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EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a Regulation of the European Parliament and of the Council

on the mutual recognition of freezing and confiscation orders

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Executive Summary Sheet
Impact assessment on a Proposal for a Regulation on the Mutual Recognition of Freezing and Confiscation Orders
A. Need for action
Why? What is the problem being addressed?
The current legal framework for the recovery of criminal assets within the EU does not respond effectively to the challenge of criminals hiding their assets in other Member States. Only very few freezing and confiscation orders are executed in other Member States. As a result, too few criminal assets are frozen and confiscated across the EU, thus allowing criminals to benefit from their illegal gains. Several reasons have been identified as to the reasons for the limited use of the two framework decisions. A major issue is that the current two mutual recognition instruments do not cover many types of freezing and confiscation orders that can be adopted at national level (notably with regard to non-conviction based confiscation, but also extended confiscation and third-party confiscation). Moreover, the current procedures and certificates are unnecessarily complicated and inefficient. In addition to the above-mentioned problems, the current instruments do not contain any provisions on victims' compensation or restitution.
What is this initiative expected to achieve?
The general objectives of the proposal are: 1. To freeze and confiscate more assets deriving from criminal activities in cross-border cases in order to prevent and combat crime, including terrorism and organised crime; 2. To enhance the protection of victims' rights in cross-border cases. The **specific objectives** are: 1. To improve the mutual recognition of freezing and confiscation orders in cross-border cases by extending the scope of the mutual recognition instrument; 2. To provide simpler and faster procedures and certificates; 3. To increase the number of victims receiving cross-border compensation.
What is the value added of action at the EU level?
As criminals often hide their assets in other Member States, effective cross border co-operation is essential in order to seize the proceeds of crime. EU legislation already provides for mutual recognition of freezing and confiscation orders; however, this legislation has not kept up with recent developments in national legislation in some Member States and with recent EU legislation on common minimum rules. This proposal widens the scope for cooperation and means that a wider range of confiscation orders will be enforceable across Member States. It will also provide simpler and faster procedures and certificates. In addition, it will foresee specific rules on the possibility of victims to claim restitution or compensation in cross-border cases.
B. Solutions
What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?
Four main policy options were considered: retention of the *status quo* (Option 1), a soft law option (Option 2) and two regulatory policy options (Options 3 and 4). The retention of the *status quo* would involve taking no action at EU level, while the other three alternative policy options will improve, to a different extent, the ability to seize and confiscate proceeds of crime on a cross-border basis. Option 2 (non-legislative action/soft-law) would support mutual recognition of freezing and confiscation orders

by, for example, training and the dissemination of best practice, and the promotion of the use of international instruments to promote cross border seizure and confiscation. However, its expected impact would be rather low and it would still be excluded for some EU Member States to act on certain requests from other Member States. Options 3 and 4 (legislative action foreseeing minimal to high level obligations) would entail obligations to recognise and execute a range of orders to freeze and confiscate criminal assets. Option 3 would require the recognition of only those freezing and confiscation orders which are set out within Directive 2014/42/EU. Option 4 would require the recognition of non-conviction based confiscation orders. Sub-option 4a (medium option) would go beyond option 3 and cover all types of criminal confiscation; including criminal non-conviction based confiscation. Sub-option 4b (maximum option) would also include civil or administrative forms of non-conviction based confiscation. The preferred option is sub-option 4a as it foresees a new mutual recognition instrument with an extended scope covering all types of freezing and confiscation orders issued in the context of criminal proceedings. It thereby complements the harmonisation measures put into place by Directive 2014/42/EU. It will also foresee specific rules for the protection of victims' rights in cross-border cases.

Who supports which option?

Member States acknowledge the need to improve mutual recognition of freezing and confiscation orders with a new legislative instrument. Thus they support a policy option which entails new legislation (Options 3, 4a or 4b). There is however variation among the Member States' positions as to what kind of measures the instrument should cover. Option 3 would not raise particular concerns from Member States but would not be considered sufficient by those Member States which have more extensive forms of confiscation. Option 4a would be the option the most easily accepted by Member States as most of Member States have already provisions including criminal non-conviction based confiscation. Views of Member States are rather divided as regards option 4b. The European Parliament is in favour of a legislative proposal to strengthen the mutual recognition of confiscation and freezing orders.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)?

The requirement to recognise a greater range of freezing and confiscation orders should increase the amount of criminal assets frozen and seized across Member State borders. It should, therefore, ultimately lead to reduced profits for organised criminals and would deny criminals the possibility to reinvest their profits to fund further criminality. Increasing the likelihood of confiscation also increases the deterrent effect on crime. It should also lead to a reduction in losses to Member State revenue. The social impact would be overall very positive as confiscated criminal assets can be given back to the victims from whom they are stolen, or put to positive social use.

What are the costs of the preferred option (if any, otherwise main ones)?

There would be an increase of administrative costs for both issuing authorities and executing authorities, stemming from an increase of cross-border procedures and enforcement of freezing and confiscation orders. These administrative costs would however be (more than) offset by the expected increase in the recovery of cross-border assets. Considerable benefits would also result from the prevention of criminal activities and terrorist attacks given that criminals would be deprived from funds.

How will businesses, SMEs and micro-enterprises be affected?

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

it should help legitimate business by decreasing competition by illegal actors.
Will there be significant impacts on national budgets and administrations?
The requirement to recognise and implement a greater range of freezing and confiscation orders will lead to a -limited increase in the costs for law enforcement and judicial authorities. However, this should be offset by the increased ability to recover – and reuse where appropriate – the proceeds of crime.
Will there be other significant impacts?
The ability to freeze and confiscate effectively criminal assets on a cross-border basis and to return assets to victims where appropriate would enhance confidence in the judicial systems of Member States and the EU in general.
D. Follow up
When will the policy be reviewed?
5 years after the entry into application of the new legal instrument.