



Brussels, 1 December 2017
(OR. en)

15107/17

Interinstitutional File:
2016/0412 (COD)

JAI 1129
COPEN 381
DROIPEN 179
IA 203
CODEC 1947

NOTE

From:	Presidency
To:	Council
No. prev. doc.:	14591/1/17 REV 1
No. Cion doc.:	15816/16 + ADD 1 + ADD 2 + ADD 3
Subject:	Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders - General approach (Certificates)

Delegations will find attached draft certificates relating to freezing orders ([Annex I](#)) and confiscation orders ([Annex II](#)) accompanying the above mentioned draft Regulation. Please note that the lay-out of these texts will be further improved.

The Council is invited to reach a general approach on the draft Regulation (doc. 15104/17) accompanied by these draft certificates, it being understood that the Presidency has the intention to submit these draft certificates to the "European Judicial Network in criminal matters" in order to obtain feedback from practitioners on these texts. Such feedback will then be shared with the Member States and could, in agreement with the Member States, be used during the finalisation of the texts in the course of the upcoming negotiations with the European Parliament.

CERTIFICATE

provided for in Article 7 for issuing a freezing order

SECTION A:

Issuing State:

NB: details of issuing authority to be filled at the end (sections K and L)

Executing State:

Name of executing authority (if known):

SECTION B: Urgency

Please indicate if there is any urgency due to:

there are legitimate grounds to believe that the property in question will imminently be transferred, moved, transformed, destroyed or disposed of.

Time limits for the execution of the freezing order are laid down in Regulation EU/.../.... However, if a shorter time limit or execution on a specific date is necessary, please provide the time limit or date and explain the reason for this:

SECTION C: Confiscation

Indicate (by ticking in the relevant box) whether:

- this freezing certificate is accompanied by a confiscation certificate for enforcement of a confiscation order issued in the issuing State;
- the property shall remain frozen in the executing State pending the transmission and execution of the confiscation order. Estimated date for submission of the confiscation certificate, if possible:

SECTION D: Information on property to which the order relates

Indicate (by ticking in the relevant box(es)) if the order concerns:

- an amount of money → go to point 1 below
- specific item(s) of property → go to point 2 below

1. If the order concerns an amount of money:

The amount for execution in the executing State with indication of currency
(in figures and words):

The total amount covered by the order with indication of currency (in figures
and words):

Please add the following information:

Grounds for believing that the person has property/income:

.....

Description of the property of the person/ source of income (when possible):

.....

Exact location of the property of the person/source of income (if not known, the
last known location):

.....

2. If the order concerns specific item(s) of property:

The order is transmitted to the executing State because (tick the relevant box):

- (a) the specific item(s) of property is (are) located in the executing State
- (b) the specific item(s) of property is (are) registered in the executing State
- (c) the issuing State has reasonable grounds to believe that all or part of the specific item(s) of property covered by the order is (are) located in

the executing State. Add the following information:

Grounds for believing that the specific item(s) of property is located in the executing State:

- Description of the item of property:

.....

- Location of the item of property (if not known, the last known location):

.....

SECTION E: Where the order has been transmitted to more than one executing State, provide the following information:

1. The order has been transmitted to the following other executing State(s) (country and authority):

.....
.....

2. The order has been transmitted to more than one executing State for the following reason (tick the relevant box):

- Different specific items of property covered by the order are believed to be located in different executing States.
- The freezing of a specific item of property involves action in more than one executing State.
- The value of the property which may be confiscated or frozen in the issuing State and any one executing State is not likely to be sufficient for the execution of the full amount covered by the order.

.....

3. Value of assets, if known, in each executing Member State:

.....
.....

4. Where the freezing of the specific item(s) of property involves action in more than one executing State, description of the action to be taken:

SECTION F: Relation to an earlier freezing order

Indicate whether this freezing order supplements an earlier freezing order. If applicable, provide information relevant to identify the previous freezing order (the date of issue of the freezing order, the authority to which it was transmitted and, if available, the date of transmission of the freezing order, and reference numbers given by the issuing and executing authorities):

SECTION G: Relation to a European Investigation Order (EIO)

Indicate whether this freezing concerns the same property as an EIO. If applicable, provide information relevant to identify the EIO (the date of issue of the EIO, the authority to which it was transmitted and, if available, the date of transmission of the EIO, and reference numbers given by the issuing and executing authorities):

SECTION H: Identity of the person against whom the freezing order is issued, or the person whose property has been the subject of that order (if more than one person is affected, please provide the information for each person):

(i) In the case of natural person(s)

Name:

First name(s):.....

Other relevant name(s), if applicable:.....

Aliases, if applicable:.....

Sex:

Nationality:.....

Identity number or social security number:.....

Type and number of the identity document(s) (ID card, passport), if available:.....

Date of birth:.....

Place of birth:.....

Residence and/or known address; if address not known, state the last known address

.....

Language(s) which the person understands

(ii) In the case of legal person(s)

Name:

Form of legal person:.....

Shortened name, commonly used name or trading name, if applicable

Registered seat:.....

Registration number:.....

Address of the legal person:.....

Name of the legal person's representative:.....

Please describe the position the affected person currently holds in the proceedings:

- person against whom the freezing order is directed
- person whose property is the subject of the order
- other (please specify)

2. If different from the address above, please give the location where the freezing order is to be executed:

.....

3. Provide any other information that will assist with the execution of the freezing order (e.g. list in detail other known affected persons, whose rights in relation to the property are directly prejudiced by the order)

.....

SECTION I: Grounds for issuing the freezing order

1. Summary of the facts

Set out the reasons why the freezing order is issued, including a summary of the underlying facts, a description of the related offence(s), the stage the investigation has reached, the reasons for any risk factors and any other relevant information.

2. Nature and legal classification of the offence(s) in relation to which the freezing order is issued and the applicable statutory provision/code:

3. Is the offence in relation to which the freezing order is issued punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years as defined by the law of the issuing State and included in the list of offences set out below? (please tick the relevant box)

- participation in a criminal organisation
- terrorism
- trafficking in human beings
- sexual exploitation of children and child pornography
- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions and explosives
- corruption
- fraud and other criminal offences as defined in Directive 2017/1371/EU on the fight against fraud to the Union's financial interests by means of criminal law

- fraud, including that affecting the financial interests of the European Union within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests
- laundering of the proceeds of crime
- counterfeiting currency, including of the euro
- computer-related crime
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties
- facilitation of unauthorised entry and residence
- murder, or grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking
- racism and xenophobia
- organised or armed robbery
- illicit trafficking in cultural goods, including antiques and works of art
- swindling
- racketeering and extortion
- counterfeiting and piracy of products
- forgery of administrative documents and trafficking therein
- fraud and counterfeiting of non-cash of means of payment
- illicit trafficking in hormonal substances and other growth promoters
- illicit trafficking in nuclear or radioactive materials
- trafficking in stolen vehicles
- rape
- arson
- crimes within the jurisdiction of the International Criminal Court
- unlawful seizure of aircraft/ships
- sabotage

SECTION J: Legal remedies

Authority in the issuing State which can supply further information on procedures for seeking legal remedies in the issuing State and on whether legal assistance, and interpretation and translation is available:

Name:

Contact person (if applicable):.....

Address:

Tel. No: (country code) (area/city code).....

Fax No: (country code) (area/city code).....

E-mail:

SECTION Ja: RESTITUTION OF FROZEN PROPERTY

Indicate if a decision to reconstitute frozen property to the victim has been issued:

- yes → go to point 1 below
- no → go to point 2 below

1. Specify the following concerning the decision to reconstitute frozen property to the victim:

name of the authority that issued the decision:.....

date of the decision:.....

description of the property to be reconstituted

name of victim:

address of victim:

If the title of the victim to the property is contested, please provide details (which persons contest the title, reasons, etc):

.....
.....

If rights of affected persons could be prejudiced as a result of the restitution, please provide details (the rights of which persons could be prejudiced, reasons, etc):

.....
.....

2. Is a demand for restitution of frozen property to the victim pending in your Member State?

no

yes → as soon as the decision to reconstitute property to the victim is taken, please inform the executing authority and provide the above mentioned information

SECTION K: Details of the authority which issued the freezing order

Tick the type of authority which issued the freezing order:

- judge, court, public prosecutor
- any other competent authority as defined by the law of the issuing State → please complete also complete section (L)

Name of authority:.....

Name of representative/contact point:.....

File No:

Address:

Tel. No: (country code) (area/city code).....

Fax No: (country code) (area/city code).....

E-mail:.....

Languages in which it is possible to communicate with the issuing authority:

If different from above, the contact details of the person(s) to contact for additional information or to make practical arrangements for the execution of the order:

Name/Title/Organisation:.....

Address:

E-mail/Contact Phone No:.....

Signature of the issuing authority and/or its representative certifying the content of the freezing order as accurate and correct:.....

Name:.....

Post held (title/grade):.....

Date:

Official stamp (if available):.....

SECTION L: Details of the judicial authority which validated the freezing order

Please indicate the type of judicial authority which has validated this freezing order:

- judge or court
- public prosecutor

Official name of the validating authority:.....

Name of its representative.....

Post held (title/grade).....

File no.: Address

Tel. No: (country code) (area/city code).....

Fax No: (country code) (area/city code).....

E-mail:

Languages in which it is possible to communicate with the validating authority:

Please indicate if the main contact point for the executing authority should be the

- issuing authority
- validating authority

Signature and details of the validating authority

Name:.....

Post held (title/grade):.....

Date:

Official stamp (if available):.....

SECTION M:

Where a central authority has been made responsible for the administrative transmission and reception of freezing orders in the issuing State:

Name of the central authority:

Contact person, if applicable (title/grade and name):

Address:.....

File reference:

Tel. (country code) (area/city code): Fax (country code) (area/city code): E mail (when available):

.....

CERTIFICATE

provided for in Article 20 for issuing a confiscation order

SECTION A:

Issuing State:

NB: details of issuing authority to be filled at the end (section L)

Executing State:

Name of executing authority (if known):

SECTION B: Confiscation order

The confiscation order was issued on (date):.....

The confiscation order became final on (date):

Reference number of the confiscation order (if available):.....

Court which issued the confiscation order (official name):.....

SECTION C: Freezing order

Indicate (by ticking in the relevant box) whether:

- the confiscation order is accompanied by a freezing order issued in the issuing State

- the property has been frozen in accordance with an earlier freezing order transmitted to the executing State (indicate the date of issue of the freezing order, the authority to which it was transmitted and, if available, the date of transmission of the freezing order, and reference numbers given by the issuing and executing authorities)

Please note that under the Regulation

- 1) prior freezing of property is not a necessary condition for a confiscation order to be recognised and executed by the executing authority;
- 2) the executing authority may freeze property of its own motion.

SECTION D: Information on property to which the order relates

The Court has decided that the property (tick the relevant box(es)):

- is the proceeds of an offence, or its equivalent, whether the full amount of the value or only part of the value of such proceeds,
- constitutes the instrumentalities of such an offence, or the value of such instrumentalities,
- is subject to confiscation through the application in the issuing State of any of the powers of confiscation provided for in Directive 2014/42/EU (including extended confiscation),
- is subject to confiscation under any other provisions relating to powers of confiscation without a final conviction under the law of the issuing State following proceedings in relation to a criminal offence.

Indicate (by ticking in the relevant box(es)) if the order concerns:

- an amount of money → go to point 1 below
- specific item(s) of property → go to point 2 below
- property as indicated in SECTION D of the accompanying freezing order referred to in SECTION C

1. If the order concerns an amount of money:

- The amount for execution in the executing State with indication of currency
(in figures and words):
- The total amount covered by the order with indication of currency
(in figures and words):

Please add the following information:

-Grounds for believing that the person has property/ income:

.....

Description of the property of the person/ source of income (when possible):

.....

Exact location of the property of the person/ source of income (if not known, the last known location):

2. If the order concerns specific item(s) of property:

The order is transmitted to the executing State because (tick the relevant box):

- (a) the specific item(s) of property is (are) located in the executing State
- (b) the specific item(s) of property is (are) registered in the executing State
- (c) the issuing State has reasonable grounds to believe that all or part of the specific item(s) of property covered by the order is (are) located in the executing State. Please add the following information:

- Grounds for believing that the specific item(s) of property is located in the executing State:

.....

- Description of the item of property

.....

- Location of the item of property (if not known, the last known location):

.....

Information on conversion and transfer of property

If the order concerns a specific item of property, state whether it is provided for under the law of the issuing State that the confiscation in the executing State may take the form of a requirement to pay the corresponding sum of money to the victim.

yes

no

SECTION E: Decision to retribute or compensate the victim

1. Indicate (by ticking in the relevant box) where relevant:

A judicial authority of the issuing State has issued a decision to compensate or retribute the victim with the following sum of money (→ fill in details below under 2):

A judicial authority of the issuing State has issued a decision to retribute the following property other than money to the victim (→ fill in details below under 2):

A procedure to compensate or retribute the victim is pending in the issuing State and the outcome shall be communicated to the executing authority

2. Details of the decision to retribute or compensate the victim:

The decision was issued on (date):.....

The decision became final on (date):

Reference number of the decision (if available):.....

Judicial authority which issued the decision (official name):.....

SECTION F: Where the order has been transmitted to more than one executing State, provide the following information:

1. The order has been transmitted to the following other executing State(s) (country and authority):

2. The order has been transmitted to more than one executing State for the following reason (tick the relevant box):

- Different specific items of property covered by the order are believed to be located in different executing States.
- The confiscation of a specific item of property involves action in more than one executing State.
- A specific item of property covered by the order is believed to be located in one of two or more specified executing States.
- The value of the property which may be confiscated or frozen in the issuing State and any one executing State is not likely to be sufficient for the execution of the full amount covered by the order.

3. Value of assets, if known, in each executing Member State:

.....
.....

4. Where the confiscation of the specific item(s) of property involves action in more than one executing State, description of the action to be taken:

.....

SECTION G: Identity of the person against whom the confiscation order is issued, or the person whose property has been the subject of that order (if more than one person is affected, please provide the information for each person)

(i) In the case of natural person(s)

Name:

First name(s):.....

Other relevant name(s), if applicable:.....

Aliases, if applicable:.....

Sex:

Nationality:.....

Identity number or social security number:.....

Type and number of the identity document(s) (ID card, passport), if available:

Date of birth:.....

Place of birth:.....

Residence and/or known address; if address not known, state the last known address:

.....

Language(s) which the person understands:

(ii) In the case of legal person(s)

Name:

Form of legal person:.....

Shortened name, commonly used name or trading name, if applicable

Registered seat:.....

Registration number:.....

Address of the legal person:.....

Name of the legal person's representative:.....

Please describe the position the affected person currently holds in the proceedings:

- person against whom the confiscation order is directed
- person whose property is the subject of the order
- other (please specify)

2. If different from the address above, please give the location where the confiscation order is to be executed

.....

3. Provide any other information that will assist with the execution of the confiscation order (e.g. list in detail other known affected persons, whose rights in relation to the property are directly prejudiced by the order):

.....

SECTION H: Information on the offence(s) resulting in the confiscation order

1. Summary of the facts

Set out the reasons why the confiscation order is issued, including a summary of the underlying facts and a description of the related offences.

2. Nature and legal classification of the offence(s) in relation to which the confiscation order is issued and the applicable statutory provision/code:

3. Is the offence in relation to which the confiscation order is issued punishable in the issuing State by a custodial sentence or detention order of a maximum of at least three years as defined by the law of the issuing State and included in the list of offences set out below? (please tick the relevant box)

- participation in a criminal organisation
- terrorism
- trafficking in human beings
- sexual exploitation of children and child pornography
- illicit trafficking in narcotic drugs and psychotropic substances
- illicit trafficking in weapons, munitions and explosives
- corruption
- fraud and fraud related criminal offences as defined in Directive 2017/1371/EU on the fight against fraud to the Union's financial interests by means of criminal law

- fraud, including that affecting the financial interests of the European Union within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests
- laundering of the proceeds of crime
- counterfeiting currency, including of the euro
- computer-related crime
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties
- facilitation of unauthorised entry and residence
- murder, grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint and hostage-taking
- racism and xenophobia
- organised or armed robbery
- illicit trafficking in cultural goods, including antiques and works of art
- swindling
- racketeering and extortion
- counterfeiting and piracy of products
- forgery of administrative documents and trafficking therein
- fraud and counterfeiting of non-cash means of payment
- illicit trafficking in hormonal substances and other growth promoters
- illicit trafficking in nuclear or radioactive materials
- trafficking in stolen vehicles
- rape
- arson
- crimes within the jurisdiction of the International Criminal Court
- unlawful seizure of aircraft/ships
- sabotage

4. Any other relevant information

SECTION I: Proceedings resulting in the confiscation order

Indicate if the person against whom the confiscation order was issued appeared in person at the trial resulting in the confiscation order linked to a final conviction:

1. Yes, the person appeared in person at the trial.
2. No, the person did not appear in person at the trial.
- 2a. No, there were no hearings held in accordance with national rules of procedure.
3. If you have ticked the box under point 2, please confirm the existence of one of the following:
 - 3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the confiscation order and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

- 3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the confiscation order, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

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

OR

- 3.3. the person was served with the confiscation order on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

- the person expressly stated that he or she does not contest the decision,

OR

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

4. If you have ticked the box under points 3.1b, 3.2 or 3.3, please provide information about how the relevant condition has been met:

.....
.....
.....

SECTION J: Information on legal remedies concerning proceeding resulting in the order

1. Please indicate if a legal remedy has already been sought against the issuing of a confiscation order, and if so please provide further details (description of the legal remedy, including necessary steps to take and deadlines):

.....

2. Authority in the issuing State which can supply further information on procedures for seeking legal remedies in the issuing State and on whether legal assistance and interpretation and translation is available:

Name:.....

Contact person (if applicable):.....

Address:.....

Tel. No: (country code) (area/city code).....

Fax No: (country code) (area/city code).....

E-mail:.....

SECTION L: Details of the issuing authority

Name of authority:.....

Name of representative/contact point:.....

File No:.....

Address:.....

Tel. No: (country code) (area/city code).....

Fax No: (country code) (area/city code).....

E-mail:.....

Languages in which it is possible to communicate with the issuing authority:.....

If different from above, the contact details of the person(s) to contact for additional information or to make practical arrangements for the transfer of property:

Name/Title/Organisation:.....

Address:

E-mail/Contact Phone No:.....

Signature of the issuing authority and/or its representative certifying the content of the freezing order as accurate and correct:

Name:.....

Post held (title/grade):.....

Date:

Official stamp (if available):.....

SECTION M:

Where a central authority has been made responsible for the administrative transmission and reception of confiscation orders in the issuing State:

Name of the central authority:

Contact person, if applicable (title/grade and name):.....

Address:.....

File reference:.....

Tel. (country code) (area/city code): Fax (country code) (area/city code): E mail (when available):
.....
