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**NOTE**

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From:	General Secretariat of the Council
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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 - Outcome of the discussions in the (JHA) Council on 8 December 2017

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On 8 December 2017, the Council (Justice and Home Affairs) reached a general approach in relation to the above mentioned proposal for a Regulation.

The text of the draft Regulation as agreed, which is set out in the Annex and which is accompanied by the draft certificates set out in doc. 15107/17, will constitute the basis for the negotiations with the European Parliament in the framework of the ordinary legislative procedure (Art. 294 TFEU).

UK still maintains a Parliamentary scrutiny reservation.

DE presented the following statement for the minutes of the Council:

**" 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. "

Proposal for a

**REGULATION 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 procedure,

Whereas:<sup>1</sup>

- (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 a cornerstone of judicial cooperation in criminal matters within the Union since the Tampere European Council of 15 and 16 October 1999.

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<sup>1</sup> The legal linguists will be asked to place the recitals in the right order.

- (3) The freezing and the confiscation of instrumentalities and proceeds of crime are among the most effective means of combatting crime. The Union is committed to ensuring more effective identification, confiscation and re-use of criminal assets in accordance with the "The Stockholm programme – An open and secure Europe serving and protecting the citizens".<sup>2</sup>
- (4) As crime is often transnational in nature, effective cross-border cooperation is essential in order to seize and confiscate the proceeds and instrumentalities of crime.
- (5) The current Union legal framework in relation to the mutual recognition of freezing orders and confiscation orders is composed of Council Framework Decisions 2003/577/JHA<sup>3</sup> and 2006/783/JHA<sup>4</sup>.
- (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. The current instruments have not been uniformly implemented and applied in the Member States, leading to insufficient mutual recognition.

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<sup>2</sup> OJ C 115, 4.5.2010, p.1.

<sup>3</sup> 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).

<sup>4</sup> 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, 21.11.2006, 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<sup>5</sup> sets out common minimum rules on the freezing and the confiscation of property. These common minimum rules concern: (i) the confiscation of proceeds and instrumentalities of crime, including in cases of illness or absconding of the suspect or accused person, where criminal proceedings have already been initiated; (ii) extended confiscation; (iii) third party confiscation. Those common minimum rules also concern the freezing of property with a view to possible subsequent confiscation. The types of freezing and confiscation covered by Directive 2014/42/EU should also be covered by the legal framework on mutual recognition.
- (8) When adopting Directive 2014/42/EU, the European Parliament and the Council stated in a declaration that an effective system of freezing and confiscation in the Union is inherently linked to the well-functioning mutual recognition of freezing orders and confiscation orders. Considering the need to put in place a comprehensive system for freezing and confiscation of the proceeds and instrumentalities of crime, the European Parliament and the Council called on the Commission to present a legislative proposal on mutual recognition of freezing orders and confiscation orders.
- (9) In its communication on the "European Agenda on Security" of 28 April 2015, the Commission considered that judicial cooperation in criminal matters relies on effective cross-border instruments and that mutual recognition of judgments and judicial decisions is a key element in the security framework. The Commission also recalled the need to improve mutual recognition of freezing orders and confiscation orders.

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<sup>5</sup> Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ L 127, 29.4.2014, p. 39).

- (10) In its communication on an "Action Plan for strengthening the fight against terrorist financing" of 2 February 2016, the Commission highlighted the need to ensure that criminals who fund terrorism are deprived of their assets. In order to disrupt organised crime activities that finance terrorism, it is essential to deprive those criminals of the proceeds of crime. To this end, it is necessary to ensure that all types of freezing orders and confiscation orders are enforced to the maximum extent possible throughout the Union through the application of the principle of mutual recognition.
- (11) In order to ensure effective mutual recognition of freezing orders and confiscation orders, the rules on recognition and execution of those orders should be established by a legally binding and directly applicable legal act of the Union.
- (12) It is important to facilitate the mutual recognition and execution of orders to freeze and orders to confiscate property by establishing rules that oblige a Member State to recognise the freezing orders and confiscation orders issued by another Member State within the framework of criminal proceedings and to execute those orders in its territory.
- (13) This Regulation should apply to all freezing orders and to all confiscation orders issued within the framework of proceedings in criminal matters. 'Proceedings in criminal matters' is an autonomous concept of Union law. It should therefore cover all types of freezing orders and confiscation orders issued following proceedings in relation to a criminal offence, not only orders covered by Directive 2014/42/EU, but also other types of orders issued without a final conviction. While such orders might not exist in the legal system of a Member State, the Member State concerned should be able to recognise and execute the order if it was issued by another Member State. Proceedings in criminal matters could also encompass criminal investigations by the police and other law enforcement authorities. Freezing orders and confiscation orders that are issued within the framework of proceedings in civil or administrative matters are excluded from the scope of this Regulation.

- (14) This Regulation should cover freezing orders and confiscation orders related to offences covered by Directive 2014/42/EU, as well as such orders related to other offences. The offences should therefore not be limited to particularly serious crimes that have a cross-border dimension, as Article 82 of the Treaty on the Functioning of the European Union (TFEU) does not require such limitation for measures laying down rules and procedures for ensuring the mutual recognition of judgments in criminal matters.
- (15) Cooperation between Member States, which is based on the principle of mutual recognition and immediate execution of judicial decisions, presupposes confidence that the decisions to be recognised and executed will always be taken in compliance with the principles of legality, subsidiarity and proportionality. It also presupposes that the rights of persons that are affected by a freezing order or a confiscation order should be preserved. Such affected persons, which could be natural persons or legal persons, should include the person against whom a freezing order or a confiscation order was issued, or the person owning the property that is covered by that order, as well as any third parties whose rights in relation to that property are directly prejudiced by that order, including bona fide third parties. Whether such third parties are directly prejudiced by a freezing order or a confiscation order, is to be decided in accordance with the law of the executing State.
- (16) This Regulation does not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union (TEU).
- (17) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union (the "Charter") and the European Convention for the Protection of Human Rights and Fundamental Freedoms (the "ECHR"). This includes that any discrimination based on any ground such as sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinion, or disability should be prohibited. This Regulation should be applied in accordance with those rights and principles.

- (18) The procedural rights set out in Directives 2010/64/EU<sup>6</sup>, 2012/13/EU<sup>7</sup>, 2013/48/EU<sup>8</sup>, 2016/343<sup>9</sup>, 2016/800<sup>10</sup> and 2016/1919<sup>11</sup> of the European Parliament and of the Council should apply, within the scope of application of these Directives, to criminal proceedings covered by this Regulation as regards the Member States bound by these Directives. In any case, the safeguards under the Charter should apply to all proceedings covered by this Regulation. In particular, the essential safeguards of criminal proceedings set out in the Charter should apply to proceedings in criminal matters covered by this Regulation, which are not criminal proceedings.
- (18a) While the rules for the transmission, recognition and execution of freezing orders and confiscation orders should ensure the efficiency of the process of recovering criminal assets, fundamental rights should be respected.

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<sup>6</sup> Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

<sup>7</sup> Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

<sup>8</sup> Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

<sup>9</sup> Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

<sup>10</sup> Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

<sup>11</sup> Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L 297, 4.11.2016, p.1).



- (18b) When assessing double criminality, the competent authority of the executing State should verify whether the factual elements underlying the offence, as reflected in the freezing certificate or confiscation certificate submitted by the competent authority of the issuing State, would also, per se, be subject to a criminal penalty in the executing State if they were present in that State at the time of the decision on the recognition.
- (18c) The issuing authority should ensure that, when issuing a freezing order, the principles of necessity and proportionality are respected. Under this Regulation a freezing order should only be issued when it could have been ordered in a similar domestic case.
- (18d) Member States should be able to present a declaration stating that when a freezing certificate or a confiscation certificate is transmitted to them with a view to the recognition and execution of a freezing order or a confiscation order, the issuing authority should transmit, together with the freezing certificate or the confiscation certificate, the original freezing order or confiscation order, or a certified copy thereof. Member States should inform the Commission when they present or withdraw such a declaration. The Commission should make the information received available to all Member States and to the European Judicial Network as set up by Joint Action 98/428/JHA.<sup>12</sup> The EJN should make the information available on the website referred to in Article 9 of Council Decision 2008/976/JHA.<sup>13</sup>
- (19) Where a freezing order is issued by a court, the issuing authority could also include an authority, designated by the issuing State, which is competent in criminal matters to execute or enforce the freezing order in accordance with national law.

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<sup>12</sup> Joint Action 98/428/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

<sup>13</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network (OJ L 348, 24.12.2008, p. 130).

- (20) Therefore, the issuing authority should transmit a freezing certificate or a confiscation certificate, together with the freezing order or confiscation order where applicable, directly to the executing authority or, where applicable, to the central authority of the executing State by any means capable of producing a written record under conditions that allow the executing authority to establish authenticity, including by registered mail and by secured e-mail.
- (20a) The issuing authority should transmit the freezing certificate or the confiscation certificate, relating to an order concerning an amount of money, to the Member State where the issuing authority has reasonable grounds to believe that the person against whom the order was issued has property or income. On this basis, the certificate could be transmitted to the Member State in which the natural person, against whom the order was issued, is residing or, if this person has no permanent or settled address, is habitually residing. If the order was issued against a legal person, the certificate could be transmitted to the Member State where the legal person is domiciled.
- (21) Where a confiscation certificate concerning an amount of money is transmitted to more than one executing State, the issuing State should seek to avoid that more property is confiscated than necessary so that the total value would go beyond the maximum amount. To that end, the issuing authority should, among other things, (i) indicate in the confiscation certificate the value of assets, if known, in each executing State, so that the executing authorities can take account thereof; (ii) maintain the necessary contacts and dialogue with the executing authorities on the property to be confiscated; and (iii) inform the relevant executing authority or authorities immediately if it considers that there could be a risk that execution beyond the maximum amount might occur. Where appropriate, Eurojust could exercise a coordinating role within its remit in order to avoid excessive confiscation.

- (22) The executing authority should recognise a freezing order or a confiscation order and should take the measures necessary for its execution. The decision on the recognition and execution of the freezing order or the confiscation order should be taken and the freezing or confiscation should be carried out with the same speed and priority as for similar domestic cases. Time limits, which should be calculated in accordance with Regulation 1182/71,<sup>14</sup> should be set out in order to ensure a quick and efficient decision and execution of the freezing order or the confiscation order. As regards freezing orders, the executing authority should, no later than 48 hours after the decision on the recognition and execution of such an order has been taken, start taking the concrete measures necessary to execute that order.
- (23, 24) (deleted)
- (25) In the execution of a freezing order, the issuing authority and the executing authority should take due account of the confidentiality of the investigation. In particular, the executing authority should guarantee the confidentiality of the facts and substance of the freezing order.
- (26) The recognition and execution of a freezing order or a confiscation order should not be refused on grounds other than those provided for in this Regulation. In particular, it should be possible for the executing authority not to recognise and execute a confiscation order on the basis of the principle *ne bis in idem*, on the basis of the rights of any interested party, or on the basis of the right to be present at the trial.

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<sup>14</sup> Regulation 1182/71 of the Council of 3 June 1971 on determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

- (26a) There should be a ground for non-recognition of confiscation orders based on the fact that the person did not appear in person at the trial resulting in a confiscation order linked to a final conviction. This ground for non-recognition only applies to trials resulting in confiscation orders linked to a final conviction and does not apply to proceedings resulting in non-conviction based confiscation orders. However, in order for such ground to be able to apply, one or more hearings should be held. The ground cannot apply if the relevant national rules of procedure do not provide for a hearing. Such national rules should comply with the Charter and with the ECHR, in particular with regard to the right to a fair trial. This is the case, for example, if the proceedings are conducted in a simplified manner following, solely or in part, a written procedure or a procedure in which no hearing is provided for.
- (26b) In exceptional circumstances only, it should be possible not to recognize or execute a freezing order or confiscation order where such recognition or execution would prevent the executing State from applying its constitutional rules relating to freedom of the press and freedom of expression in other media.
- (27) Before deciding not to recognise or execute a freezing order or a confiscation order on the basis of a ground for non-recognition or non-execution, the executing authority should consult the issuing authority, in order to obtain any necessary additional information.
- (27a) When examining a request from the executing authority to limit the period for which the property should be frozen, the issuing authority should take into account all circumstances of the case, in particular whether the continuation of the freezing order could cause unjustified damage in the executing State. The executing authority is encouraged to consult with the issuing authority on this issue before making a formal request.
- (27b) The issuing authority should inform the executing authority when the authority of the issuing State receives any sum of money which the person concerned has paid in respect of the confiscation order, it being understood that the executing State must only be notified if the amount of payment towards the order impacts on the amount that should be confiscated pursuant to the order.

- (28) It should be possible for the executing authority to postpone the execution of a or a freezing order or a confiscation order, in particular where its execution might damage an ongoing criminal investigation. As soon as there is no longer a ground for postponement, the executing authority should take the measures necessary to execute the order.
- (28a) After the execution of a freezing order, and following the decision to recognise and execute a confiscation order, the executing authority should, in so far as possible, inform affected persons known to it of such execution or such decision. This means that the executing authority should do all reasonable efforts to determine who the affected persons are, verify how they can be reached and inform those persons of the execution of the freezing order or of the decision to recognise and execute a confiscation order. In carrying out these obligation, the executing authority could ask the issuing authority for assistance, for example when the affected persons appear to reside in the issuing State. The obligation under this Regulation for the executing authority to provide information to affected persons is without prejudice to any obligation incumbent on the issuing authority to provide information to persons under the law of the issuing State, e.g. regarding the issue of a freezing order or regarding existing legal remedies under the law of the issuing State.
- (28b) In order to ensure the adequate management of the frozen property, the executing authority has the possibility to sell or transfer the property, where necessary, in accordance with Article 10 of Directive 2014/42/EU, in particular where the property is frozen for a considerable period of time.
- (29) The issuing authority should be notified without delay if it is impossible to execute an order. Such impossibility might arise because the property has already been confiscated, has disappeared, has been destroyed, cannot be found at the location indicated by the issuing authority, or because the location of the property has not been indicated in a sufficiently precise manner despite consultations between the executing authority and the issuing authority. In such circumstances, the executing authority will no longer be under the obligation to execute the freezing order.

- (29a) Where mandatory provisions of law in the executing State make the execution of a freezing order or a confiscation order legally impossible, the executing authority should contact the issuing authority in order to discuss the situation and to find a solution. Such a solution could consist in the issuing authority withdrawing the order concerned.
- (29b) As soon as the execution of a confiscation order has been completed, the executing authority should inform the issuing authority of the results of the execution. Where practically possible, the executing authority should, at this occasion, also inform the issuing authority of the amount of money or the property that has been confiscated, and of other details that it considers relevant.
- (30) The execution of a freezing order or a confiscation order should be governed by the law of the executing Member State and only its authorities should be competent to decide on the procedures for execution.
- (31) The proper practical 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.
- (32) The victims' rights to compensation and restitution should not be prejudiced in cross-border cases. Rules for the disposal of frozen and confiscated property should give priority to the compensation and restitution of property to victims. The notion of victim is to be interpreted in accordance with the national law of the issuing State, which could also provide that a legal person could be a victim for the purpose of this Regulation. This Regulation should be without prejudice to rules on compensation and restitution of property to victims in national proceedings.

- (32a) Where an executing authority has received information on a decision, issued by the issuing authority or by another competent judicial authority in the issuing State, to reconstitute frozen property to the victim, it should take the necessary measures to ensure that the property concerned is frozen and reconstituted to the victim as soon as possible. The executing authority could transfer the property to the issuing State, so that the latter could reconstitute the property to the victim, or directly to the victim subject to the consent of the issuing State. The obligation to reconstitute frozen property to the victim is subject to three conditions: the title of the victim to the property should not be contested, meaning that it is accepted that the victim is the rightful owner of the property and there are no serious claims putting this into question; the property should not be required as evidence in criminal proceedings in the executing State; and the rights of affected persons, in particular of bona fide third parties, should not be prejudiced. The executing authority should reconstitute frozen property to the victim only if these conditions are met. Where an executing authority considers that these conditions have not been met, it should consult with the issuing authority, e.g. to request for any additional information and discuss the situation, in order to find a solution. If no solution can be found, the executing authority could decide not to reconstitute the frozen property to the victim.
- (33) Member States should not be able to claim from each other the refund of costs resulting from the application of this Regulation. However, where the executing Member State has incurred large or exceptional costs, for instance because the property has been frozen for a considerable period of time, a proposal by the executing authority that the costs be shared should be taken into account by the issuing authority.
- (34) [deleted]

- (35) In order to be able in the future to address, as quickly as possible, identified problems regarding the content of the certificate and the form set out in Annexes I and II to this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amendments to such a certificate and form. 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 on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (36) Since the objective of this Regulation, namely the mutual recognition and execution of freezing orders and confiscation orders, cannot be achieved by the Member States but can rather, by reason of its scale and its effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (37) Provisions of Framework Decision 2003/577/JHA have already been replaced by Directive 2014/41/EU of the European Parliament and of the Council <sup>15</sup> as regards the freezing of evidence. Provisions of Framework Decision 2003/577/JHA should be replaced by this Regulation between Member States bound by it as regards freezing with a view to the subsequent confiscation of property. Provisions that relate to freezing of evidence and those that relate to freezing with a view to subsequent confiscation should be aligned. This Regulation should also replace Framework Decision 2006/783/JHA as between Member States bound by it.

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<sup>15</sup> 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).



- (37a) The legal form of this instrument should not constitute a precedent for future legislative instruments of the Union in the field of mutual recognition of judgments and judicial decisions in criminal matters. The choice of the legal form for future instruments should be carefully assessed on a case-by-case basis taking into account amongst others the effectiveness of the instrument and the principles of proportionality and subsidiarity.
- (38) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified its wish to take part in the adoption and application of this Regulation.
- (38a) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (39) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

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 shall recognise and execute in its territory a freezing order or a confiscation order issued by another Member State within the framework of proceedings in criminal matters.
2. This Regulation shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 TEU.
3. 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 referred to in point (8) 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 from a natural or legal person;
- (3) 'property' means property of any description, whether corporeal or incorporeal, movable or immovable, as well as 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 such an offence, or the value of such instrumentalities,
  - (c) subject to confiscation through the application in the issuing State of any of the powers of confiscation provided for in Directive 2014/42/EU, or
  - (d) subject to confiscation under any other provisions relating to powers of confiscation 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; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits;

- (5) 'instrumentalities' means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence;
- (6) 'issuing State' means the Member State in which a freezing order or a confiscation order is issued;
- (7) 'executing State' means the Member State to which a freezing order or a confiscation order is transmitted for the purpose of recognition and execution;
- (8) 'issuing authority' means:
  - (a) in respect of a freezing order:
    - (i) a judge, a court, or a public prosecutor competent in the case concerned;  
or
    - (ii) any other competent authority which is designated as such by the issuing State and which has competence in criminal matters to order the freezing of property or to execute a freezing order in accordance with national law. 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 such an authority, that authority may also be regarded as an issuing authority for the purposes of transmitting the order;
  - (b) in respect of a confiscation order, an authority which is designated as such by the issuing State and which is competent in criminal matters to enforce a confiscation order issued by a court in accordance with national law;

- (9) 'executing authority' means an authority that is competent to recognise a freezing order or a confiscation order and to ensure its execution in accordance with this Regulation and the procedures applicable under national law for the freezing and confiscation of property. Such procedures may require that a court registers the order and authorises the execution thereof. In such a case, the executing authority also includes the authority that is competent to request such registration by the court and such court authorisation;
- (10) 'affected person' means the person against whom a freezing order or a confiscation order was issued, or the person owning the property that is covered by that order, as well as any third parties whose rights in relation to that property are directly prejudiced by that order in accordance with the law of the executing State.

### Article 3

#### Offences

1. A freezing order or a confiscation order shall be executed without verification of the double criminality of the acts giving rise to such order, if these acts are punishable in the issuing State by a custodial sentence of a maximum of at least three years and constitute one or more of the following offences under the law of the issuing State:
  - (1) participation in a criminal organisation,
  - (2) terrorism,
  - (3) trafficking in human beings,
  - (4) sexual exploitation of children and child pornography,
  - (5) illicit trafficking in narcotic drugs and psychotropic substances,
  - (6) illicit trafficking in weapons, munitions and explosives,
  - (7) corruption,
  - (8) fraud and other criminal offences as defined in Directive (EU) 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law,<sup>16</sup>

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<sup>16</sup> Directive 2017/1371/EU 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).

- (9) fraud, including that affecting the financial interests of the European Union within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,<sup>17</sup>
- (10) laundering of the proceeds of crime,
- (11) counterfeiting currency, including the euro,
- (12) computer-related crime,
- (13) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- (14) facilitation of unauthorised entry and residence,
- (15) murder, or grievous bodily injury,
- (16) illicit trade in human organs and tissue,
- (17) kidnapping, illegal restraint or hostage-taking,
- (18) racism and xenophobia,
- (19) organised or armed robbery,
- (20) illicit trafficking in cultural goods, including antiques and works of art,
- (21) swindling,

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<sup>17</sup> Convention drawn up on the basis of Article K.3 of the Treaty on European Union on the protection of the European Communities' financial interests (OJ C 316, 27.11.1995, p. 49).

- (22) racketeering and extortion,
- (23) counterfeiting and piracy of products,
- (24) forgery of administrative documents and trafficking therein,
- (25) fraud and counterfeiting of non-cash means of payment,
- (26) illicit trafficking in hormonal substances and other growth promoters,
- (27) illicit trafficking in nuclear or radioactive materials,
- (28) trafficking in stolen vehicles,
- (29) rape,
- (30) arson,
- (31) crimes within the jurisdiction of the International Criminal Court,
- (32) unlawful seizure of aircraft or ships,
- (33) sabotage.

2. For offences other than those referred to in paragraph 1, the executing State may make the recognition and execution of a freezing order or a confiscation order subject to the condition that the acts giving rise to the freezing order or the confiscation order constitute an offence under the law of the executing State, whatever its constituent elements or however it is described under the law of the issuing State.



## CHAPTER II

### TRANSMISSION, RECOGNITION AND EXECUTION OF FREEZING ORDERS

*Article 4 (deleted)*

Article 5

#### **Transmission of freezing orders**

1. A freezing order shall be transmitted through a freezing certificate. The issuing authority shall transmit a freezing certificate as referred to in Article 7 directly to the executing authority, or where applicable to the central authority referred to in Article 27(2), by any means capable of producing a written record under conditions allowing the executing authority to establish authenticity.
2. Member States may present a declaration stating that when a freezing certificate is transmitted to them with a view to the recognition and execution of a freezing order, the issuing authority must transmit, together with the freezing certificate, the original freezing order or a certified copy thereof. However, only the freezing certificate has to be translated, in accordance with Article 7(2).
- 2a. Member States may present the declaration referred to in paragraph 2 at the moment of adoption of this Regulation, or at a later date. Member States may withdraw a declaration at any time. Member States shall inform the Commission when they present or withdraw a declaration. The Commission shall make the information received available to all Member States and to the European Judicial Network ("EJN") as set out in Council Decision [2008/976/JHA](#).

3. As regards a freezing order concerning an amount of money, the issuing authority shall transmit the freezing certificate to the Member State where the issuing authority has reasonable grounds to believe that person against whom the order was issued has property or income.
4. As regards a freezing order concerning specific items of property, the issuing authority shall transmit the freezing certificate to the Member State where the issuing authority has reasonable grounds to believe that property covered by the freezing order is located.
5. The freezing certificate referred to in paragraph 1 shall:
  - (a) be accompanied by a confiscation certificate transmitted in accordance with Article 17, or
  - (b) contain an instruction that the property is to remain frozen in the executing State pending the transmission and execution of the confiscation order in accordance with Article 17, in which case the issuing authority shall indicate the estimated date for this transmission in the freezing certificate referred to in Article 7.
6. The issuing authority shall inform the executing authority if it is aware of any person that is affected by the freezing order. The issuing authority shall, upon request, also inform the executing authority of any information relevant to any claim that such an affected person may have in relation to the property, including any information identifying that person.
7. Where, despite the information that is made available in accordance with Article 27(3), the competent executing authority is unknown, the issuing authority shall make all necessary inquiries, including through the contact points of the EJN, in order to obtain information about which authority is competent for the recognition and execution of the freezing order.

8. Where the authority which receives a freezing order has no competence to recognise it or take the measures necessary for its execution, that authority shall immediately transmit the freezing order to the competent executing authority in its Member State and shall inform the issuing authority accordingly.

## Article 6

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

1. A freezing certificate shall only be transmitted pursuant to Article 5 to one executing State at any one time, unless the conditions of paragraphs 2 or 3 apply.
2. Notwithstanding paragraph 1, where a freezing order concerns specific items of property, the freezing certificate may be transmitted to more than one executing State at the same time if:
  - (a) the issuing authority has reasonable grounds to believe that different items of property covered by the freezing order are located in different executing States; or
  - (b) the freezing of a specific item of property covered by the freezing order would require action in more than one executing State.
3. Notwithstanding paragraph 1, where a freezing order concerns an amount of money, the freezing certificate may be transmitted to more than one executing State at the same time, where the issuing authority deems there is a specific need to do so, in particular where the estimated value of the property which may be frozen in the issuing State and in any one executing State is not likely to be sufficient for the freezing of the full amount covered by the freezing order.

## *Article 7*

### **Standard freezing certificate**

1. The issuing authority shall complete the freezing certificate set out in Annex I, shall sign it and shall certify its content as being accurate and correct.
2. The issuing authority shall translate the freezing certificate into an official language of the executing State or into any other language that the executing State will accept in accordance with paragraph 3.
3. Any Member State may, at any time, state in a declaration submitted to the Commission, that it will accept a translation in one or more other official languages of the Union.

## *Article 8*

### **Recognition and execution of freezing orders**

The executing authority shall recognise a freezing order that has been transmitted in accordance with Article 5 and shall take the measures necessary to execute it with the same speed and priority as for a domestic freezing order, unless that authority invokes one of the grounds for non-recognition and non-execution provided for in Article 9 or one of the grounds for postponement provided for in Article 11.

## Article 9

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

1. The executing authority may decide not to recognise and not to execute the freezing order only if:
  - (a) executing the freezing order would be contrary to the *ne bis in idem* principle;
  - (b) there is an immunity or privilege under the law of the executing State that would prevent the freezing of the property concerned or there are rules on the determination or limitation of criminal liability that relate to the freedom of the press and the freedom of expression in other media, which prevent the execution of the order;
  - (c) the certificate provided for in Article 7 is incomplete or manifestly incorrect, and has not been completed following the consultation in accordance with paragraph 2 of this Article;
  - (d) the order is based on a criminal offence committed wholly or partially outside the territory of the issuing State and wholly or partially in the territory of the executing State and the conduct in connection with which the order was issued is not an offence in the executing State;
  - (e) in a case falling under Article 3(2), the conduct giving rise to the order does not constitute an offence under the law of the executing State; however, in cases that involve taxes or duties, or customs and exchange regulations, the execution of the freezing order shall not be refused on the grounds that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes and duties or the same type of customs and exchange regulations as the law of the issuing State.

2. In the cases referred to in paragraph 1, before deciding not to recognise or not to execute the freezing order, whether in whole or in part, the executing authority shall consult the issuing authority, by any appropriate means, and shall, where appropriate, request the issuing authority to supply any necessary information without delay.
3. 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 this 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 10*

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

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

**Postponement of execution of freezing orders**

1. The executing authority may postpone the execution of a freezing order transmitted in accordance with Article 5 where:
  - (a) its execution might damage an ongoing criminal investigation, in which case the execution of the freezing order may be postponed until such time as the executing authority deems reasonable;
  - (b) the property is already the subject of an existing freezing order, in which case the execution of the freezing order may be postponed until such existing orders are withdrawn; or
  - (c) the property is already subject to an existing order issued in the course of other proceedings in the executing State, in which case the execution of the freezing order may be postponed until that such existing order is withdrawn. However, this point shall only apply where such existing order would have priority over subsequent national freezing orders under national law.
  
2. The executing authority shall immediately report to the issuing authority on the postponement of the execution of the order, by any means capable of producing a written record, including the grounds for the postponement and, if possible, the expected duration of the postponement. As soon as the ground for postponement has ceased to exist, the executing authority shall immediately take the measures necessary to execute the order and shall inform the issuing authority thereof by any means capable of producing a written record.



## *Article 12*

### **Confidentiality**

1. During the execution of a freezing order the issuing authority and the executing authority shall take due account of the confidentiality of the investigation.
2. Except to the extent necessary to execute the order, the executing authority shall guarantee the confidentiality of the facts and substance of the freezing order in accordance with its national law.
3. To protect ongoing investigations, the issuing authority may request the executing authority to keep the execution of the freezing order confidential.
4. If the executing authority cannot comply with the confidentiality obligations set out in this Article, it shall notify the issuing authority immediately, and, where possible, prior to the execution of the freezing order.

## *Article 13*

*(transferred to the new Art. 32a)*

**Duration of freezing orders**

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

## Article 15

### **Impossibility of execution of a freezing order**

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

## *Article 16*

### **Reporting**

The executing authority shall report to the issuing authority on the execution of the freezing order, including a description of the property frozen and, where available, an estimation of its value. Such reporting shall be carried out by any means capable of producing a written record, without undue delay following the moment when the executing authority has been informed that the freezing order has been executed.

## CHAPTER III

### TRANSMISSION, RECOGNITION AND EXECUTION OF CONFISCATION ORDERS

#### *Article 17*

##### **Transmission of confiscation orders**

1. A confiscation order shall be transmitted through a confiscation certificate. The issuing authority shall transmit the confiscation certificate provided for in Article 20 directly to the executing authority or, where applicable, to the central authority referred to in Article 27(2) by any means capable of producing a written record under conditions that allow the executing authority to establish authenticity.
2. Member States may present a declaration stating that when a confiscation certificate is transmitted to them with a view to the recognition and execution of a confiscation order, the issuing authority must transmit, together with the confiscation certificate, the original confiscation order or a certified copy thereof. However, only the confiscation certificate has to be translated, in accordance with Article 20(2).
  - 2a. Member States may present the declaration referred to in paragraph 2 at the moment of adoption of this Regulation, or at a later date. Member States may withdraw a declaration at any time. Member States shall inform the Commission when they present or withdraw a declaration. The Commission shall make the information received available to all Member States and to the EJN.
3. As regards a confiscation order concerning an amount of money, the issuing authority shall transmit the confiscation certificate to the Member State where the issuing authority has reasonable grounds to believe that person against whom the order was issued has property or income.

4. As regards a confiscation order concerning specific items of property, the issuing authority shall transmit the confiscation certificate to the Member State where the issuing authority has reasonable grounds to believe that property covered by the confiscation order is located.
5. Where, despite the information that is made available in accordance with Article 27(3), the competent executing authority is unknown, the issuing authority shall make all necessary inquiries, including through the contact points of the EJN, in order to obtain information about which authority is competent for the recognition and execution of the confiscation order.
6. Where the authority in the executing State which receives a confiscation certificate is not competent to recognise it or to take the measures necessary for its execution, the authority shall immediately transmit the confiscation certificate to the competent executing authority in its Member State and shall inform the issuing authority accordingly.

## *Article 18*

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

1. A confiscation certificate shall only be transmitted pursuant to Article 17 to one executing State at any one time unless the conditions of paragraphs 2 or 3 apply.
2. Notwithstanding paragraph 1, where a confiscation order concerns specific items of property, the confiscation certificate may be transmitted to more than one executing State at the same time where:
  - (a) the issuing authority has reasonable grounds to believe that different items of property covered by the confiscation order are located in different executing States, or
  - (b) the confiscation of a specific item of property covered by the confiscation order involves action in more than one executing State.
3. Notwithstanding paragraph 1, where a confiscation order concerns an amount of money, the confiscation certificate may be transmitted to more than one executing State at the same time, where the issuing authority deems that there is a specific need to do so, in particular where:
  - (a) the property concerned has not been frozen under this Regulation, or
  - (b) the value of the property which may be confiscated in the issuing State and in any one executing State is not likely to be sufficient for the execution of the full amount covered by the confiscation order.

## *Article 19*

### **Consequences of transmission of confiscation orders**

1. The transmission of a confiscation order, through a certificate, to one or more executing States in accordance with Articles 17 and 18 shall not restrict the right of the issuing State to execute the order itself.
2. Where a confiscation order concerning an amount of money is transmitted to one or more executing States, the total value derived from its execution shall not exceed the maximum amount specified in the confiscation order.
3. The issuing authority shall immediately inform the executing authority by any means capable of producing a written record if:
  - (a) it considers that there is a risk that execution beyond the maximum amount may occur, in particular on the basis of information received from the executing authority pursuant to Article 24(1)(b);
  - (b) all or a part of the confiscation order has been executed in the issuing State or in another executing State, specifying the amount for which the confiscation order has not yet been executed;
  - (c) after the transmission of a confiscation certificate in accordance with Article 17, an authority of the issuing State receives any sum of money which the person concerned has paid in respect of the confiscation order.

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



## Article 20

### **Standard confiscation certificate**

1. The issuing authority shall complete the confiscation certificate set out in Annex II, shall sign it and shall certify its content as being accurate and correct.
2. The issuing authority shall translate the confiscation certificate into an official language of the executing State or into any other language that the executing State will accept in accordance with paragraph 3.
3. Any Member State may, at any time, state in a declaration submitted to the Commission, that it will accept a translation in one or more other official languages of the Union.

## Article 21

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

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

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

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

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

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

- (i) was summoned in person in due time and was thereby informed of the scheduled date and place of the trial that resulted in the confiscation order, or actually received official information of the scheduled date and place of that trial by other means in such a manner that it was established unequivocally that that person was aware of the scheduled trial, and was informed in due time that such a confiscation order could be handed down if that person did not appear at the trial;
- (ii) being aware of the scheduled trial, had given a mandate to a legal counsel, who was either appointed by the person concerned or by the State, to defend that person at the trial and was indeed defended by that counsel 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 the merits of the case, including fresh evidence, to be re-examined, and which could lead to the original decision being reversed:
  - expressly stated that he or she did not contest the confiscation order, or
  - did not request a retrial or appeal within the applicable time limits.

2. In the cases referred to in paragraphs 1, before deciding not to recognise and execute the confiscation order, whether in whole or in part, the executing authority shall consult the issuing authority by any appropriate means and shall, where appropriate, request the issuing authority to supply any necessary information without delay.

3. Any decision not to recognise and to execute the confiscation order shall be taken without delay and notified immediately to the issuing authority by any means capable of producing a written record.

### *Article 23*

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

1. The executing authority shall take the decision on the recognition and execution of the confiscation order without delay and, without prejudice to paragraph 4, no later than 60 days after the executing authority has received the confiscation certificate.
2. The executing authority shall communicate the decision on the recognition and execution of the confiscation order to the issuing authority without delay by any means capable of producing a written record.
3. Unless grounds for postponement under Article 24 exist, the executing authority shall take the concrete measures necessary to execute the confiscation order without delay and at least with the same speed and priority as a comparable domestic confiscation order.
4. Where it is not possible in a specific case to meet the time limit set out in paragraph 1, the executing authority shall inform the issuing authority without delay, giving the reasons for the delay and shall consult with the issuing authority on the appropriate schedule for recognising and executing the confiscation order.
5. The expiry of the time limit referred to in paragraph 1 shall not relieve the executing authority of its obligation to adopt a decision on the recognition and execution of the confiscation order and to execute that order without delay.

## Article 24

### **Postponement of recognition and execution of confiscation orders**

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

4. As soon as there is no longer any ground for postponement, the executing authority shall, without delay, take the measures necessary to execute the order and inform the issuing authority thereof by any means capable of producing a written record.

#### *Article 25*

#### **Impossibility to execute a confiscation order**

1. Where an executing authority considers that it is impossible to execute a confiscation order, it shall notify the issuing authority thereof without delay.
2. Before notifying the issuing authority in accordance with paragraph 1, the executing authority shall, where appropriate, consult with the issuing authority without delay in order to find a solution, taking into account also the possibilities provided for under Article 21(2) or (3).
3. The non-execution of a confiscation order under this Article can only be justified if the property:
  - (a) has already been confiscated;
  - (b) has disappeared;
  - (c) has been destroyed;
  - (d) cannot be found in the location indicated on the certificate; or
  - (e) cannot be found because its location has not been indicated in a sufficiently precise manner, despite the consultations referred to in paragraph 2.

4. As regards the situations referred to in paragraph 3 under (b), (d) and (e), if the executing authority subsequently obtains information allowing it to locate the property, the executing authority may execute the confiscation order without a new certificate having to be transmitted, provided that the executing authority, prior to executing the confiscation order, has verified with the issuing authority that the confiscation order is still valid.
5. Notwithstanding paragraph 3, in case the issuing authority has indicated that property of equivalent value could be confiscated, the non-execution of a confiscation order under this Article can be justified if one of the circumstances set out in paragraph 3 exists and there is no property of equivalent value that can be confiscated.



## CHAPTER IV

### GENERAL PROVISIONS

#### *Article 26*

##### **Law governing execution**

1. The execution of the freezing order or the confiscation order shall be governed by the law of the executing State and its authorities shall be solely competent to decide on the procedures for the execution thereof and to determine all the measures relating thereto.
2. A freezing order or a confiscation order issued against a legal person shall be executed even if the executing State does not recognise the principle of criminal liability of legal persons.
3. Notwithstanding Article 21(2) and (3), the executing State may not impose measures alternative to the freezing order or the confiscation order transmitted pursuant to Articles 5 and 17, without the consent of the issuing State.

#### *Article 26a*

##### **Cooperation between Asset Recovery Offices**

Member States shall ensure that their Asset Recovery Offices cooperate with each other for the purposes of the facilitation of the tracing and identification of proceeds of crime and other crime related property which may become the object of a freezing order or a confiscation order, in accordance with 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.<sup>18</sup>

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<sup>18</sup> OJ L 332, 18.12.2007, p.103.

**Notification on the competent authorities**

1. By ... [*date of application of this Regulation*], each Member State shall inform the Commission of the authority or authorities as defined in Article 2(8) and (9) that are competent under its national law in the cases that Member State is respectively:
  - (a) the issuing State, or
  - (b) the executing State.
2. If it is necessary because of the structure of its internal legal system, each Member State may designate one or more central authorities to be responsible for the administrative transmission and reception of certificates relating to freezing orders and confiscation orders and for assisting its competent authorities. The Member States shall inform the Commission of those authorities.
3. The Commission shall make the information received available to all Member States.

## Article 28

### **Communication**

1. Where necessary, the issuing authority and the executing authority shall consult each other to ensure the efficient application of this Regulation, using any appropriate means of communication.
2. All communications, including those intended to deal with difficulties concerning the transmission or authentication of any document needed for the execution of the freezing order or the confiscation order, shall be made directly between the issuing authority and the executing authority, and where the Member State has designated a central authority in accordance with Article 27(2), shall be made with the involvement of that central authority.

## *Article 29*

### **Multiple orders**

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

*Article 30*

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

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

## Article 31

### Management of frozen and confiscated property

1. The management of frozen and confiscated property shall be governed by the law of the executing State.
2. The executing State shall manage the frozen or confiscated property with a view to preventing its depreciation in value. To that end, the executing State shall have the possibility of selling or transferring frozen property, having regard to Article 10 of Directive 2014/42/EU.
3. Frozen property, or money obtained after selling such property in accordance with paragraph 2, shall remain in the executing State until a confiscation order has been submitted and that order has been executed, without prejudice to the possibility of restitution of property as foreseen in Article 31a.
4. The executing State shall not be required to sell or return specific items covered by a confiscation order which constitute cultural objects, as defined in Article 2(1) of Directive 2014/60/EU of the European Parliament and the Council.<sup>19</sup> This Regulation shall not affect the obligation to return cultural objects under that Directive.

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

## Article 31a

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

1. Where the issuing authority or another competent authority of the issuing State has issued a decision, in accordance with its national law, to reconstitute frozen property to the victim, the issuing authority shall include information on such decision in the freezing certificate, referred to in Article 7, or communicate information on such decision at a later stage to the executing authority.
2. Where an executing authority has received information on a decision to reconstitute frozen property as referred to in paragraph 1, it shall take the necessary measures to ensure that when the property concerned is frozen, such property shall be reconstituted as soon as possible to the victim, in accordance with rules of procedure of the executing State, where necessary via the issuing State, provided that:
  - (a) the title of the victim to the property is not contested;
  - (b) the property is not required as evidence in criminal proceedings in the executing State;
  - (c) the rights of affected persons are not prejudiced.
3. Where an executing authority is not satisfied that the conditions of paragraph 2 have been met, it shall consult with the issuing authority without delay and by any appropriate means in order to find a solution. If no solution can be found, the executing authority may decide not to reconstitute the frozen property to the victim.

## Article 31b

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

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



5. If a procedure to retribute or compensate the victim is pending in the issuing State, the issuing authority shall inform the executing authority accordingly. The executing State shall withhold the disposition of the confiscated property until the information on the decision to retribute or compensate the victim is communicated to the executing authority, even where the confiscation order has already been executed.
6. Without prejudice to paragraphs 1-5, 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 Article 31b, paragraph 7;
  - (b) the property may be transferred to the issuing State, provided that, if the confiscation order covers an amount of money, the property may only be transferred to the issuing State when the issuing authority has given its consent;
  - (c) if it is not possible to apply point (a) or (b), the property may be disposed of in another way in accordance with the law of the executing State;
  - (d) the property may be used for public interest or social purposes in the executing State in accordance with its laws, subject to the agreement of the issuing State.

7. Unless the confiscation order is accompanied by a decision to reconstitute property to the victim or compensate that person in accordance with paragraphs 1-5, or unless otherwise agreed by the Member States involved, the executing State shall dispose of the money obtained as a result of the execution of a confiscation order as follows:
- (a) if the amount obtained from the execution of the confiscation order is equal to or less than EUR 10 000, the amount is to accrue to the executing State;
  - (b) if the amount obtained from the execution of the confiscation order is more than EUR 10 000, 50 % of the amount is to be transferred by the executing State to the issuing State.

## *Article 32*

### **Costs**

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

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

**Obligation to inform affected persons**

1. Without prejudice to Article 12, following the execution of a freezing order and following the decision to recognise and execute a confiscation order, the executing authority shall, in accordance with procedures under its national law and in so far as possible, inform the affected persons known to it of such execution and of such decision without delay.
2. The information to be provided in accordance with paragraph 1 shall state the authority who issued the order and the legal remedies available under the national law of the executing State.
3. Where the information referred to in paragraph 1 is to be provided to the person against whom a freezing order or confiscation order was issued, or the person whose property has been the subject of that order, it shall also state, at least in a brief manner, the reasons for this order.
4. Where appropriate, the executing authority may ask the issuing authority for assistance in carrying out the tasks referred to in paragraph 1.

### *Article 33*

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

1. Affected persons shall have the right to legal remedies in the executing State against the decision on the recognition and execution of orders pursuant to Articles 8 and 21 of this Regulation. The right to a legal remedy shall be exercised before a court in the executing State in accordance with its national law. As regards confiscation orders, the action may have suspensive effect if the law of the executing State so provides.
2. The substantive reasons for issuing the freezing order or the confiscation order shall be challenged only before a court in the issuing State.
3. The competent authority of the issuing State shall be informed of any legal remedy filed in accordance with paragraph 1.

### Article 34

#### **Reimbursement**

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

## **CHAPTER V**

### **FINAL PROVISIONS**

#### *Article 35*

#### **Statistics**

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

## Article 36

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

The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning any amendment to the certificate and the form in Annexes I and II. Such amendments shall be in line with the provisions of this Regulation and shall not affect these provisions.

## Article 37

### **Exercise of delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 36 shall be conferred for an indeterminate period of time from ...*[date of application of this Regulation]*.
3. The delegation of powers 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 on Better Law-Making of 13 April 2016.<sup>20</sup>
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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<sup>20</sup> OJ L 123, 12.5.2016, p. 13.

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

### **Review clause**

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

- a) the possibility for Member States to present and withdraw declarations under Articles 5(2) and 17(2);
- b) the application of Articles 31-31b on the management and disposal of frozen and confiscated property, and on restitution of property to the victim and compensation of the victim.

If necessary, the report shall be accompanied by proposals for adaptation of this Regulation.



## *Article 39*

### **Replacement**

This Regulation replaces Framework Decision 2003/577/JHA and Framework Decision 2006/783/JHA between the Member States bound by this Regulation as from ...*[date of application of this Regulation]*.

## *Article 40*

### **Entry into force**

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

It shall apply from ... *[date of entry into force of the Regulation plus 30 months]*, with the exception of Article 27, which shall apply from ... *[date of entry into force of the Regulation]*.

## *Article 41*

### **Transitional provisions**

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

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

Done at Brussels,

*For the European Parliament*

*For the Council*

*The President*

*The President*

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