*:
  - (a) it considers that there is a risk that execution beyond the maximum amount may occur, in particular on the basis of information received from the executing authority pursuant to **point (b) of Article 24(1)**;
  - (b) all or a part of the confiscation order has been executed in the issuing State or in another executing State, specifying the amount for which the confiscation order has not yet been executed; or
  - (c) after the transmission of a confiscation certificate in accordance with Article 17, an authority of the issuing State receives any sum of money which the person concerned has paid in respect of the confiscation order.

Where point (a) applies, the issuing authority shall inform the executing authority as soon as possible whether the risk referred to no longer exists.

## **Article 20**

### **Standard confiscation certificate**

1. The issuing authority shall complete the *confiscation* certificate set out in Annex *II*, shall sign it and shall certify its content as being accurate and correct.
2. The issuing authority shall translate the *confiscation* certificate into an official language of the executing State or into any other language that the executing State will accept 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 21**

### **Recognition and execution of confiscation orders**

1. The executing authority shall recognise a confiscation order transmitted in accordance with Article *17* and shall take the measures necessary for its execution in the same way as for a confiscation order issued by an authority of the executing State, unless that executing authority invokes one of the grounds for non-recognition and non-execution *under* Article *22* or one of the grounds for postponement provided for in Article *24*.
2. If a confiscation order concerns a specific item of property, the issuing authorities and executing authorities may, if the law of the issuing State *so provides*, agree that confiscation in the executing State can take the form of a requirement to pay a sum of money corresponding to the value of the property otherwise to be confiscated.

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. ***Conversion shall be made using the daily euro exchange rate published in the C series of the Official Journal of the European Union.***
4. ***Any part of the amount of money that is recovered pursuant to the confiscation order in any State other than the executing State shall be deducted in full from the amount to be confiscated in the executing State.***
5. ***When the issuing authority has issued a confiscation order, but it has not issued a freezing order, the concrete measures provided for in paragraph 1 may include that the executing authority decides to freeze the property concerned of its own motion in accordance with its national law, in view of subsequent execution of the confiscation order. In such a case, the executing authority shall inform the issuing authority without delay, if possible prior to freezing the property concerned.***
6. As soon as the execution of the order has been completed, the executing authority shall inform the issuing authority of the results of the execution by any means capable of producing a written record.



## Article 22

### 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) executing the order would be contrary to the *ne bis in idem* principle;
  - (b) there is an immunity or privilege under the law of the executing State which would prevent the execution of a domestic confiscation order *against* the property concerned, *or there are rules on the determination or limitation of criminal liability in relation to the freedom of the press and the freedom of expression in other media that prevent the execution of the order*;
  - (c) the *confiscation* certificate provided for in Article 20 is incomplete or manifestly incorrect, and has not been completed following the consultation **under** paragraph 2 of **this Article**;
  - (d) the order is based on a criminal offence committed, *wholly or partially*, outside the territory of the issuing State and, wholly or partially, in the territory of the executing State and the conduct in connection with which the order was issued **does not constitute** an offence in the executing State;
  - (e) the rights of affected persons would make it impossible under the law of the executing State to execute the order, even where that impossibility is a consequence of the application of legal remedies in accordance with Article 33;
  - (f) in a case referred to in Article 3(2), the conduct which the order is based **on** does not constitute an offence under the law of the executing State; however, in cases involving taxes or duties, or customs and exchange regulations, the execution of the order shall not be refused on the ground that the law of the executing State does not impose the same kind of taxes or duties or does not contain the same type of rules as regards taxes and duties or customs and exchange regulations as the law of the issuing State;

(g) according to the confiscation certificate provided for in Article 20, the person *against whom the confiscation order was issued* did not appear in person at the trial resulting in a confiscation order linked to a final conviction. *This* ground shall not apply where the *confiscation* certificate states that, in accordance with further procedural requirements defined in the national law of the issuing State, *the person:*

- (i) was summoned in person in due time and was thereby informed of the scheduled date and place of the trial *that* resulted in the confiscation order, or actually received official information of the scheduled date and place of that trial *by other means* in such a manner that it was established unequivocally that *that person* was aware of the scheduled trial, and was informed in due time that such a confiscation order could be handed down if that person did not appear at the trial;
- (ii) being aware of the scheduled trial, had given a mandate to a **lawyer**, who was either appointed by the person concerned or by the State, to defend that person at the trial and was **actually** defended by that **lawyer** at the trial; or
- (iii) after having been served with the confiscation order and having been expressly informed of the right to a retrial or an appeal in which the person *would have* the right to participate and which *would* allow **a re-examination of** the merits of the case, including fresh evidence, and which could lead to the original decision being reversed:

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

- did not request a retrial or appeal within the applicable time limits;

***(h) there are substantial grounds to believe that the execution of the confiscation order would, in the particular circumstances of the case, entail a manifest breach of the executing State's obligations in accordance with Article 6 TEU and the Charter.***

2. In **[any of]** the cases referred to in paragraph 1, before deciding not to recognise and execute the confiscation order, *whether* 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 the confiscation order shall be taken without delay and notified immediately to the issuing authority by any means capable of producing a written record.

### **Article 23**

#### **Time limits for recognition and execution of confiscation orders**

1. The executing authority shall take the decision on the recognition and execution of the confiscation order without delay and, without prejudice to paragraph 4, no later than **45** days after the executing authority has received the confiscation certificate.
2. The executing authority shall communicate the decision *on the recognition and execution* of the confiscation order to the issuing authority without delay by any means capable of producing a written record.
3. Unless grounds for postponement under Article 24 exist, the executing authority shall *take the concrete measures necessary to execute* the confiscation order *without delay and, at least, with the same speed and priority as a comparable domestic confiscation order*.
4. Where it is not possible in a specific case to meet the time-limit set out in paragraph 1, the executing authority shall inform the issuing authority *without delay*, giving the reasons for the delay, and shall consult with the issuing authority on the appropriate *schedule for recognising and executing the confiscation order*.
5. *The expiry of the time limit referred to in paragraph 1 shall not relieve the executing authority of its obligation to adopt a decision on the recognition and execution of the confiscation order and to execute that order without delay.*

## Article 24

### Postponement of execution of confiscation orders

1. The executing authority may postpone *the recognition or* execution of a confiscation order transmitted in accordance with Article 17 where:
  - (a) its execution might damage an ongoing criminal investigation, *in which case the execution of the confiscation order may be postponed* until such time as *the executing authority* deems reasonable;
  - (b) as regards a confiscation order concerning an amount of money, *the executing authority* considers that there is a risk that the total value derived from *the execution of that confiscation order* 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 ongoing confiscation proceedings in the executing State; or
  - (d) in cases *where* the legal remedies referred to in Article 33 apply.
2. *Notwithstanding Article 8(5), the competent authority of the executing State shall, for as long as the execution of a confiscation order is postponed, take all the measures it would take in a similar domestic case to prevent the property from no longer being available for the purpose of execution of the confiscation order.*
3. The executing authority shall report to the issuing authority *without delay* on the postponement of the execution of the order *by any means capable of producing a written record*, including the grounds for the postponement and, if possible, the expected duration of the postponement.
4. As soon as *there is no longer any* ground for postponement, the executing authority shall, without delay, take the measures *necessary* to execute the order and inform the issuing authority thereof by any means capable of producing a written record.

## Article 25

### Impossibility to execute a confiscation order

1. Where *an executing authority considers that* it is impossible to execute *a* confiscation order, *it shall notify* the issuing authority thereof without delay.
2. *Before notifying the issuing authority in accordance with paragraph 1, the executing authority shall, where appropriate, consult with the issuing authority, taking into account also the possibilities provided for under Article 21(2) or (3).*
3. *The non-execution of a confiscation order under this Article can only be justified if the property:*
  - (a) has already been confiscated;
  - (b) has disappeared;
  - (c) has been destroyed;
  - (d) cannot be found in the location indicated on the certificate; or
  - (e) cannot be found because its location has not been indicated in a sufficiently precise manner, *despite the consultations referred to in paragraph 2.*
4. *As regards the situations under points (b), (d) and (e) of paragraph 3, if the executing authority subsequently obtains information allowing it to locate the property, the executing authority may execute the confiscation order without a new certificate having to be transmitted, provided that the executing authority, prior to executing the confiscation order, has verified with the issuing authority that the confiscation order is still valid.*
5. *Notwithstanding paragraph 3, in case the issuing authority has indicated that property of equivalent value could be confiscated, the non-execution of a confiscation order under this Article can be justified if one of the circumstances set out in paragraph 3 exists and there is no property of equivalent value that can be confiscated.*

## CHAPTER IV

### GENERAL PROVISIONS

#### Article 26

##### Law governing execution

1. The execution of the freezing *order* or the 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 the execution thereof and to determine all the measures relating thereto.
2. A freezing *order* or a 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 **21(2)** and (3), the executing State may not impose measures alternative to the freezing *order* or the confiscation order transmitted pursuant to Articles **5** and **17**, *without* the consent of the issuing State.

#### Article 27

##### Notification on the competent authorities

1. By ... [date of application of this Regulation], each Member State shall inform the Commission of the authority or authorities as defined in Article 2(8) and (9) that are competent under its national law *in the cases* that Member State is *respectively*:
  - (a) the issuing State, or
  - (b) the executing State.
2. *If it is necessary because of the structure of its internal legal system*, each Member State may designate one or more central authorities *to be* responsible for the administrative transmission and reception of certificates relating to freezing orders and confiscation orders and for assisting its competent authorities. **Each** Member State shall inform the Commission of **any such** authority **that it so designates**.
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, *without delay*, consult each other to ensure the efficient application of this Regulation, *using any* appropriate means *of communication*.
2. All communications, including those intended to deal with difficulties concerning the transmission or authentication of any document needed for the execution of the freezing order or the confiscation order, shall be made directly between the issuing *authority* and the executing authority *and*, where the Member State has designated a central authority in accordance with Article 27(2), *shall be made, where appropriate*, with the involvement of that central authority.

## Article 29 Multiple orders

1. If the *executing* authority *receives* two or more freezing or confiscation orders *from different Member States* against the same person, and that person does not have sufficient property in the executing State to satisfy all of the orders, *or if the executing authority receives* two or more freezing orders or confiscation orders in respect of the same specific item of property, *the executing authority shall decide which* of the orders to execute in accordance with the law of the executing State, *without prejudice to the possibility of postponing the execution of a confiscation order in accordance with Article 24*.
2. *In taking its decision, the executing authority shall, where possible, give priority to the interests of victims. It shall also take all other relevant circumstances into account, including the following:*
  - (a) *whether the assets are* frozen;
  - (b) *the dates of the respective orders and their dates of* transmission;
  - (c) the seriousness *of the offence concerned; and*
  - (d) *the place where the offence has been committed*.

## Article 30

### Termination of the execution of a freezing order or a confiscation order

1. *The issuing authority shall, without delay, withdraw the freezing certificate or confiscation certificate when the freezing order or confiscation order ceases to be enforceable or is no longer valid.*
2. The issuing authority shall immediately inform the executing authority, by any means capable of producing a written record, *of the withdrawal of a freezing order or confiscation order, as well as of any decision or measure that causes a freezing order or confiscation order to be withdrawn.*
3. The executing **authority** shall terminate the execution of the *freezing order or confiscation order* as soon as it *has* been informed by the issuing authority *in accordance with paragraph 2, in so far as the execution has not yet been completed. The executing authority shall, without undue delay, send a confirmation of the termination to the issuing State by any means capable of producing a written record.*

## Article 31

### Management and disposal of frozen and confiscated property

1. The management of frozen and confiscated property shall be governed by the law of the executing State.
2. The executing State shall manage the frozen or confiscated property with a view to preventing its depreciation in value. To that end, the executing State shall have the possibility of selling or transferring frozen property, having regard to Article 10 of Directive 2014/42/EU.
3. Frozen property, or money obtained after selling such property in accordance with paragraph 2, shall remain in the executing State until a confiscation order has been submitted and that order has been executed, without prejudice to the possibility of restitution of property under Article 31a.



4. The executing State shall not be required to sell or return specific items covered by a confiscation order which constitute cultural objects, as defined in Article 2(1) of Directive 2014/60/EU of the European Parliament and the Council.<sup>19</sup> This Regulation shall not affect the obligation to return cultural objects under that Directive.

### **Article 31a**

#### **Restitution of frozen property to the victim**

1. Where the issuing authority or another competent authority of the issuing State has issued a decision, in accordance with the national law, to reconstitute frozen property to the victim, the issuing authority shall include information on such decision in the freezing certificate, referred to in Article 7, or communicate information on such decision at a later stage to the executing authority.
2. Where an executing authority has received information on a decision to reconstitute frozen property as referred to in paragraph 1, it shall take the necessary measures to ensure that, when the property concerned is frozen, such property shall be reconstituted as soon as possible to the victim, in accordance with rules of procedure of the executing State, where necessary via the issuing State, provided that:
  - (a) the title of the victim to the property is not contested;
  - (b) the property is not required as evidence in criminal proceedings in the executing State;  
and
  - (c) the rights of affected persons are not prejudiced.

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<sup>19</sup> Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State (OJ L 159, 28.5.2014, p. 1).

3. Where an executing authority is not satisfied that the conditions of paragraph 2 have been met, it shall consult with the issuing authority without delay and by any appropriate means in order to find a solution. If no solution can be found, the executing authority may decide not to reconstitute the frozen property to the victim.

### **Article 31b**

#### **Disposal of confiscated property or money obtained after selling such property**

1. Where the issuing authority or another competent authority of the issuing State has issued a decision, in accordance with its national law, either to reconstitute confiscated property to the victim or to compensate the victim, the issuing authority shall include information on such decision in the confiscation certificate, referred to in Article 20, or communicate information on such decision at a later stage to the executing authority.
2. Where an executing authority has received information on a decision to reconstitute confiscated property to the victim as referred to in paragraph 1, it shall take the necessary measures to ensure that, when the property concerned is confiscated, that property is reconstituted as soon as possible to the victim, where necessary by transferring it to the issuing State.
3. Where it is not possible for the executing authority to reconstitute the property to the victim in accordance with paragraph 2, but money has been obtained as a result of the execution of a confiscation order in relation to that property, the corresponding sum is to be transferred to the victim for the purposes of restitution, where necessary via the issuing State. Any remaining property is to be disposed of in accordance with paragraph 7.
4. Where an executing authority has received information on a decision to compensate the victim as referred to in paragraph 1, and money has been obtained as a result of the execution of a confiscation order, the corresponding sum, in so far as it does not exceed the amount indicated in the certificate, is to be transferred to the victim for the purposes of compensation, where necessary via the issuing State. Any remaining property is to be disposed of in accordance with paragraph 7.

5. If a procedure to retribute or compensate the victim is pending in the issuing State, the issuing authority shall inform the executing authority accordingly. The executing State shall withhold the disposition of the confiscated property until the information on the decision to retribute or compensate the victim is communicated to the executing authority, even where the confiscation order has already been executed.
6. Without prejudice to paragraphs 1 to 5, property other than money that has been obtained as a result of the execution of the confiscation order, the property shall be disposed of in accordance with the following rules:
  - (a) the property may be sold, in which case the proceeds of the sale are to be disposed of in accordance with Article 31b(7);
  - (b) the property may be transferred to the issuing State, provided that, 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) if 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; **or**
  - (d) 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.
7. Unless the confiscation order is accompanied by a decision to retribute property to the victim or compensate **the victim** in accordance with paragraphs 1 to 5, or unless otherwise agreed by the Member States involved, the executing State shall dispose of the money obtained as a result of the execution of a confiscation order 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 is to accrue to the executing State; **or**
  - (b) if the amount obtained from the execution of the confiscation order is more than EUR 10 000, 50 % of the amount is to be transferred by the executing State to the issuing State.

## Article 32

### Costs

1. Each Member State shall bear its own costs resulting from the application of this Regulation, without prejudice to the provisions relating to the disposal of confiscated property set out in Article 31.
2. The executing authority may submit a proposal to the issuing authority that the costs be shared where it appears, either before or after the execution of a freezing order or a confiscation order, that the execution of the order entails large or exceptional costs.

Following such a proposal, which shall be accompanied by a detailed breakdown of the costs by the executing authority, the issuing authority and the executing authority shall consult with each other. Where appropriate, Eurojust can facilitate such consultations.

*The consultations, or at least the result thereof, shall be recorded by any means capable of producing a written record.*

## Article 32a

### Obligation to inform affected persons

1. *Without prejudice to Article 12, following the execution of a freezing order and following the decision to recognise and execute a confiscation order, the executing authority shall, to the extent possible, inform the affected persons known to it of such execution and of such decision without delay, in accordance with procedures under its national law.*
2. *The information to be provided in accordance with paragraph 1 shall include the authority who issued the order and the legal remedies available under the national law of the executing State. The information shall also include, at least in a brief manner, the reasons for that order.*
3. *Where appropriate, the executing authority may ask the issuing authority for assistance in carrying out the tasks referred to in paragraph 1.*

### Article 33

#### Legal remedies in the executing State against the recognition and execution of a freezing order or a confiscation order

1. *Affected persons* shall have **the right to effective** legal remedies *in the executing State* against the decision on the recognition and execution of orders pursuant to Articles 8 and 21. The **right to a legal remedy** shall be exercised before a court in the executing State in accordance with its national law. *As regards confiscation orders*, the action may have suspensive effect *if the law of the executing State so provides*.
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.
4. **This Article is without prejudice to the application in the issuing State of safeguards and legal remedies in accordance with Article 8 of Directive 2014/42/EU.**

### Article 34

#### Reimbursement

1. Where the executing State is responsible under its national law for injury *to an affected person because* of the execution of a freezing order or a confiscation order transmitted to it pursuant to Articles 5 and 17, the issuing State shall reimburse the executing State for any damages paid to the affected person *unless the issuing State can demonstrate to the executing State that the injury*, or any part of it, was exclusively due to the conduct of the latter State, *in which case the issuing and executing States shall agree between them on the amount to be reimbursed*.
2. Paragraph 1 is without prejudice to the law of the Member States on claims by natural or legal persons for compensation for damage.

## CHAPTER V

### FINAL PROVISIONS

#### Article 35

##### Statistics

1. Member States shall regularly collect and maintain comprehensive statistics from the relevant authorities, *and shall send them to the Commission each year*. Those statistics shall include, in addition to the information provided for in Article 11(2) of Directive 2014/42/EU, *the number of freezing orders and confiscation orders received by a Member State from other Member States*
  - (a) *that were recognised and executed; and*
  - (b) *the recognition and execution of which were refused.*
2. *Member States shall also send each year the following statistics to the Commission, if they are available at a central level in the Member State concerned:*
  - (a) *the number of cases where a victim was compensated or granted restitution of the property obtained by the execution of a confiscation order under this Regulation; and*
  - (b) *the average duration of the execution of freezing orders and confiscation orders under this Regulation.*

#### Article 36

##### Amendments to the certificate and the form

The Commission is empowered to adopt delegated acts in accordance with Article 37 concerning any amendment to the certificates in Annexes I and II. *Such amendments shall be in accordance with the provisions of this Regulation and shall not affect those provisions.*

**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 power **to adopt delegated acts referred to** in Article 36 shall be conferred **on the Commission** for an indeterminate period of time from ...[date of application of this Regulation].
3. The delegation of power referred to in Article 36 may be revoked at any time by the European Parliament or by the Council. A decision to revoke 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 affect the validity of any delegated acts already in force.
4. *Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.*
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. 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 *two* 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 two months at the initiative of the European Parliament or of the Council.

## Article 38

### *Reporting and review clause*

By .... [*five* years from the date of application of this Regulation] at the latest, *and every five years thereafter*, the Commission shall submit a report to the European Parliament, to the Council and to the European Economic and Social Committee on the application of this Regulation, *including on*

- a) *the possibility for Member States to present and withdraw declarations under Articles 5(2) and 17(2);*
- b) *the application of the ground for non-recognition based on fundamental rights, as referred to in point (f) of Article 9(1) and point (h) of Article 22(1).*
- c) *the application of Articles 31, 31a and 31b in relation to the management and disposal of frozen and confiscated property, the restitution of property to victims and the compensation of victims.*

## Article 39

### **Replacement**

This Regulation replaces Framework Decisions 2003/577/JHA and 2006/783/JHA between the Member States bound by this Regulation as from ... [*date of application of this Regulation, see below under Article 40*].

## Article 40

### **Entry into force**

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

It shall apply from ... [*date of entry into force of the Regulation plus **22-24 months***].

**However**, Article 27 shall apply from ... [*date of entry into force of the Regulation*].



**Article 41**  
**Transitional provisions**

1. *This Regulation shall apply to certificates relating to freezing orders and confiscation orders transmitted on or after ... [date of application of this Regulation].*
2. *Certificates relating to freezing orders and confiscation orders transmitted before ... [date of application of this Regulation] shall continue to be governed after that date by Framework Decisions 2003/577/JHA and 2006/783/JHA, between the Member States bound by this Regulation until the final execution of the freezing order or the confiscation order.*

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

Done at Brussels, .....

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