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Subject: Proposal for a Regulation of the European Parliament and of the Council
on the mutual recognition of freezing and confiscation orders
- General approach

Germany presented the following statement for the minutes of the meeting of the (JHA) Council on 7/8 December 2017:

" Statement for the minutes by Germany on its rejection of the general approach of the proposal for a Regulation on the mutual recognition of freezing and confiscation orders

In order to counter organised crime and prevent the financing of terrorism, it is of critical importance to confiscate the proceeds of their crimes from offenders. Because organised groups are often active across borders and – no doubt quite intentionally – increasingly investing their assets across and beyond national borders, effective instruments are necessary in order to trace, freeze, confiscate and, where appropriate, return those assets to the victims of the offences.

This is currently accomplished on the basis of the framework decisions on the application of the principle of mutual recognition to confiscation orders (2006/783/JHA) and on the execution of orders freezing property or evidence (2003/577/JHA). The aims of the new regulatory initiative include creating a uniform and more effective legal instrument to improve cross-border asset recovery.

Guaranteeing cross-border asset recovery as comprehensively as possible is consistent with the principle of mutual trust. However, cooperation reaches its limits when, in altogether exceptional cases, fundamental rights are no longer safeguarded. From the outset of the negotiations, Germany has therefore advocated drafting a Regulation text that is not only precise and easy to implement in practice, but also includes clear and transparent wording emphasising compliance with fundamental rights in the recognition and enforcement of decisions. Germany's various suggestions to the Member States and the Commission for compromise, some of which were quite far-reaching, were made not least to take account of the most recent case-law of the European Court of Justice.

Although the text is otherwise successful in creating a good and practicable legal basis for effective cross-border asset recovery, unfortunately a majority could not be found for anchoring fundamental rights in the text. We will not do justice to the great importance of fundamental rights if we do not clearly and unequivocally emphasise their importance, as we have done in the Directive on the European Investigation Order.

Although Germany, like the other Member States, sees the need to improve cross-border cooperation in the area of asset recovery, in light of the above Germany is not in a position to agree to the general approach contained in the current text of the Regulation. "