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INFORMATION NOTE

From: General Secretariat of the Council
To: Permanent Representatives Committee/Council

Subject: Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders
- Outcome of the European Parliament's first reading,
(Strasbourg, 1 to 4 October 2018)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the rapporteur, Nathalie GRIESBECK (ALDE, FR), presented a compromise amendment (amendment number 145) to the proposal for a Regulation on behalf of the Committee on Civil Liberties, Justice and Home Affairs. This amendment had been agreed during the informal contacts referred to above.

In addition, the EFDD political group tabled an amendment (amendment number 146).

II. VOTE

When it voted on 4 October 2018, the plenary adopted the compromise amendment (amendment number 145) to the proposal for a Regulation. No other amendments were adopted. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in *bold and italics*. The symbol "■" indicates deleted text.

European Parliament legislative resolution of 4 October 2018 on the proposal for a regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders (COM(2016)0819 – C8-0002/2017 – 2016/0412(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0819),
 - having regard to Article 294(2) and Article 82(1), second subparagraph, point (a) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0002/2017),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Czech Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 20 June 2018 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs (A8-0001/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

P8_TC1-COD(2016)0412

Position of the European Parliament adopted at first reading on 4 October 2018 with a view to the adoption of Regulation (EU) 2018/... of the European Parliament and of the Council on the mutual recognition of freezing orders and confiscation orders

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82 (1)(a) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure³,

³ Position of the European Parliament of 4 October 2018.

Whereas:

- (1) The 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 has commonly been referred to as the 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 Stockholm programme – An open and secure Europe serving and protecting the citizens"***⁴.

⁴ OJ C 115, 4.5.2010, p.1.

- (4) As crime is often transnational in nature, effective cross-border cooperation is essential in order to freeze and confiscate the instrumentalities and proceeds of crime.
- (5) The current Union legal framework in relation to the mutual recognition of freezing orders and confiscation orders is composed of Council Framework *Decisions* 2003/577/JHA⁵ and 2006/783/JHA⁶.
- (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 orders and confiscation orders is not fully effective. Those Framework Decisions have not been implemented and applied uniformly in the Member States, which has led to insufficient mutual recognition *and sub-optimal cross-border cooperation*.

⁵ *Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence* (OJ L 196, 2.8.2003, p. 45).

⁶ *Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders* (OJ L 328, 24.11.2006, p. 59).

- (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* ⁷ establishes minimum rules on *the* freezing and *the* confiscation of property. Those minimum rules concern the confiscation of instrumentalities and proceeds of crime, including in the *cases* of illness *or* absconding of the suspect or accused person, where criminal proceedings have *already* been initiated regarding a criminal offence, extended confiscation and confiscation from a third party. Those minimum rules also concern the freezing of property with a view to possible subsequent confiscation. The types of *freezing orders and* confiscation **■** orders covered by that Directive should also be included in the legal framework on mutual recognition.

⁷ 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).

- (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 the freezing and confiscation of *the* instrumentalities and proceeds of crime in the Union, the European Parliament and the Council called on the Commission to present a legislative proposal on the mutual recognition of freezing *orders* and confiscation orders.
- (9) In *its communication of 28 April 2015 entitled 'The European Agenda on Security'*, the Commission considered that judicial cooperation in criminal matters relies on effective cross-border instruments and that the mutual recognition of judgments and judicial decisions is a key element in the security framework. The Commission also recalled the need to improve the mutual recognition of freezing *orders* and confiscation orders.

- (10) In its *communication of 2 February 2016* on an Action Plan for strengthening the fight against terrorist financing, the Commission highlighted the need to ensure that criminals who fund terrorism are deprived of their assets. The Commission stated that, in order to disrupt organised crime activities that finance terrorism, it is essential to deprive those criminals of the proceeds of crime. To that end, the Commission stated that it is necessary to ensure that all types of freezing *orders* and confiscation orders are enforced to the maximum extent possible throughout the Union by the application of the principle of mutual recognition.
- (11) In order to ensure the effective mutual recognition of freezing *orders* and confiscation orders, the rules on the recognition and execution of those orders should be established by a legally binding and directly applicable act of the Union.

- (12) It is important to facilitate the mutual recognition and execution of freezing orders and confiscation *orders* 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 within 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. The term therefore covers 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. *It also* covers other types of order 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 such an 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 should be excluded from the scope of this Regulation.*

- (14) This Regulation should cover freezing orders **and confiscation orders** related to criminal offences covered by Directive 2014/42/EU, as well as **freezing orders and confiscation orders** related to other criminal offences. The criminal offences covered by this Regulation 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 a 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 the 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. Such cooperation also presupposes that the rights ***of persons who are affected by a freezing order or confiscation order should be preserved. Such affected persons, who can be natural persons or legal persons, should include the person against whom a freezing order or confiscation order was issued or the person who owns 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 confiscation order, should be decided in accordance with the law of the executing State.***

- (16) This Regulation does not modify the obligation to respect fundamental rights and legal principles 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 the principle that any discrimination based on any ground such as sex, racial or ethnic origin, religion, sexual orientation, nationality, language, political opinion, or disability is to be prohibited.*** This Regulation should be applied in accordance with those rights and principles.

- (18) *The procedural rights set out in Directives 2010/64/EU⁸, 2012/13/EU⁹, 2013/48/EU¹⁰, (EU) 2016/343¹¹, (EU) 2016/800¹² and (EU) 2016/1919¹³ of the European Parliament and of the Council should apply, within the scope of those 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 for criminal proceedings set out in the Charter should apply to proceedings in criminal matters that are not criminal proceedings but which are covered by this Regulation.*

⁸ 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).

⁹ 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).

¹⁰ *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).*

¹¹ *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).*

¹² 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).

¹³ *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).*

- (19) 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 are to be respected.*
- (20) *When assessing double criminality, the competent authority of the executing State should verify whether the factual elements underlying the criminal offence in question, 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 of the freezing order or confiscation order.*

(21) *The issuing authority should ensure that, when issuing a freezing order or confiscation order, the principles of necessity and proportionality are respected. Under this Regulation, a freezing order or confiscation order should only be issued and transmitted to an executing authority in another Member State where it could have been issued and used in a solely 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.*

- (22) *In some cases, a freezing order may be issued by an authority, designated by the issuing State, which is competent in criminal matters to issue or execute the freezing order in accordance with national law, and which is not a judge, court or public prosecutor. In such cases, the freezing order should be validated by a judge, court or public prosecutor, before it is transmitted to the executing authority.*
- (23) *Member States should be able to make 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 confiscation order, the issuing authority should transmit the original freezing order or confiscation order, or a certified copy thereof, together with the freezing certificate or the confiscation certificate. Member States should inform the Commission where they make or withdraw such a declaration. The Commission should make such information available to all Member States and to the European Judicial Network (EJN) provided for by Council Decision 2008/976/JHA¹⁴. The EJN should make that information available on the website referred to in that Decision.*

¹⁴ *Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).*

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

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

- (26) *With a view to the administrative transmission and reception of certificates relating to freezing orders and confiscation orders, Member States should be able to designate one or more central authorities where necessary due to the structure of their internal legal systems. 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.*

- (27) *Where a confiscation certificate that relates to a confiscation order concerning an amount of money is transmitted to more than one executing State, the issuing State should seek to avoid the situation whereby more property than necessary is confiscated and the total amount obtained from the execution of the order would exceed the maximum amount specified therein. To that end, the issuing authority should, inter alia, indicate in the confiscation certificate the value of assets, where known, in each executing State, so that the executing authorities can take account thereof, maintain the necessary contact and dialogue with the executing authorities on the property to be confiscated, and inform the relevant executing authority or authorities immediately if it considers that there could be a risk that confiscation in excess of the maximum amount might occur. Where appropriate, Eurojust could exercise a coordinating role within its remit in order to avoid excessive confiscation.*

- (28) *Member States should be encouraged to make a declaration stating that, as executing States, they would accept freezing certificates, confiscation certificates, or both, in one or more official languages of the Union other than their official languages.*
- (29) The executing authority should recognise *freezing orders and* confiscation orders and should take the *measures* necessary for their execution. The decision on the recognition and execution of the *freezing order or* 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 (EEC, Euratom) No 1182/71 of the Council¹⁵*, should be set out in order to ensure a quick and efficient decision on the recognition of the *freezing order or confiscation order and a quick and efficient execution thereof. As regards freezing orders, the executing authority should start taking the concrete measures necessary to execute such orders no later than 48 hours after the decision on the recognition and execution thereof has been taken.*

¹⁵ *Regulation (EEC, Euratom) No 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).*

- (30) 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.*
- (31) The recognition and execution of a freezing order or confiscation order should not be refused on grounds other than those *provided for* in this Regulation. This Regulation should permit the executing authorities not to recognise or execute confiscation orders on the basis of the **■** principle of *ne bis in idem*, *on the basis* of the rights of affected persons or *on the basis* of the right to be present at the trial.

- (32) *This Regulation should permit executing authorities not to recognise or execute confiscation orders where the person against whom the confiscation order was issued did not appear in person at the trial that resulted in the confiscation order linked to a final conviction. This should only be a ground for non-recognition or non-execution where trials result in confiscation orders linked to a final conviction and not where proceedings result in non-conviction-based confiscation orders. However, in order for such a ground to be available, one or more hearings should be held. The ground should not be available if the relevant national procedural rules do not provide for a hearing. Such national procedural 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 partially, a written procedure or a procedure in which no hearing is provided for.*
- (33) *It should be possible, in exceptional circumstances, not to recognise 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 or freedom of expression in other media.*

(34) *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, where there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of a freezing order or confiscation order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter, the executing authority should be able to decide not to recognise and execute the order concerned. The fundamental rights that should be relevant in this respect are, in particular, the right to an effective remedy, the right to a fair trial and the right of defence. The right to property should, in principle, not be relevant because freezing and confiscation of assets necessarily imply an interference with a person's right to property and because the necessary safeguards in that respect are already provided for in Union law, including in this Regulation.*

- (35) *Before deciding not to recognise or execute a freezing order or 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.*
- (36) *When examining a request from the executing authority to limit the period during which the property should be frozen, the issuing authority should take into account all of the 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.*
- (37) *The issuing authority should inform the executing authority when an authority of the issuing State receives any sum of money which has been paid in respect of the confiscation order, it being understood that the executing State should only be informed if the amount paid in respect of the order impacts on the outstanding amount that is to be confiscated pursuant to the order.*

- (38) 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 the grounds for postponement have ceased to exist, the executing authority should take the *measures necessary for the execution of* the order.
- (39) *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. To that end, the executing authority should make every reasonable effort to identify the affected persons, verify how they can be reached and inform them of the execution of the freezing order or of the decision to recognise and execute the confiscation order. In carrying out that obligation, the executing authority could ask the issuing authority for assistance, for example where 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 of 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.*

- (40) The issuing authority should be notified without delay *if it is impossible* to execute a freezing order or confiscation order. Such impossibility might arise *because* the *property* has already been confiscated, has disappeared, *has been destroyed or* 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 obliged to execute the order. However, if the executing authority subsequently obtains information that allows it to locate the property, it should be able to execute the order without a new certificate having to be transmitted in accordance with this Regulation.*
- (41) *Where the law of the executing State renders the execution of a freezing order or 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.*

- (42) *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 that time, also inform the issuing authority of the property or the amount of money that has been confiscated, and of other details that it considers relevant.*
- (43) The execution of a *freezing order or* confiscation ■ order should be governed by the law of the executing State and *only* the authorities of that State should ■ be competent to decide on the procedures for execution. *Where appropriate, the issuing and executing authority should be able to invite Eurojust or the EJN to provide assistance, within their remit, concerning issues relating to the execution of freezing orders and confiscation orders.*
- (44) 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 or the EJN.*

- (45) The victims' rights to compensation and restitution should not be prejudiced in cross-border cases. Rules for *the* disposal of *frozen or* confiscated property should give priority to the compensation of, and restitution of property to, *victims*. *The notion of 'victim' is to be interpreted in accordance with the law of the issuing State, which should also be able to 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.*

(46) *Where an executing authority is informed of a decision issued by the issuing authority or by another competent authority in the issuing State to retribute frozen property to the victim, the executing authority should take the necessary measures to ensure that the property concerned is frozen and restituted to the victim as soon as possible. The executing authority should be able to transfer the property to the issuing State, so that the latter would be able to retribute the property to the victim, or directly to the victim subject to the consent of the issuing State. The obligation to retribute frozen property to the victim should be subject to the following conditions: the victim's title 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 that into question; the property should not be required as evidence in criminal proceedings in the executing State; and the rights of affected persons, in particular the rights of bona fide third parties, should not be prejudiced. The executing authority should retribute frozen property to the victim only where those conditions have been met. Where an executing authority considers that those conditions have not been met, it should consult with the issuing authority, for example to request any additional information or to discuss the situation, in order to find a solution. If no solution can be found, the executing authority should be able to decide not to retribute the frozen property to the victim.*

- (47) *Each Member State should consider establishing a national centralised office responsible for the management of frozen property, with a view to possible later confiscation, as well as for the management of confiscated property. Frozen property and confiscated property 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.*
- (48) *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.*
- (49) Member States should not be able to claim from each other compensation for costs resulting from the application of this Regulation. However, where the executing 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 to share the costs should be considered by the issuing authority.

- (50) In order to *be able to address identified problems in the future regarding the content of the certificates* set out in the Annexes 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 those 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-Making¹⁶*. *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*.
- (51) Since the objective of this Regulation, namely the mutual recognition and execution of freezing *orders* and confiscation orders, cannot be sufficiently 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.

¹⁶ *OJ L 123, 12.5.2016, p. 1.*

- (52) Provisions of Framework Decision 2003/577/JHA have already been replaced by Directive 2014/41/EU *of the European Parliament and of the Council*¹⁷ as regards *the* freezing of evidence *for Member States bound by that Directive*. Provisions of Framework Decision 2003/577/JHA as regards freezing of property should be replaced by this Regulation between Member States bound by it. Framework Decision 2006/783/JHA should also be replaced by this Regulation between Member States bound by it. *The provisions of Framework Decision 2003/577/JHA as regards freezing of property, as well as the provisions 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.*
- (53) *The legal form of this act should not constitute a precedent for future legal acts 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 legal acts of the Union should be carefully assessed on a case-by-case basis taking into account, among other factors, the effectiveness of the legal act and the principles of proportionality and subsidiarity.*

¹⁷ Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

- (54) *Member States should ensure that, in accordance with Council Decision 2007/845/JHA¹⁸, their Asset Recovery Offices cooperate with each other to facilitate 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.*
- (55) 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 TEU and to the TFEU, ■ the United Kingdom ■ has notified its wish to take part in the adoption and application of this Regulation ■ .
- (56) *In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21*, 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.

¹⁸ *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).*

(57) In accordance with Articles 1 and 2 of Protocol *No 22* on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

CHAPTER I
SUBJECT-MATTER, DEFINITIONS AND SCOPE

Article 1
Subject matter

1. This Regulation lays down the rules under which a Member State recognises and executes in its territory freezing *orders* and confiscation orders 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 enshrined in Article 6 TEU.
3. *When issuing freezing orders or confiscation orders, issuing authorities shall ensure that the principles of necessity and proportionality are respected.*
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) ***'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;
- (2) '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 of a natural or legal person;
- (3) 'property' means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property, which the issuing authority considers to be:
 - (a) the proceeds of ***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 a criminal 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 partially, to commit a criminal offence ■ ;
- (6) 'issuing State' means the Member State in which a freezing order or confiscation order is issued ■ ;
- (7) 'executing State' means the Member State to which a freezing order or confiscation order is transmitted for the purpose of recognition and execution;

- (8) 'issuing authority' means:
- (a) in respect of a freezing order:
 - (i) a judge, court, █ or public prosecutor competent in the case concerned; or
 - (ii) **another** competent authority **which is designated as such** by the issuing State **and** which is competent in criminal **matters** to order the freezing of property or to execute a freezing order in accordance with national law. In addition, before it is transmitted to the executing authority, the freezing order shall be validated **by a judge, court or public prosecutor in the issuing State after examining** its conformity with the conditions for issuing such an order under this Regulation █. Where the order has been validated by a judge, court or public prosecutor, that other competent 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 execute 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 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 register the order and authorise its execution, the executing authority includes the authority that is competent to request such registration and authorisation;*
- (10) ‘affected person’ means *the natural or legal person against whom a freezing order or confiscation order is issued, or the natural or legal person that owns 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 under the law of the executing State.*

Article 3
Criminal offences

1. Freezing orders or confiscation orders shall ***be executed*** without verification of the double criminality of the acts giving rise to ***such orders, where those 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 criminal 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 affecting the Union's financial interests as defined in Directive ***(EU) 2017/1371 of the European Parliament and of the Council***¹⁹;

- I**
- (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;
 - (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;

¹⁹ ***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).***

- (20) swindling;
- (21) racketeering and extortion;
- (22) counterfeiting and piracy of products;
- (23) forgery of administrative documents and trafficking *therein*;
- (24) *forgery of 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 criminal offences other than those *referred to in* paragraph 1, the executing State may make the recognition and execution of a freezing order or confiscation order subject to the condition that the acts giving rise to the freezing order or confiscation order constitute a criminal 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

Transmission of freezing orders

1. *A freezing order shall be transmitted by means of a freezing certificate. The issuing authority shall transmit the freezing certificate provided for in Article 6 directly to the executing authority or, where applicable, to the central authority referred to in Article 24(2), by any means capable of producing a written record under conditions that allow the executing authority to establish the authenticity of the freezing certificate.*

2. *Member States may make 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 is to transmit the original freezing order or a certified copy thereof together with the freezing certificate. However, only the freezing certificate has to be translated, in accordance with Article 6(2).*
3. *Member States may make the declaration referred to in paragraph 2 prior to the date of application of this Regulation or at a later date. Member States may withdraw such a declaration at any time. Member States shall inform the Commission when they make or withdraw such a declaration. The Commission shall make such information available to all Member States and to the EJN.*
4. *As regards a freezing order concerning an amount of money, where the issuing authority has reasonable grounds to believe that the person against whom the freezing order was issued has property or income in a Member State, it shall transmit the freezing certificate to that Member State.*

5. *As regards a freezing order concerning specific items of property, where the issuing authority has reasonable grounds to believe that such items are located in a Member State, it shall transmit the freezing certificate to that Member State.*
6. *The freezing certificate shall:*
 - (a) *be accompanied by a confiscation certificate transmitted in accordance with Article 14; 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 14, in which case the issuing authority shall indicate the estimated date of this transmission in the freezing certificate.*
7. *The issuing authority shall inform the executing authority if it is aware of any affected persons. The issuing authority shall also provide, upon request, the executing authority with any information relevant to any claim that such affected persons may have in relation to the property, including any information identifying those persons.*

8. *Where, despite the information having been made available in accordance with Article 24(3), the competent executing authority is unknown to the issuing authority, the issuing authority shall make all necessary inquiries, including through the contact points of the EJN, in order to determine which authority is competent for the recognition and execution of the freezing order.*
9. *Where the authority in the executing State which receives a freezing certificate is not competent to recognise the freezing order or take the measures necessary for its execution, that authority shall immediately transmit the freezing certificate to the competent executing authority in its Member State and shall inform the issuing authority accordingly.*

Article 5

Transmission of a freezing order to one or more executing States

1. *A freezing certificate shall only be transmitted pursuant to Article 4 to one executing State at any one time, unless paragraph 2 or 3 of this Article applies.*

2. *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 where:*
- (a) *the issuing authority has reasonable grounds to believe that different items of property covered by the freezing order are located in different executing States; 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. *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 considers that 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 6
Standard freezing certificate

1. *In order to transmit a freezing order, 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 provide the executing authority with a translation of the freezing certificate in an official language of the executing State or in 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 translations of freezing certificates in one or more official languages of the Union other than the official language or languages of that Member State. The Commission shall make the declarations available to all Member States and to the EJN.*

Article 7

Recognition and execution of freezing orders

- 1. The executing authority shall recognise a freezing order transmitted in accordance with Article 4 and shall take the measures necessary for its execution in the same way as for a domestic freezing order issued by an authority of the executing State, unless the executing authority invokes one of the grounds for non-recognition and non-execution provided for in Article 8 or one of the grounds for postponement provided for in Article 10.*
- 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, providing an estimate of its value. Such reporting shall be carried out using any means capable of producing a written record, without undue delay once the executing authority has been informed that the freezing order has been executed.*

Article 8

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

1. *The executing authority may decide not to recognise or execute a freezing order only where:*
 - (a) *executing the freezing order would be contrary to the principle of ne bis in idem;*
 - (b) *there is a privilege or immunity 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 or the freedom of expression in other media that prevent the execution of the freezing order;*
 - (c) *the freezing certificate is incomplete or manifestly incorrect and has not been completed following the consultation referred to in paragraph 2;*

- (d) *the freezing order relates to 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 freezing order was issued does not constitute a criminal offence under the law of the executing State;*
- (e) *in a case falling under Article 3(2), the conduct in connection with which the freezing order was issued does not constitute a criminal offence under the law of the executing State; however, in cases that involve taxes or duties or customs and exchange regulations, the recognition or 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 provide for 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) in exceptional situations, there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the freezing order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter, in particular the right to an effective remedy, the right to a fair trial or the right of defence.

- 2. In any of the cases referred to in paragraph 1, before deciding not to recognise or execute the freezing order, whether wholly or partially, the executing authority shall consult the issuing authority by any appropriate means and where appropriate, shall request the issuing authority to supply any necessary information without delay.*
- 3. Any decision not to recognise or execute the freezing order shall be taken without delay and notified immediately to the issuing authority by any means capable of producing a written record.*
- 4. Where the executing authority has recognised a freezing order, but it becomes aware, during the execution thereof, that one of the grounds for non-recognition or non-execution applies, it shall immediately contact the issuing authority by any appropriate means in order to discuss the appropriate measures to take. On that basis, the issuing authority may decide to withdraw the freezing order. If, following such discussions, no solution has been reached, the executing authority may decide to stop the execution of the freezing order.*

Article 9

Time limits for recognition and execution of freezing orders

- 1. The executing authority shall take the decision on the recognition and execution of the freezing order and execute that order without delay and with 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 execution of the freezing order is to be carried out on a specific date, the executing authority shall take as full account as possible thereof. Where the issuing authority has indicated that coordination is needed between the Member States involved, the executing authority and the issuing authority shall coordinate with each other in order to agree on the date of execution of the freezing order. Where no agreement can be reached, the executing authority shall decide on the date of execution of the freezing order, taking as full account as possible of the interests of the issuing authority.*

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, or in view of any investigative or procedural needs in the issuing State, 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. No later than 48 hours after such a decision has been taken, the executing authority shall take the concrete measures necessary to execute the order.*

4. *The executing authority shall communicate, without delay and by any means capable of producing a written record, the decision on the recognition and execution of the freezing order to the issuing authority .*

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 which it was not possible to meet those time limits, and shall consult with the issuing authority on an appropriate schedule for the recognition or the execution of the freezing order.*
6. *The expiry of the time limits set out in paragraph 3 shall not relieve the executing authority of its obligation to take a decision on the recognition and execution of the freezing order, and to execute that order, without delay.*

Article 10

Postponement of the execution of freezing orders

1. *The executing authority may postpone the execution of a freezing order transmitted in accordance with Article 4 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 considers 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 that existing order is 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 existing order is withdrawn; however, this point shall only apply where the existing order would have priority, under national law, over subsequent national freezing orders in criminal matters.*
2. *The executing authority shall, immediately and by any means capable of producing a written record, report to the issuing authority on the postponement of the execution of the freezing order , specifying the grounds for the postponement and, where possible, the expected duration of the postponement.*

3. *As soon as the grounds for postponement have ceased to exist, the executing authority shall immediately take the measures necessary for the execution of the freezing order and inform the issuing authority thereof by any means capable of producing a written record.*

Article 11

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 in the context of which the freezing order was issued.*
2. *Except to the extent necessary to execute the freezing order, the executing authority shall guarantee the confidentiality of the facts and substance of the freezing order in accordance with its national law. Without prejudice to paragraph 3 of this Article, as soon as the freezing order has been executed, the executing authority shall inform the affected persons thereof in accordance with Article 32.*

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 under Article 32. 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 the executing authority can inform the affected persons of the execution of the freezing order in accordance with Article 32.*
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 12

Duration of freezing orders

- 1. The property subject to a freezing order 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 14 or until the issuing authority has informed the executing authority of any decision or measure that renders the order unenforceable or causes it to be withdrawn in accordance with Article 27(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 is to be frozen. Such a request, including any relevant supporting information, shall be transmitted by any means capable of producing a written record under conditions that allow the issuing authority 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 respond to the request as soon as possible. If the issuing authority does not agree to the limitation, it shall inform the executing authority of the reasons thereof. In such a case, the property shall remain frozen in accordance with paragraph 1. If the issuing authority does not respond within six weeks of receiving the request, the executing authority shall no longer be obliged to execute the freezing order.*

Article 13

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, where appropriate, shall consult with the issuing authority.*
3. *The non-execution of a freezing order under this Article may only be justified where 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, where the executing authority subsequently obtains information that allows it to locate the property, the executing authority may execute the freezing order without a new freezing certificate having to be transmitted, provided that, prior to executing the freezing order, the executing authority has verified with the issuing authority that the freezing order is still valid.*
- 5. Notwithstanding paragraph 3, where the issuing authority has indicated that property of equivalent value could be frozen, the executing authority shall not be required to execute the freezing order where one of the circumstances set out in paragraph 3 exists and there is no property of equivalent value that can be frozen.*

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CHAPTER III
TRANSMISSION, RECOGNITION AND EXECUTION OF CONFISCATION ORDERS

Article 14

Transmission of confiscation orders

1. A confiscation order **■** shall be transmitted *by means of a confiscation certificate. The issuing authority shall transmit the confiscation* certificate provided for in Article 17 directly to the executing authority or, where applicable, to the central authority referred to in Article 24(2), by any means capable of producing a written record under conditions that allow the executing authority to establish the authenticity of the confiscation certificate.

2. *Member States may make 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 is to transmit the original confiscation order or a certified copy thereof together with the confiscation certificate. However, only the confiscation certificate has to be translated, in accordance with Article 17(2).*

3. *Member States may make the declaration referred to in paragraph 2 prior to the date of application of this Regulation, or at a later date. Member States may withdraw such a declaration at any time. Member States shall inform the Commission when they make or withdraw such a declaration. The Commission shall make such information available to all Member States and to the EJN.*
4. As regards a confiscation order concerning an amount of money, where the *issuing authority* has reasonable grounds to believe that the person against whom the confiscation order *was* issued has property or income in a Member State, it *shall transmit the confiscation certificate* to that Member State.
5. As regards a confiscation order concerning specific items of property, where the *issuing authority* has reasonable grounds to believe that such items are located in a Member State, it *shall transmit the confiscation certificate* to that Member State.
6. *The issuing authority shall inform the executing authority if it is aware of any affected persons. The issuing authority shall also, upon request, provide the executing authority with any information relevant to any claim that such affected persons may have in relation to the property, including any information identifying those persons.*

7. *Where, despite the information having been made available in accordance with Article 24(3), the competent executing authority is unknown to the issuing authority, the issuing authority shall make all necessary inquiries, including through the contact points of the EJN, in order to determine which authority is competent for the recognition and execution of the confiscation order.*
8. Where the authority in the executing State which receives a confiscation *certificate is not competent* to recognise the confiscation order *or* to take the *measures* necessary for its execution, *that authority* shall immediately transmit the confiscation *certificate* to the competent executing authority in its Member State and shall inform the issuing authority accordingly.

Article 15

Transmission of a confiscation order to one or more executing States

1. A confiscation *certificate shall* only be transmitted, pursuant to Article 14, to one executing State at any one time, *unless paragraph 2 or 3 of this Article applies.*

2. **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 **would require action** in **■** more **than one** executing **State**.
3. **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 considers 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 estimated 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 confiscation of the full amount covered by the confiscation order.

Article 16

Consequences of transmission of confiscation orders

1. The transmission of a confiscation order, in accordance with Articles 14 and 15, shall not restrict the right of the issuing State to execute the order.
2. The total amount obtained from the execution of a confiscation order concerning an amount of money *shall* not exceed the maximum amount specified in that order, regardless of whether that order was transmitted to one or to several executing States.
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 confiscation in excess of the maximum amount may occur, in particular on the basis of information *received from* the executing authority pursuant to *point (b) of Article 21(1)* ;
- (b) all or a part of the █ confiscation order has been executed in the issuing State or in a different executing State, in which case it shall specify 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 14, an authority of the issuing State receives any sum of money which has been paid █ in respect of the *confiscation* order.

Where point (a) of the first subparagraph applies, the issuing authority shall inform the executing authority as soon as possible when the risk referred to in that point *ceases to exist*.

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Article 17

Standard *confiscation* certificate

1. In order to transmit a confiscation order, 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 provide the executing authority with a translation of the *confiscation* certificate in an official language of the executing State or *in* 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 translations of confiscation certificates in one or more official languages of the Union other than *the official language or languages of that Member State. The Commission shall make the declarations available to all Member States and to the EJN.*

Article 18

Recognition and execution of confiscation orders

1. The executing authority shall ■ recognise a confiscation order transmitted in accordance with Article 14 and shall take the *measures* necessary ■ for its execution in the same way as for a domestic confiscation order *issued* by an authority of the executing State, unless the *executing* authority *invokes* one of the grounds for non-recognition and non-execution *provided for in* Article 19 or one of the grounds for postponement provided for in Article 21.
2. Where a confiscation order concerns a specific item of property, the issuing *authority* and executing authority may, where ■ the law of the issuing State *so provides*, agree that confiscation in the executing State *can* be carried out through the confiscation of a sum of money corresponding to the value of the property *that was to be confiscated*.

3. Where a confiscation order concerns an amount of money and the executing authority is unable to obtain payment of that amount, it shall execute the confiscation order in accordance with paragraph 1 on any item of property that is available for that purpose. Where necessary, the executing authority shall convert the amount of money to be confiscated into the currency of the executing State at the daily euro exchange rate as published in the C series of the *Official Journal of the European Union* for the date on which the confiscation order was issued..

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. *Where the issuing authority has issued a confiscation order but has not issued a freezing order, the executing authority may, as part of the measures provided for in paragraph 1, decide to freeze the property concerned of its own motion in accordance with its national law with a view to subsequent execution of the confiscation order. In such a case, the executing authority shall inform the issuing authority without delay and, where possible, prior to freezing the property concerned.*
6. As soon as the execution of the confiscation order has been completed, the executing authority shall inform, by any means capable of producing a written record, the issuing authority *of the results of the execution.*

Article 19

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

1. The executing authority may decide not to recognise or execute *a* confiscation *order* only where:

- (a) *executing* the █ confiscation order would be contrary to the principle of *ne bis in idem*;
- (b) there is *a* privilege or immunity under the law of the executing State that would prevent the confiscation of the property concerned *or there are rules on the determination or limitation of criminal liability that relate to the freedom of the press or the freedom of expression in other media that prevent the execution of the confiscation order*;
- (c) *the confiscation certificate is incomplete or manifestly incorrect and has not been completed following the consultation referred to in paragraph 2*;
- (d) the █ confiscation order relates to 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 █ confiscation order *was* issued *does* not *constitute* a criminal offence under the law of the executing State;

- (e) the rights of *affected persons would* make it impossible under the law of the executing State to execute the █ confiscation order, *including* where that impossibility is a consequence of the application of legal remedies in accordance with Article 33;
- (f) █ in a case falling under Article 3(2), the conduct in connection█ with which the █ confiscation order was issued does not constitute a criminal offence under the law of the executing State; however, in *cases that involve* taxes or duties *or* customs and exchange *regulations, the* recognition or execution of the█ confiscation 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 provide for 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;

- (g) according to the *confiscation* certificate, the person *against whom the confiscation order was issued* did not appear in person at the trial that resulted in the confiscation order linked to a final conviction, unless the *confiscation* certificate states that ■, in accordance with further procedural requirements defined in the 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, *by other means*, official information of the scheduled date and place of that trial 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 an examination of fresh evidence ■, and which could lead to the original confiscation order 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) *in exceptional situations, there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the confiscation order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter, in particular the right to an effective remedy, the right to a fair trial or the right of defence.*

2. In *any of* the cases referred to in paragraph 1, before deciding not to recognise or execute the confiscation order, *whether* wholly or partially, the executing authority shall consult the issuing authority by any appropriate means and, where appropriate, shall request the issuing authority to supply any necessary information without delay.
3. Any decision not to recognise or 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 20

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, without delay and by any means capable of producing a written record, the decision on *the recognition and execution of the* confiscation order to the issuing authority .
3. Unless grounds for postponement *under* Article 21 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 for a similar domestic case*.

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* by any means, giving the reasons for which it was not possible to meet that time limit, and shall consult with the issuing authority on an appropriate *schedule for the recognition and execution of the confiscation order*. ■

5. *The expiry of the time limit set out in paragraph 1 shall not relieve the executing authority of its obligation to take a decision on the recognition and execution of the confiscation order, and to execute that order, without delay.*

Article 21

Postponement of the execution of confiscation orders

1. The executing authority may postpone the *recognition or* execution of a confiscation order transmitted in accordance with Article *14* 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* considers reasonable;
- (b) as regards a confiscation order concerning an amount of money, *it* considers that there is a risk that the total amount obtained from *the execution of that confiscation order* might 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) the property is already the subject of *ongoing* confiscation proceedings in the executing State; *or*
- (d) *a* legal remedy as referred to in Article 33 *has been invoked*.

2. *Notwithstanding Article 18(5), for as long as the execution of a confiscation order is postponed, the competent authority of the executing State shall 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 the execution of the confiscation order.*
3. The executing authority shall, without delay and by any means capable of producing a written record, ■ ■ report to the issuing authority *on the postponement of the execution of the confiscation order*, specifying the grounds for the postponement and, where possible, the expected duration of the postponement.
4. As soon as *the* grounds for postponement have ceased to exist ■ , the executing authority shall take, without delay, the *measures necessary for the execution of* the confiscation order and inform the issuing authority thereof by any means capable of producing a written record.

■

Article 22

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, where appropriate, shall consult with the issuing authority, taking into account also the possibilities provided for under Article 18(2) or (3).*
3. *The non-execution of a confiscation order under this Article may only be justified where the property:*
 - (a) *has already been confiscated;*
 - (b) *has disappeared;*

- (c) *has been destroyed;*
 - (d) *cannot be found in the location indicated on the confiscation 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, where the executing authority subsequently obtains information that allows it to locate the property, the executing authority may execute the confiscation order without a new confiscation certificate having to be transmitted, provided that, prior to executing the confiscation order, the executing authority has verified with the issuing authority that the confiscation order is still valid.*
5. *Notwithstanding paragraph 3, where the issuing authority has indicated that property of equivalent value could be confiscated, the executing authority shall not be required to execute the confiscation order where 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 23

Law governing execution

1. The execution of the freezing *order* or confiscation order shall be governed by the law of the executing State and its authorities shall be solely competent to decide on the procedures for *its* execution and to determine all the measures relating thereto.
2. A freezing *order* or confiscation order issued against a legal person shall be executed even where the executing State does not recognise the principle of criminal liability of legal persons.
3. Notwithstanding Article *18*(2) and (3), the executing State may not impose alternative measures ■ to the freezing *order transmitted* pursuant to Article *4* or confiscation order *transmitted* pursuant to Articles *14 without the consent of the* issuing State ■ .

Article 24

Notification of 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 points (8) and (9) of Article 2 *that* are competent under its law *in the cases* where that Member State is, *the issuing State or the executing State, respectively*.
2. *Where* necessary, *due to* 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 *freezing certificates and confiscation certificates* 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 under this Article available to all Member States and to the EJN.

Article 25
Communication

1. Where necessary, the issuing authority and the executing authority shall consult each other **without delay** 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 confiscation order, shall be made **directly** between the issuing **authority** and the executing authority **and**, where a Member State has designated a central authority in accordance with Article 24(2), **shall be made, where appropriate**, with the involvement of that central authority.

Article 26
Multiple orders

1. If **█** the executing *authority receives* two or more freezing orders or confiscation orders *from different Member States* issued 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 21.*
2. *In taking its decision, the executing authority shall give priority to the interests of victims where possible. It shall also take all other relevant circumstances into account, including the following:*

- (a) *whether the assets are already frozen;*
- (b) the dates of the respective orders and their dates of transmission **■** ;
- (c) the **■** seriousness *of the criminal offence concerned;* and
- (d) *the place **■** where the criminal offence was committed.*

■

Article 27

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

1. *Where the freezing order or confiscation order can no longer be executed or is no longer valid, the issuing authority shall withdraw the freezing order or confiscation order without delay.*

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 and 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, in so far as the execution has not yet been completed*, as soon as it *has been* informed by the issuing authority *in accordance with paragraph 2. The executing authority shall send, without undue delay and by any means capable of producing a written record, a confirmation of the termination to the issuing State.*

Article 28

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, having regard to Article 10 of Directive 2014/42/EU, shall be able to sell or transfer frozen property.*
3. *Frozen property and money obtained after selling such property in accordance with paragraph 2 shall remain in the executing State until a confiscation certificate has been transmitted and the confiscation order has been executed, without prejudice to the possibility of restituting property under Article 29.*

4. *The executing State shall not be required to sell or return specific items covered by a confiscation order, where those items constitute cultural objects, as defined in point (1) of Article 2 of Directive 2014/60/EU of the European Parliament and of the Council²⁰. This Regulation shall not affect the obligation to return cultural objects under that Directive.*

Article 29

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 its national law, to restitute frozen property to the victim, the issuing authority shall include information on that decision in the freezing certificate or communicate information on that decision to the executing authority at a later stage.*

²⁰ *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 and amending Regulation (EU) No 1024/2012 (OJ L 159, 28.5.2014, p. 1).*

2. *Where an executing authority has been informed of a decision to reconstitute frozen property to the victim as referred to in paragraph 1, it shall take the necessary measures to ensure that, where the property concerned has been frozen, that property is reconstituted as soon as possible to the victim, in accordance with the procedural rules of the executing State, where necessary via the issuing State, provided that:*

- (a) the victim's title 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.*

The executing authority shall inform the issuing authority where property is transferred directly to the victim.

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 30

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 that decision in the confiscation certificate or communicate, at a later stage, information on that decision to the executing authority.*

2. *Where an executing authority has been informed of a decision to retribute confiscated property to the victim as referred to in paragraph 1, it shall take the necessary measures to ensure that, where the property concerned has been confiscated, that property is restituted as soon as possible to the victim, where necessary via the issuing State. The executing authority shall inform the issuing authority where property is transferred directly to the victim.*

3. *Where it is not possible for the executing authority to retribute 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 shall be transferred to the victim for the purposes of restitution, where necessary via the issuing State. The executing authority shall inform the issuing authority where money is transferred directly to the victim. Any remaining property shall be disposed of in accordance with paragraph 7.*

4. *Where an executing authority has been informed of 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, shall be transferred to the victim for the purposes of compensation, where necessary via the issuing State. The executing authority shall inform the issuing authority where money is transferred directly to the victim. Any remaining property shall be disposed of in accordance with paragraph 7.*

5. *Where proceedings to restitute property to, or compensate, the victim are pending in the issuing State, the issuing authority shall inform the executing authority accordingly. The executing State shall refrain from disposing of the confiscated property until the information on the decision to restitute property to, or compensate, the victim has been communicated to the executing authority, even in cases 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 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 paragraph 7;*
 - (b) *the property may be transferred to the issuing State provided that, where the confiscation order covers an amount of money, the issuing authority has given its consent to the transfer of property to the issuing State ;*
 - (c) *subject to point (d), 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 law, subject to the consent of the issuing State.*

7. Unless the confiscation order is accompanied by a decision to *restitute property to the victim or to* 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 *shall* 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 *shall* be transferred by the executing State to the issuing State.

█

Article 31

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 28.***
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 confiscation order, that the execution of the order would entail large or exceptional costs.***

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

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

Article 32

Obligation to inform affected persons

- 1. Without prejudice to Article 11, following the execution of a freezing order or following the decision to recognise and execute a confiscation order, the executing authority shall inform, to the extent possible, 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 specify the name of the issuing authority and the legal remedies available under the law of the executing State. The information shall also specify, at least in a brief manner, the reasons for the 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 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 freezing *orders* pursuant to *Article 7 and confiscation orders pursuant to Article 18*. *The right to a* legal remedy shall be *invoked* before a court in the executing State in accordance with its law. *As regards confiscation orders, the* invocation of a legal remedy may have suspensive effect *where* the law of the executing State *so provides*.
2. The substantive reasons for issuing the freezing order 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 invoked 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 liable under its law for damage **■** to *an affected person resulting from* the execution of a freezing *order* transmitted to it pursuant to Article 4 or confiscation order transmitted to it pursuant to Article 14, the issuing State shall reimburse the executing State *for any damages paid to the affected person. However, where the issuing State can demonstrate to the executing State that* the damage, or any part thereof, *was* exclusively due to the conduct of the *executing State, the issuing and executing States shall agree between themselves 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 comprehensive statistics from the relevant authorities. *They shall maintain those statistics and shall send them* to the Commission each year. *Those statistics* shall include, in addition to *the information referred to* 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 that were recognised and executed, and* the recognition and execution of which were refused **█**.

2. *Each year, Member States shall also send the following statistics to the Commission, where they are available at a central level in the Member State concerned:*

- (a) the number of cases in which 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 period required for 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* set out in Annexes I and II. *Such amendments shall be in accordance with this Regulation and shall not affect it.*

Article 37

Exercise of the 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

By [five years from the date of application of this Regulation], *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 make and withdraw declarations under Articles 4(2) and 14(2);*
- b) *the interaction between the respect for fundamental rights and the mutual recognition of freezing orders and confiscation orders;*
- c) *the application of Articles 28, 29 and 30 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 the provisions of Framework **Decision** 2003/577/JHA as regards the freezing of property between the Member States bound by this Regulation as from ...[date of application of this Regulation].

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

For the Member States bound by this Regulation, references to Framework Decision 2003/577/JHA as regards freezing of property and references to Framework Decision 2006/783/JHA shall be construed as references to this Regulation.

Article 40
Transitional provisions

- 1. This Regulation shall apply to freezing certificates and confiscation certificates transmitted on or after ... [date of application of this Regulation].*
- 2. Freezing certificates and confiscation certificates transmitted before ... [date of application of this Regulation] shall continue to be governed 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 confiscation order.*

Article 41
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 ... [24 months after the date of entry into force of this Regulation].

However, Article 24 shall apply from ... [date of entry into force of **this** Regulation].

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

Done at...,

For the European Parliament

For the Council

The President

The President

FREEZING CERTIFICATE



SECTION A:

Issuing State:

Issuing authority:

Validating authority (if applicable):

Executing State:

Executing authority (if known):

SECTION B: *Urgency and/or requested date for execution*



1. Please indicate the particular grounds for urgency:

- There are legitimate grounds to believe that the property in question will imminently be removed or destroyed, namely:*

.....
.....

- Investigative or procedural needs in the issuing State, namely:*

.....
.....

2. Date for execution:

- A specific date is requested, namely:*

- Coordination needed between the Member States involved*

Grounds for this request:

.....
.....

SECTION C: *Affected person(s)*

Identity of the person(s) against whom the freezing order is issued, or of the person(s) that owns/own the property that is covered by the freezing order (if more than one person is affected, please provide the information for each person):

1. Identification data

(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, if available:.....

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

.....

Date of birth:.....

Place of birth:.....

Residence and/or known address (if the address is not known, the last known address):

.....

Language(s) which the affected person understands

Please indicate the position of the affected person in the proceedings:

- person against whom the freezing order is directed*
- person that owns the property that is covered by the freezing order*

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

Name:

Legal form:

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

Registered seat:.....

Registration number:.....

Address:.....

Name of the representative:.....

Please indicate the position of the affected person in the proceedings:

- person against whom the freezing order is directed*
- person that owns the property that is covered by the freezing order*

I

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

.....

3. Third parties whose rights in relation to the property that is covered by the freezing order are directly prejudiced by the order (identity and grounds):

.....

.....

4. Provide any other information that will assist with the execution of the freezing order :

.....

I

SECTION D: Information on property to which the order relates

1. *Please indicate* if the order concerns:

- an amount of money
- specific item(s) of property (*corporeal or incorporeal, movable or immovable*)
- property *of equivalent value (in the context of value-based confiscation)* ■

2. If the order concerns an amount of money *or property of equivalent value to that amount of money*:

- The amount for execution in the executing State ■ , in figures and words (*indicate currency*):

.....

- The total amount covered by the order, in figures and words (*indicate currency*):

.....

Additional information:

- Grounds for believing that the affected person has property/income in the executing State:

.....

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

.....

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

- **Details of the bank account of the affected person (if known):**

.....

3. *If the order concerns specific item(s) of property or property of equivalent value to such property:*

Grounds for *the transmission of the order to the executing State:*

- the specific item(s) of property is/are located in the executing State*
- the specific item(s) of property is/are* registered in the executing State
- the issuing authority 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.

Additional information:

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

.....

- Description of the item of property █ :

.....

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

.....

█

- *Other* relevant █ *information (e.g. appointment of a judicial administrator):*

.....

█

SECTION E: Grounds for issuing the freezing order

1. Summary of the facts

Set out the reasons why the freezing order is issued, including:

- summary of the facts, including a description of the criminal offence(s):

.....
.....

- stage of the investigation:

.....
.....

- grounds for freezing:

.....
.....

- other relevant information:

.....
.....

2. Nature and legal classification of the criminal offence(s) in relation to which the freezing order was issued and the applicable legal provision(s):

.....
.....

3. Is the criminal offence in relation to which the freezing order is issued punishable in the issuing State by a custodial sentence of a maximum of at least three years and included in the list of criminal offences set out below? (please tick the relevant box). Where the freezing order concerns several criminal offences, please indicate numbers in the list of criminal offences below (corresponding to the criminal offences as described under points 1 and 2 above).

- 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, including fraud and other criminal offences affecting the Union's financial interests as defined in Directive (EU) 2017/1371*
- *laundering of the proceeds of crime*
- *counterfeiting currency, including the euro*
- *computer-related crime*

- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties*
- facilitation of unauthorised entry and residence*
- murder or grievous bodily injury*
- illicit trade in human organs and tissue*
- kidnapping, illegal restraint or 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*
- forgery 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 or ships

sabotage

█

4. *Any other relevant information (e.g. relation between the property and the criminal offence):*

.....

SECTION F: *Confidentiality of the order and/or request for specific formalities*

Need to maintain the information in the order confidential after execution:

.....

Need for specific formalities at the time of execution:

.....

SECTION G: *Where a freezing certificate* has been transmitted to more than one executing State, provide the following information:

1. *A freezing certificate* has been transmitted to the following other executing State(s) (State and authority):

.....

.....

2. *A freezing certificate* has been transmitted to more than one executing State for the following reasons **█** :

Where the freezing order concerns specific items of property:

Different items of property covered by the order are believed to be located in different executing States ■

The *freezing* of a specific item of property requires action in more than one executing State ■

■ Where the freezing order concerns an amount of money:

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 order

Other specific needs:

.....

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

.....

.....

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

.....

.....

SECTION H: Relation to an earlier freezing order and/or other order(s) or request(s)

Please indicate whether this freezing order relates to an earlier order or request (e.g. freezing order, European Investigation Order, European arrest warrant or mutual legal assistance). If applicable, provide the following information relevant to identify the previous order or request :

- Type of the order/request:.....

- Date of issue:.....

- Authority to which the order/request was transmitted:.....

- Reference number given by the issuing authority:.....

- Reference number(s) given by the executing authority(ies):

SECTION I: Confiscation

Please indicate whether:

- this freezing certificate is accompanied by a confiscation certificate issued in the issuing State (reference number of the confiscation certificate):***

.....

- 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 J: Alternative measures

1. Please indicate whether the issuing State allows for the application by the executing State of alternative measures where it is not possible to execute the freezing order, either wholly or partially:

Yes

No

2. If yes, state which measures may be applied:

.....

SECTION K: RESTITUTION OF FROZEN PROPERTY

1. Please indicate if a decision to retribute frozen property to the victim has been issued:

Yes

No

If yes, please specify the following concerning the decision to retribute frozen property to the victim:

Authority that issued the decision (official name):

.....

Date of the decision:

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

Description of the property to be restituted:

Name of the victim:

Address of the victim:

If the victim's title to the property is contested, please provide details (persons contesting the title, reasons, etc):

.....
.....

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

.....
.....

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

- No*
- Yes, the outcome will be communicated to the executing authority*

The issuing authority shall be notified in case of direct transfer to the victim.

SECTION L: 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, interpretation and translation is available:

The issuing authority (see Section M)

The validating authority (see Section N)

Other:.....

SECTION M: Details of the issuing authority

Type of the issuing authority:

- judge, court, public prosecutor*
- another competent authority designated by the issuing State*

Name of the authority:.....

Name of the contact person:.....

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 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/Tel. No.:.....

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

Name:.....

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

Date:

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

SECTION N: Details of the authority which validated the freezing order

Please indicate the type of authority which has validated the freezing order, if applicable:

judge or court

public prosecutor

Name of the validating authority:.....

Name of the contact person:.....

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 the main contact point for the executing authority:

- issuing authority*
- validating authority*

Signature and details of the validating authority and/or its representative:

.....
Name:.....

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

Date:

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

SECTION O: Central authority

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

Name of the central authority:

Name of the contact person:

Post held (title/grade):

File No.:

Address:.....

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

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

E-mail :

.....

SECTION P: Attachments

Please indicate any attachments to the certificate:.....

CONFISCATION CERTIFICATE

SECTION A:

Issuing State:

Issuing authority:

Executing State:

Executing authority (if known):

SECTION B: Confiscation order

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

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

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

4. **The confiscation order became final on (date):**

SECTION C: Affected person(s)

Identity of the *person(s) against whom the confiscation order is issued, or of the person(s) that owns/own the property that is covered by the confiscation order* (if more than one person is *affected*, please provide the information for each person):

1. Identification data

(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, *if available*:.....

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

Date of birth:.....

Place of birth:.....

Residence and/or known address (if address is not known, the last known address):
.....

Language(s) which the affected person understands:

Please indicate the position of the affected person in the proceedings:

person against whom the confiscation order is directed

person that owns the property that is covered by the confiscation order

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

Name:

Legal form:.....

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

Registered seat:.....

Registration number:.....

Address ■ :.....

Name of the ■ representative:.....

Please *indicate* the position *of* the *affected* person **█** in the proceedings:

- person against whom the confiscation order is directed*
- person that owns the property that is covered by the confiscation order*

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

.....

3. *Third parties whose rights in relation to the property that is covered by the confiscation order are directly prejudiced by the order (identity and grounds):*

.....

.....

4. Provide any other information that will assist with the execution of the confiscation order:

.....

SECTION *D*: Information on *property to which* the **II** order *relates*

1. The court has decided that the property:

- is 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*
- constitutes the instrumentalities of a criminal 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, including confiscation without a final conviction, under the law of the issuing State following proceedings in relation to a criminal offence*

2. *Please indicate if the order concerns:*

an amount of money

specific item(s) of property (corporeal or incorporeal, movable or immovable)

property of equivalent value (in the context of value-based confiscation)

3. *If the order concerns an amount of money or property of equivalent value to that amount of money:*

- The amount for execution in the executing State, in figures and words

(indicate currency):

- The total amount covered by the order, in figures and words

(indicate currency):

Additional information:

- Grounds for believing that the affected person has property/income in the executing State:

.....

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

.....

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

- Details of the bank account of the affected person (if known):

.....

4. If the order concerns specific item(s) of property or property of equivalent value to such property:

Grounds for the transmission of the order to the executing State:

- the specific item(s) of property is/are located in the executing State*
- the specific item(s) of property is/are registered in the executing State*
- the issuing authority 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.*

Additional information:

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

.....

.....

- *Description of the item of property*

.....

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

.....

- *Other relevant information (e.g. appointment of a judicial administrator):*

.....

5. 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 can be carried out through the confiscation of a sum of money corresponding to the value of the property to be confiscated:

Yes

No

SECTION E: Freezing order

Please indicate whether:

- the confiscation order is accompanied by a freezing order issued in the issuing State (reference number of the freezing certificate):**

.....

- the property has been frozen in accordance with an earlier freezing order transmitted to the executing State**

- date of issue of the freezing order:.....

- date of transmission of the freezing order:

- the authority to which it was transmitted:.....

- reference number given by the issuing authority:

- reference number given by the executing authorities:

SECTION F: Grounds for issuing the confiscation order

1. Summary of the facts **and** the reasons why the confiscation order is issued, including a description of the criminal **offence(s) and** other relevant information:

.....

2. Nature and legal classification of the criminal offence(s) **in relation to** which the confiscation order **was** issued and the applicable legal provision(s):

.....

3. Is the criminal offence **in relation to** which the confiscation order is issued punishable in the issuing State by a custodial sentence of a maximum of at least three years and included in the list of criminal offences set out below? (please tick the relevant box). **Where the confiscation order concerns several criminal offences, please indicate numbers in the list of criminal offences below (corresponding to the criminal offences as described under points 1 and 2 above).**

- 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, including *fraud and other criminal offences* affecting the Union's financial interests *as defined in Directive (EU) 2017/1371*

- laundering of the proceeds of crime
- counterfeiting currency, including the euro
- computer-related crime
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties
- facilitation of unauthorised entry and residence
- murder or grievous bodily injury
- illicit trade in human organs and tissue
- kidnapping, illegal restraint or 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
- forgery 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 or ships
- sabotage

= **4. Any other relevant information (e.g. relation between the property and the criminal offence):**

.....

SECTION G: Where a confiscation *certificate has been transmitted to more than one executing State, provide the following information:*

1. A confiscation certificate has been transmitted to the following other executing State(s) (State and authority):

.....

.....

2. A confiscation certificate has been transmitted to more than one executing State for the following reasons:

Where the confiscation order concerns specific items of property:

- Different items of property covered by the order are believed to be located in different executing States***
- The confiscation of a specific item of property requires action in more than one executing State***

Where the confiscation order concerns an amount of money:

- The property concerned has not been frozen under Regulation (EU) 2018/...⁺***
- The estimated 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 confiscation of the full amount covered by the order***
- Other specific needs:***

.....

⁺ OJ: Please insert in the text the number of this Regulation (PE-CONS 38/18 - 2016/0412(COD)).

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

.....

.....

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

.....

SECTION H: Proceedings resulting in the confiscation order

Please indicate if the person *against whom the confiscation order was issued* appeared in person at the trial that resulted 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 █
3. *No, in accordance with national procedural rules there were no hearings held.*
4. If you have ticked the box under point 2, please confirm the existence of one of the following:
- 4.1a. the person was summoned in person on █ (day/month/year) ... and thereby informed of the scheduled date and place of the trial that resulted in the confiscation order and was informed that a confiscation order could be handed down if he or she does not appear at the trial

OR

- 4.1b. the person was not summoned in person but actually received, by other means, official information of the scheduled date and place of the trial that resulted in the confiscation order, in such a manner that it was established unequivocally that he or she was aware of the scheduled trial, and was informed that a confiscation order may be handed down if he or she does not appear at the trial

OR

- 4.2. being aware of the scheduled trial, the person had given a mandate to a lawyer, who was either appointed by the person concerned or by the state, to defend him or her at the trial, and was actually defended by that lawyer at the trial

OR

4.3. the person was served with the confiscation order on ■ (day/month/year) ... and was expressly informed about the right to a retrial or an appeal, in which he or she had the right to participate and which allowed a re-examination fo the merits of the caseincluding an examination of fresh evidence, and which could lead to the original confiscation order being reversed, and

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

OR

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

5. If you have ticked the box under points 4.1b, 4.2 or 4.3, please provide information about how the relevant condition has been met:.....

SECTION I: Alternative measures, including custodial sanctions

1. Please indicate *whether the issuing State allows for the application by the executing State of alternative measures where it is not possible to execute the confiscation order, either wholly or partially:*

Yes

No

2. *If yes, state which measures may be applied:*

= ***Custody (maximum period):***

=

= ***Community service (or equivalent) (maximum period):***

=

= ***Other measures (description):***

=

SECTION J: Decision to restitute property to, or compensate, the victim

1. Please indicate, where relevant:

An issuing authority or another competent authority of the issuing State has issued a decision to compensate the victim with, or restitute to the victim, the following sum of money:

- *An issuing authority or another competent authority of the issuing State has issued a decision to retribute the following property other than money to the victim:*
.....
- *Proceedings to retribute property to, or compensate, the victim are pending in the issuing State and the outcome will be communicated to the executing authority*

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

Authority that issued the decision (official name):.....

Date of the decision:.....

Date on which the decision became final:

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

Description of the property to be restituted:

Name of the victim:

Address of the victim:

The issuing authority shall be notified in case of direct transfer to the victim.

SECTION **K**: Details of the issuing authority

Name of authority:.....

Name of **█** the contact *person*:.....

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 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 or the transfer of the *property*:.....

Name/Title/Organisation:.....

Address:

E-mail/ Tel. No.:.....

Signature of the issuing authority and/or its representative certifying the content of the *confiscation certificate* as accurate and correct:

Name:.....

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

Date:

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

SECTION L: *Central authority*

Where a central authority has been made responsible for the administrative transmission and reception of confiscation certificates in the issuing State, *please indicate*:

Name of the central authority:

Name of the contact person:.....

Post held (title/grade):

File No.:.....

Address:.....

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

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

E-mail:

I

SECTION M: *Payment details of the Issuing State*

█

IBAN:

BIC:

Name *of bank account holder:*

SECTION N: *Attachments*

Please indicate *any attachments to the certificate:*

█
