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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Proposal for a Regulation of the European Parliament and of the Council
on the mutual recognition of freezing and confiscation orders
- EP amendments

On 11 January, the LIBE Committee held its vote on the (draft) amendments to the Commission proposal. Delegations will find attached, for information, the amendments as they were adopted by the Committee.

On 17 January, the EP plenary approved the decision of the LIBE Committee to start interinstitutional negotiations on the file, thus paving the way for trilogues between the Council, European Parliament and the Commission.

European Parliament

2014-2019



Plenary sitting

A8-0001/2018

12.1.2018

REPORT

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

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Nathalie Griesbeck

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikethrough. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

Page

| | |
|--|----|
| DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION..... | 5 |
| EXPLANATORY STATEMENT | 77 |
| OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS... Error! Bookmark not defined. | |
| OPINION OF THE COMMITTEE ON LEGAL AFFAIRS Error! Bookmark not defined. | |
| PROCEDURE – COMMITTEE RESPONSIBLE..... Error! Bookmark not defined. | |
| FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE .. Error! Bookmark not defined. | |

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Ordinary legislative procedure: first reading)

The European Parliament,

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

Amendment 1

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) Freezing and confiscation of instrumentalities and proceeds of crime are among the most effective means of **combating** crime. The European Union is committed to ensuring more effective identification, confiscation and re-use of

Amendment

(3) Freezing and confiscation of instrumentalities and proceeds of crime are among the most effective means of **combating** crime, ***infringements of the law, in particular by organised criminals, and terrorism, due to the fact that they***

criminal assets²⁴.

deprive criminals of the proceeds of their illegal activities and prevent terrorists from organising an attack. The European Union is committed to ensuring more effective identification, confiscation and re-use of criminal assets²⁴. ***Confiscated criminal assets can be rechannelled into law enforcement, crime prevention or victim compensation.***

²⁴ "The Stockholm programme – An open and secure Europe serving and protecting the citizens", OJ C 115, 4.5.2010, p.1.

²⁴ "The Stockholm programme – An open and secure Europe serving and protecting the citizens", OJ C 115, 4.5.2010, p.1.

Amendment 2

Proposal for a regulation

Recital 4

Text proposed by the Commission

(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.

Amendment

(4) As crime is often transnational in nature, effective cross-border cooperation, ***continuing exchange of information and reciprocal support*** is essential in order to ***detect***, seize and confiscate the proceeds and instrumentalities of crime. ***Therefore, law enforcement bodies and authorities, persons, units or services within the Member States should closely cooperate and communicate in order to optimize duration and efficiency of freezing and confiscation procedures.***

Amendment 3

Proposal for a regulation

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) In the area of financial services, several legal acts of the Union regarding

financial markets provide for freezing and confiscation orders as sanctions for financial institutions. Effective cross-border cooperation of criminal courts and other national competent authorities is paramount for the stability of, and trust in, the Union financial system.

Amendment 4

Proposal for a regulation

Recital 6

Text proposed by the Commission

(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 and confiscation orders is not fully effective. The current instruments have not been implemented and applied uniformly in the Member States, leading to insufficient mutual recognition.

Amendment

(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 and confiscation orders is not fully effective. The current instruments have not been implemented and applied uniformly in the Member States, leading to insufficient mutual recognition *and inefficient cross-border cooperation.*

Amendment 5

Proposal for a regulation

Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Extended confiscation and third party confiscation must comply with the guarantees enshrined in the ECHR, in particular articles 6 and 7, and the Charter of Fundamental Rights of the European Union. The decision by competent authorities shall be based on a thorough assessment of the individual case of the person subjected to the confiscation order, including the certainty that goods confiscated were acquired or

obtained through criminal activities;

Amendment 6

Proposal for a regulation Recital 7 b (new)

Text proposed by the Commission

Amendment

(7b) Organised crime, corruption and money laundering pose serious threats to the economy of the Union by, for example, significantly reducing the tax revenues of Member States and the Union as a whole, and to the accountability of Union-funded projects, as criminal organisations operate in various sectors, many of which are subject to governmental control.

Amendment 7

Proposal for a regulation Recital 11

Text proposed by the Commission

Amendment

(11) In order to ensure effective mutual recognition of freezing 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.

(11) In order to ensure effective mutual recognition of freezing 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 ***that is wider in scope than other legal acts to date and contains clear provisions for ordering the freezing and confiscation of assets. One single instrument for mutual recognition of both freezing and confiscation orders containing a standard certificate and form, together with applicable rules and deadlines, will ensure that the orders are recognised and executed without delay within the Union. A regulation improves clarity and legal certainty, eliminates the problems of transposition into national systems and***

thus allows freezing and confiscation orders to be more rapidly and effectively enforced.

Amendment 8

Proposal for a regulation Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) Whereas the mutual recognition of freezing and confiscation orders in the Union is an important step in the fight against crime, a considerable amount of assets are held offshore, unreported and untaxed, in third countries outside the Union. A comprehensive plan to discourage transfers of assets to third countries and to find an effective way to recover them would represent a major step forward.

Amendment 9

Proposal for a regulation Recital 12

Text proposed by the Commission

Amendment

(12) It is important to facilitate the mutual recognition and execution of orders to freeze and to confiscate property by establishing rules obliging a Member State to recognise and execute in its territory freezing and confiscation orders issued by another Member State within the framework of criminal proceedings.

(12) It is important to facilitate the mutual recognition and execution of orders to freeze and to confiscate property by establishing rules obliging a Member State, ***without undue delay or additional formalities***, to recognise and execute in its territory freezing and confiscation orders issued by another Member State within the framework of criminal proceedings.

Amendment 10

Proposal for a regulation Recital 12

Text proposed by the Commission

(12) It is important to facilitate the mutual recognition and execution of orders to freeze and to confiscate property by establishing rules obliging a Member State to recognise and execute in its territory freezing and confiscation orders issued by another Member State within the framework of *criminal* proceedings.

Amendment

(12) It is important to facilitate the mutual recognition and execution of orders to freeze and to confiscate property by establishing rules obliging a Member State to recognise and execute in its territory freezing and confiscation orders issued by another Member State within the framework of proceedings *in criminal matters*.

Amendment 11

Proposal for a regulation Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) In the light of the case law of the Court of Justice of the European Union and the European Court of Human Rights (ECtHR), it is not always enough, when seeking to determine whether proceedings belong to the criminal sphere, to consider only their status under national law. If the aims of the Treaties and of this Directive are to be achieved and the fundamental rights laid down, for example, by the ECHR and the Charter, are to be upheld in full, due account should be taken, in applying the Directive, not only of the status of the proceedings under national law, but also of the nature of the offence involved and the severity of the penalty which the accused person faces.

Amendment 12

Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) This Regulation should apply to all confiscation orders imposed by a court following proceedings in ***relation to a criminal offence*** and all freezing orders issued with a view to possible subsequent confiscation. It should therefore cover all types of orders covered by Directive 2014/42/EU, as well as other types of orders issued without final conviction within the framework of criminal proceedings. This Regulation should not apply to freezing and confiscation orders issued within the framework of civil or administrative ***proceedings***.

Amendment

(13) This Regulation should apply to all confiscation orders imposed by a court following proceedings in criminal ***matters*** and all freezing orders issued with a view to possible subsequent confiscation. It should therefore cover all types of orders covered by Directive 2014/42/EU, as well as other types of orders issued without final conviction within the framework of criminal proceedings. This Regulation should not apply to freezing and confiscation orders issued within the framework of civil or administrative ***proceedings***.

Amendment 13

Proposal for a regulation
Recital 16

Text proposed by the Commission

(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 ***TEU***.

Amendment

(16) This Regulation ***is without prejudice to*** the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of ***the TEU and in the Charter of Fundamental Rights of the European Union (hereinafter ‘the Charter’)***.

Amendment 14

Proposal for a regulation
Recital 17

Text proposed by the Commission

(17) This Regulation respects the

Amendment

(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 Regulation should be applied in accordance with those rights and principles.

fundamental *and procedural* rights and observes the *relevant* 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 Regulation should be applied in accordance with those rights and principles.

Amendment 15

Proposal for a regulation

Recital 18

Text proposed by the Commission

(18) This Regulation should be applied ***taking into account*** Directives 2010/64/EU³⁰, 2012/13/EU³¹, 2013/48/EU³², 2016/343³³, 2016/800³⁴ and 2016/1919 of the European Parliament and of the Council³⁵, which concern procedural rights in criminal proceedings.

³⁰ 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).

³¹ 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).

³² 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).

³³ Directive (EU) 2016/343 of the European Parliament and of the Council of

Amendment

(18) This Regulation should be applied ***in accordance with*** Directives 2010/64/EU³⁰, 2012/13/EU³¹, 2013/48/EU³², 2016/343³³, 2016/800³⁴ and 2016/1919 of the European Parliament and of the Council³⁵, which concern procedural rights in criminal proceedings.

³⁰ 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).

³¹ 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).

³² 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).

³³ 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).

³⁴ 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).

³⁵ 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).

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).

³⁴ 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).

³⁵ 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).

Amendment 16

Proposal for a regulation

Recital 20

Text proposed by the Commission

(20) To this end, freezing and confiscation orders should be transmitted directly by the issuing authority to the executing authority **or, where applicable**, to a central authority.

Amendment

(20) To this end, freezing and confiscation orders should be transmitted directly by the issuing authority to the executing authority **and communicated** to a central authority **responsible for assisting the competent authorities, logging the freezing or confiscation orders transmitted and received at the national level and streamlining the transmission and reception of orders**.

Amendment 17

Proposal for a regulation

Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) With a view to ensuring the transmission of the freezing and confiscation order to the competent authority of the executing State, the issuing authority should be able to make use of any possible or relevant means of transmission, for example the secure telecommunications system of the European Judicial Network, Eurojust, or other channels used by judicial authorities.

Justification

Harmonisation with other European mutual recognition instruments. Seeks to facilitate the transmission of orders by the issuing state.

Amendment 18

Proposal for a regulation

Recital 20 b (new)

Text proposed by the Commission

Amendment

(20b) The designation by the Member States of one or more central authorities, which may clearly play an administrative support and coordination role, is a key element in supporting the rapid mutual recognition of freezing and confiscation orders between the issuing and enforcing authorities and in speeding up these mutual recognition procedures. With that in mind, the European Judicial Network should also be strengthened to help the issuing and executing authorities to communicate more quickly with each other and cooperate more effectively.

Justification

Article 27(2) of the proposal for a regulation mentions the possibility for Member States of

appointing a central authority to support and assist the competent national authorities, though it does not specify the role or importance of such authorities. However, these central authorities could provide genuine added value in facilitating mutual recognition, given the inadequacy of the current regime.

Amendment 19

Proposal for a regulation

Recital 21

Text proposed by the Commission

(21) A confiscation order should be transmitted together with a standard certificate.

Amendment

(21) A confiscation **or freezing** order should be transmitted together with a standard certificate.

Justification

For the purposes of simplification, it is useful to coordinate the mutual recognition procedures for freezing and confiscation orders respectively; accordingly, these two orders should each be accompanied by a certificate (in Annexes I and II).

Amendment 20

Proposal for a regulation

Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) When making a declaration concerning the language regime they are adopting pursuant to this Regulation, Member States should include at least one official language of the European Union other than their official language(s).

Justification

Harmonisation with other European mutual recognition instruments. The linguistic diversity of the EU should of course be defended, but should not be an obstacle to mutual recognition procedures. Accordingly, a Member State should agree to receive freezing or confiscation orders in at least one language other than its national language.

Amendment 21

Proposal for a regulation Recital 22

Text proposed by the Commission

(22) The executing authority should recognise a confiscation order without further formalities and should take the necessary measures for its execution. The decision on the recognition and execution of the confiscation order should be taken and the confiscation should be carried out with the same *celerity* and priority as for a similar domestic case. *Time limits* should *be* set out in order to ensure a quick and efficient decision and execution of the confiscation order.

Amendment

(22) The executing authority should recognise a confiscation order without further formalities *or undue delay* and should take the necessary measures for its execution. The decision on the recognition and execution of the confiscation order should be taken *without any undue delay* and the confiscation should be carried out with the same *speed* and priority as for a similar domestic case. *This Regulation* should set out *time limits by which the different steps of the procedure must be completed* in order to ensure a quick and efficient decision and execution of the confiscation order.

Amendment 22

Proposal for a regulation Recital 23

Text proposed by the Commission

(23) ***In light of the urgency of freezing and of its provisional nature, a freezing order should be issued in a standard form.*** The issuing authority should ascertain whether issuing the freezing order is necessary and proportionate for the purpose of provisionally preventing the destruction, transformation, moving, transfer or disposal of property. To align the conditions for issuing freezing orders in domestic and cross-border cases, a freezing order under this Regulation should be issued only when it could have been ordered in a similar domestic case.

Amendment

(23) The issuing authority should ascertain whether issuing the freezing order is necessary and proportionate for the purpose of provisionally preventing the destruction, transformation, moving, transfer or disposal of property. To align the conditions for issuing freezing orders in domestic and cross-border cases, a freezing order under this Regulation should be issued only when it could have been ordered in a similar domestic case.

Justification

For the purposes of simplification, it is useful to coordinate the mutual recognition procedures for the freezing and confiscation orders respectively; accordingly, these two orders should each be accompanied by a certificate (in Annexes I and II).

Amendment 23

Proposal for a regulation

Recital 24

Text proposed by the Commission

(24) The executing authority should recognise a freezing order without further formalities and should immediately take the necessary measures for its execution. The decision on the recognition and execution of the freezing order should be taken and the freezing should be carried out with the same *celerity* and priority as for a similar domestic case. *Time* limits should *be* set out in order to ensure a quick and efficient decision and execution of the freezing order.

Amendment

(24) The executing authority should recognise a freezing order without further formalities *or undue delay* and should immediately take the necessary measures for its execution. The decision on the recognition and execution of the freezing order should be taken *without undue delay* and the freezing should be carried out with the same *speed* and priority as for a similar domestic case. *This Regulation* should set out *firm time* limits *by which the different steps of the procedure must be completed* in order to ensure a quick and efficient decision and execution of the freezing order.

Amendment 24

Proposal for a regulation

Recital 25

Text proposed by the Commission

(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 the substance of the freezing order.

Amendment

(25) *Without prejudice to the right to information of any person concerned, 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 the substance of the freezing order.

Justification

It is necessary to clarify the relationship between the obligation to supply information and the requirements of confidentiality. The confidential nature of an inquiry must not mean that a person is deprived of his or her right to information.

Amendment 25

Proposal for a regulation

Recital 26

Text proposed by the Commission

(26) The recognition and execution of a freezing order or a confiscation order should not be refused on grounds other than those stated 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*, of the rights of any interested party, or of the right to be present at the trial.

Amendment

(26) The recognition and execution of a freezing order or a confiscation order should not be refused on grounds other than those stated 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 ***fundamental rights***, the principle *ne bis in idem*, of the rights of any interested party, or of the right to be present at the trial.

Amendment 26

Proposal for a regulation

Recital 26 a (new)

Text proposed by the Commission

Amendment

(26a) The principle of ne bis in idem is a fundamental principle of law in the Union, as recognised by the Charter and developed by the case-law of the Court of Justice of the European Union. Therefore the executing authority should be entitled to refuse to execute a confiscation or freezing order if execution would be contrary to that principle.

Justification

Harmonisation with other European mutual recognition instruments. Importance of the ne bis in idem principle in criminal and European law.

Amendment 27

Proposal for a regulation

Recital 26 b (new)

Text proposed by the Commission

Amendment

(26b) The creation of an area of freedom, security and justice within the Union is based on mutual confidence and a presumption of compliance by other Member States with Union law and, in particular, with fundamental rights. However, that presumption is rebuttable. Consequently, if there are substantial grounds for believing that the execution of a confiscation or freezing order would result in a breach of a fundamental right of the person concerned and that the executing State would disregard its obligations concerning the protection of fundamental rights recognised in the Charter, execution of the confiscation or freezing order should be refused.

Justification

Les instruments de reconnaissance mutuelle contiennent, très souvent, une clause de non-reconnaissance fondée sur le respect des droits fondamentaux, soit implicite (Décision-cadre 2002/584), soit explicite (Décision-cadre 2005/214/JHA, Directive 2014/41/UE), en outre développée par le droit national. Deuxièmement, la Cour de Justice de l'Union européenne a confirmé l'existence et l'importance d'une telle clause (arrêt Aranyosi/Caldararu du 5 avril 2016 - C404/15). Troisièmement, l'insertion d'une telle clause pourra permettre de prévenir une contradiction possible entre le droit européen et le droit constitutionnel national. Dès lors il est important d'avoir une telle clause dans ce règlement européen.

Amendment 28

Proposal for a regulation

Recital 26 c (new)

(26c) This Regulation respects the fundamental rights and observes the principles recognised by Article 6 of the TEU and in the Charter, notably Title VI thereof, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions in their respective fields of application. Nothing in this Regulation may be interpreted as prohibiting refusal to execute a confiscation or freezing order when there are reasons to believe, on the basis of objective elements, that the confiscation or freezing order has been issued for the purpose of prosecuting or punishing a person on account of his or her sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions, or that the person's position may be prejudiced for any of these reasons.

Justification

Les instruments de reconnaissance mutuelle contiennent, très souvent, une clause de non-reconnaissance fondée sur le respect des droits fondamentaux, soit implicite (Décision-cadre 2002/584), soit explicite (Décision-cadre 2005/214/JHA, Directive 2014/41/UE), en outre développée par le droit national. Deuxièmement, la Cour de Justice de l'Union européenne a confirmé l'existence et l'importance d'une telle clause (arrêt Aranyosi/Caldararu du 5 avril 2016 - C404/15). Troisièmement, l'insertion d'une telle clause pourra permettre de prévenir une contradiction possible entre le droit européen et le droit constitutionnel national. Enfin, la jurisprudence de la CEDH a mis en lumière des difficultés, dans certains États membres, en matière de confiscation et de respect des droits fondamentaux. Dès lors il est important d'avoir une telle clause dans ce Règlement européen.

Amendment 29

Proposal for a regulation

Recital 26 d (new)

(26d) It is vital to take into account the rights of any third party affected by an order for the confiscation or freezing of specified property, for example because he is the owner of such property but has been unable to assert his rights in the proceedings in the issuing Member State because he is not a party to those proceedings. Accordingly, an executing authority should have the right to refuse to recognise or execute a confiscation or freezing order where it relates to a specific item of property which is not the property of the natural or legal person against whom the confiscation order was made in the issuing Member State or of any other natural or legal person who was a party to the proceedings in the issuing State.

Justification

It is essential to take into consideration in the regulation the rights of third persons acting in good faith who could be affected by a confiscation or freezing order.

Amendment 30

Proposal for a regulation

Recital 27

Text proposed by the Commission

Amendment

(27) Before deciding to apply a ground for non-recognition and non-execution, the executing authority should consult the issuing authority, in order to obtain ***any*** necessary additional information.

(27) Before deciding to apply a ground for non-recognition and non-execution, the executing authority should consult the issuing authority ***without any undue delay***, in order to obtain necessary additional information.

Amendment 31

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) The issuing authority should be notified without delay of the ***impossibility to execute*** an order. Such impossibility might arise from the ***reason*** that the property has already been confiscated, has disappeared, cannot be found in the location indicated by the issuing authority or the location of the property has not been indicated in a sufficiently precise manner.

Amendment

(29) The issuing authority should be notified without ***undue*** delay of the ***reasons for which the execution of*** an order ***is impossible***. Such impossibility might arise from the ***fact*** that the property has already been confiscated, has disappeared, cannot be found in the location indicated by the issuing authority or the location of the property has not been indicated in a sufficiently precise manner.

Amendment 32

Proposal for a regulation Recital 29 a (new)

Text proposed by the Commission

Amendment

(29 a) Where there are doubts as to the location of property which is the subject of a confiscation order, Member States should use all available means in order to identify the correct location of that property, including the use of all available information systems.

Amendment 33

Proposal for a regulation Recital 30

Text proposed by the Commission

Amendment

(30) The execution of a confiscation ***or a freezing*** order should be governed by the law of the executing State and its authorities should alone be competent to decide on the procedures for execution.

(30) The execution of a ***freezing or a*** confiscation order should be governed by the law of the executing State and its authorities should alone be competent to decide on the procedures for execution.

Amendment 34

Proposal for a regulation Recital 31

Text proposed by the Commission

(31) The proper practical operation of this Regulation presupposes close communication between the competent national authorities involved, in particular in cases of simultaneous execution of a confiscation order in more than one Member State. The competent national authorities should therefore consult each other *whenever necessary*.

Amendment

(31) The proper practical operation of this Regulation presupposes close communication *and optimal cooperation* between the competent national authorities involved, in particular in cases of simultaneous execution of a *freezing or* confiscation order in more than one Member State. The competent national authorities should therefore consult each other *and should use modern communication technologies accepted under the procedural rules of the Member States concerned*.

Amendment 35

Proposal for a regulation Recital 32

Text proposed by the Commission

(32) The victims' rights to compensation and restitution *should* not be prejudiced in cross-border cases. Rules for disposal of the confiscated property *should* give priority to the compensation and restitution of property to the victims. Member States should also take into account their obligations to assist in the recovery of tax claims from other Member States in accordance with Directive 2010/24/EU³⁶.

³⁶ Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84, 31.3.2010, p. 1).

Amendment

(32) The victims' rights to compensation and restitution *shall* not be prejudiced in cross-border cases. Rules for disposal of the confiscated property *shall* give priority to the compensation and restitution of property to the victims. Member States should also take into account their obligations to assist in the recovery of tax claims from other Member States in accordance with Directive 2010/24/EU³⁶.

³⁶ Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures (OJ L 84, 31.3.2010, p. 1).

Amendment 36

Proposal for a regulation Recital 32 a (new)

Text proposed by the Commission

Amendment

(32a) Property frozen with a view to later confiscation, and property confiscated, should be managed adequately in order not to lose its economic value, to encourage its reuse for social purposes and to avoid the risk of further criminal infiltration. Accordingly, Member States should take the necessary measures, including sale or transfer of the property, to minimise such losses and to favour social aims. They should adopt all appropriate legislative or other measures such as the creation of centralised national property management offices or equivalent arrangements, with a view to the proper management of frozen or confiscated property. To that end, it would be useful to consider the formation of a Union fund that would collect a part of the confiscated assets from Member States. Such a fund should be accessible for pilot projects from EU citizens, associations, NGO groupings and any other civil society organisation, in order to encourage the effective reuse of confiscated property for social purposes.

Justification

It is important to promote, at European level and within the Member States, the best possible management of frozen and confiscated property and its reuse for social purposes, for the compensation of victims, victims' families, and businesses which are victims of organised crime, or in order to combat organised crime.

Amendment 37

Proposal for a regulation Recital 32 b (new)

(32b) The rules on the destination of confiscated goods should include appropriate forms of compensation for the families of police officers and public servants killed in the line of duty and police officers and public servants permanently disabled in the line of duty. Each Member State should accordingly set up a fund earmarked for this purpose and assign to it a portion of the confiscated assets.

Amendment 38

Proposal for a regulation

Recital 32 c (new)

(32c) The practice of using confiscated assets for social purposes fosters and sustains the dissemination of a culture of legality, assistance to crime victims and action against organised crime, hence creating ‘virtuous’ mechanisms, which may also be implemented through non-governmental organisations, that benefit society and the socio-economic development of an area, using objective criteria. Accordingly, the Member States should be encouraged to develop such practices.

Justification

It is important to promote, at European level and within the Member States, the best possible management of frozen and confiscated property and its reuse for social purposes, for the compensation of victims, victims’ families, and businesses which are victims of organised crime, or in order to combat organised crime.

Amendment 39

Proposal for a regulation

Recital 32 d (new)

Text proposed by the Commission

Amendment

(32d) In order that civil society may concretely perceive the effectiveness of the action of the Member States against organised crime, including mafia-type crime, and that proceeds are actually taken away from the criminals, it is necessary to adopt common measures to prevent criminal organisations from recovering possession of property illicitly obtained. Best practice in several Member States has shown that the following are effective tools: management and administration by Asset Management Offices (AMO) or similar mechanisms, as well as the use of the confiscated property for projects aimed at eliminating and preventing crime, and for other institutional or public purposes or social use.

Justification

It is important to promote, at European level and within the Member States, the best possible management of frozen and confiscated property and its reuse for social purposes, for the compensation of victims, victims' families, and businesses which are victims of organised crime, or in order to combat organised crime.

Amendment 40

Proposal for a regulation

Recital 32 e (new)

Text proposed by the Commission

Amendment

(32e) Confiscated assets should be properly managed in order to reaffirm and promote respect for legality through their reuse in the social and economic interest of the communities directly affected by the activities of terrorists and

Amendment 41

Proposal for a regulation Recital 34

Text proposed by the Commission

(34) Any interested party, including bona fide third parties, should have legal remedies against the recognition and execution of a freezing or confiscation order to preserve his or her rights, including the effective possibility to challenge the order before a court or claim title of ownership or other property rights in accordance with Directive 2014/42/EU. The action should be brought before a court in the executing State.

Amendment

(34) Any interested party, including bona fide third parties, should have legal remedies against the recognition and execution of a freezing or confiscation order to preserve his or her rights, including the ***right of access to the file and the*** effective possibility to challenge the order before a court or claim title of ownership or other property rights in accordance with Directive 2014/42/EU. The action should be brought before a court in the executing State.

Amendment 42

Proposal for a regulation Recital 35

Text proposed by the Commission

(35) In order to amend 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 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work for delegated acts, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure the simultaneous, timely and appropriate transmission of relevant documents to the

Amendment

deleted

Justification

All the information appearing in the two certificates (in Annexes I and II) should, for reasons of legal certainty, be determined and laid down by the legislative authority. Delegation of powers for this purpose is neither necessary nor appropriate.

Amendment 43

Proposal for a regulation

Recital 35

Text proposed by the Commission

(35) In order to amend 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 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work for delegated acts, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

Amendment

(35) In order to amend 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 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work for delegated acts ***with specialised authorities in the Member States and the corresponding European agencies***, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

Amendment 44

Proposal for a regulation

Article 1 – paragraph 1

Text proposed by the Commission

1. This Regulation lays down the rules under which a Member State shall

Amendment

1. This Regulation lays down the rules under which a Member State shall

recognise and execute in its territory a freezing or a confiscation order issued by another Member State within the framework of *criminal* proceedings.

recognise and execute in its territory a freezing or a confiscation order issued by another Member State within the framework of proceedings *in criminal matters*.

Amendment 45

Proposal for a regulation Article 1 – paragraph 2

Text proposed by the Commission

2. This Regulation shall not have the effect of amending the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 TEU.

Amendment

2. This Regulation shall not have the effect of amending the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 TEU *and in the Charter, in particular the right of defence, the right to a fair trial and the right to property*.

Amendment 46

Proposal for a regulation Article 1 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. The issuing authority shall ensure, when issuing a freezing or confiscation order, that the principles of necessity and proportionality are respected.

Amendment 47

Proposal for a regulation

Article 2 – paragraph 1 – point 1

Text proposed by the Commission

(1) ‘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;

Amendment

(1) ‘confiscation order’ means a 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;

Amendment 48

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – introductory part

Text proposed by the Commission

(3) ‘property’ means **property** of any **description**, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such **property**, which the issuing authority considers to be:

Amendment

(3) ‘property’ means **money or assets** of any **kind**, whether corporeal or incorporeal, movable or immovable, **as well as limited property rights** and legal documents or instruments evidencing title or interest in such **assets**, which the issuing authority considers to be:

Amendment 49

Proposal for a regulation

Article 2 – paragraph 1 – point 6

Text proposed by the Commission

(6) ‘issuing State’ means the Member State in which a freezing order or a confiscation order is issued within the framework of **criminal** proceedings;

Amendment

(6) ‘issuing State’ means the Member State in which a freezing order or a confiscation order is issued within the framework of proceedings **in criminal matters**;

Amendment 50

Proposal for a regulation

Article 2 – paragraph 1 – point 8 – point a – point 2

Text proposed by the Commission

(2) any other competent authority as defined by the issuing State which has competence in criminal **proceedings** 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, after examination of its conformity with the conditions for issuing such an order under this Regulation, in particular the conditions set out in Article 13(1), by a judge, court, investigating judge or a public prosecutor in the issuing State. Where the order has been validated by such an authority, that authority may also be regarded as an issuing authority for the purposes of transmission of the order;

Amendment

(2) any other competent authority as defined by the issuing State 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, after examination of its conformity with the conditions for issuing such an order under this Regulation, in particular the conditions set out in Article 13(1), by a judge, court, investigating judge or a public prosecutor in the issuing State. Where the order has been validated by such an authority, that authority may also be regarded as an issuing authority for the purposes of transmission of the order;

Amendment 51

Proposal for a regulation

Article 2 – paragraph 1 – point 8 – point b

Text proposed by the Commission

(b) in respect of a confiscation order, a competent authority as defined by the issuing State which, in criminal **proceedings**, has competence to enforce a confiscation order issued by a court in accordance with national law;

Amendment

(b) in respect of a confiscation order, a competent authority as defined by the issuing State which, in criminal **matters**, has competence to enforce a confiscation order issued by a court in accordance with national law;

Amendment 52

Proposal for a regulation

Article 2 – paragraph 1 – point 9 a (new)

Text proposed by the Commission

Amendment

(9a) ‘interested party’ means any natural or legal person, including bona fide third parties, who is affected by this Regulation in accordance with national law of the executing State;

Amendment 53

Proposal for a regulation

Article 3 – paragraph 1

Text proposed by the Commission

Amendment

1. A freezing order or confiscation order shall give rise to execution without verification of the double criminality of the acts if the acts giving rise to the freezing or confiscation order constitute one or more of the ***following*** offences, ***as defined by the law of the issuing State, and are punishable in the issuing State by a custodial sentence of a maximum of at least three years: :***

- ***participation in a criminal organisation,***
- ***terrorism,***
- ***trafficking in human beings,***
- ***sexual exploitation of children and child pornography,***
- ***illicit trafficking in narcotic drugs***

1. A freezing order or confiscation order shall give rise to execution without verification of the double criminality of the acts if the acts giving rise to the freezing or confiscation order constitute one or more of the offences ***referred to in Article 2(2) of Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States^{1a}.***

and psychotropic substances,

- *illicit trafficking in weapons, munitions and explosives,*
- *corruption,*
- *fraud and fraud-related criminal offences as defined in Directive 2017/xxx/EU on the fight against fraud to the Union's financial interests by means of criminal law,*
- *fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,*
- *laundering of the proceeds of crime,*
- *counterfeiting currency, including the euro,*
- *computer-related crime,*
- *environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,*
- *facilitation of unauthorised entry and residence,*
- *murder, grievous bodily injury,*
- *illicit trade in human organs and tissue,*
- *kidnapping, illegal restraint and hostage-taking,*
- *racism and xenophobia,*
- *organised or armed robbery,*
- *illicit trafficking in cultural goods, including antiques and works of art,*
- *swindling,*
- *racketeering and extortion,*
- *counterfeiting and piracy of products,*
- *forgery of administrative documents and trafficking thereof,*
- *fraud and counterfeiting of non-*

- cash means of payment,*
- *illicit trafficking in hormonal substances and other growth promoters,*
 - *illicit trafficking in nuclear or radioactive materials,*
 - *trafficking in stolen vehicles,*
 - *rape,*
 - *arson,*
 - *crimes within the jurisdiction of the International Criminal Court,*
 - *unlawful seizure of aircraft or ships,*
 - *sabotage.*

*1^a Council Framework Decision
2002/584/JHA of 13 June 2002 on the
European arrest warrant and the
surrender procedures between Member
States (OJ L 190, 18.7.2002, p. 1).*

Amendment 54

Proposal for a regulation Article 4 – paragraph 1

Text proposed by the Commission

1. A confiscation order, ***or a certified copy of it***, shall be transmitted together with the certificate provided for in Article 7 by the issuing authority 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.

Amendment

1. A confiscation order shall be transmitted together with the certificate provided for in Article 7 by the issuing authority directly to the executing authority ***and communicated*** 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 ***its*** authenticity.

Amendment 55

Proposal for a regulation

Article 4 – paragraph 6

Text proposed by the Commission

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

Amendment

6. Where the authority in the executing State which receives a confiscation order has no competence to recognise it and to take the necessary measures for its execution, it shall immediately ***and at the latest within 2 working days***, transmit the confiscation order to the competent executing authority in its Member State and shall inform the issuing authority accordingly.

Amendment 56

Proposal for a regulation

Article 5 – paragraph 1

Text proposed by the Commission

1. A confiscation order may only be transmitted pursuant to Article 4 to one executing State at any one time.

Amendment

1. ***In principle***, a confiscation order may only be transmitted pursuant to Article 4 to one executing State at any one time.

Amendment 57

Proposal for a regulation

Article 5 – paragraph 2 – introductory part

Text proposed by the Commission

2. A confiscation order concerning

Amendment

2. ***Without prejudice to paragraph 1***, a

specific items of property may be transmitted to more than one executing State at the same time where:

confiscation order concerning specific items of property may be transmitted to more than one executing State at the same time where:

Amendment 58

Proposal for a regulation

Article 5 – paragraph 3 – introductory part

Text proposed by the Commission

3. A confiscation order concerning an amount of money 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:

Amendment

3. ***Without prejudice to paragraph 1,*** a confiscation order concerning an amount of money 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:

Amendment 59

Proposal for a regulation

Article 6 – paragraph 2

Text proposed by the Commission

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 may not exceed the maximum amount specified in the confiscation order.

Amendment

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 may not exceed the maximum amount specified in the confiscation order. ***In cases where the confiscation has already been executed in part, such amount shall be deducted in full from the amount confiscated in the executing state.***

Amendment 60

Proposal for a regulation

Article 6 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

The issuing authority shall immediately inform the executing authority by any means capable of producing a written record:

Amendment

The issuing authority shall immediately ***and at the latest within one working day*** inform the executing authority by any means capable of producing a written record:

Amendment 61

Proposal for a regulation

Article 6 – paragraph 3 – subparagraph 1 – point b

Text proposed by the Commission

(b) if all or a part of the ***freezing or*** confiscation order has been executed in the issuing State or in another executing State, specifying the amount for which the ***freezing or*** confiscation order has not yet been executed;

Amendment

(b) if 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;

Amendment 62

Proposal for a regulation

Article 6 – paragraph 4

Text proposed by the Commission

4. Where the issuing State has indicated that it wishes to withdraw the order from the executing State for any reason, the

Amendment

4. Where the issuing State has indicated that it wishes to withdraw the order from the executing State for any reason, the

executing State shall terminate the execution of the confiscation order immediately.

executing State shall terminate the execution of the confiscation order immediately ***and at the latest within 3 working days.***

Amendment 63

Proposal for a regulation Article 7 – title

Text proposed by the Commission

Standard certificate

Amendment

Standard certificate ***for issuing a confiscation order***

Amendment 64

Proposal for a regulation Article 8 – paragraph 4

Text proposed by the Commission

4. As soon as the execution of the order has been completed the executing authority shall ***inform*** the issuing authority by any means capable of producing a written record.

Amendment

4. As soon as the execution of the order has been completed the executing authority shall ***immediately and at the latest within 12 hours notify*** the issuing authority by any means capable of producing a written record.

Amendment 65

Proposal for a regulation Article 9 – title

Text proposed by the Commission

Amendment

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

Mandatory and optional grounds for non-recognition and non-execution of confiscation orders

Amendment 66

Proposal for a regulation

Article 9 – paragraph 1– introductory part

Text proposed by the Commission

Amendment

The executing authority ***may decide not to*** recognise ***and not to*** execute confiscation orders ***only*** if:

The executing authority ***shall not*** recognise ***or*** execute confiscation orders if:

Amendment 67

Proposal for a regulation

Article 9 – paragraph 1– point a

Text proposed by the Commission

Amendment

(a) the certificate provided for in Article 7 is incomplete, manifestly incorrect or manifestly does not correspond to the confiscation order, and has not been completed following the consultation in accordance with paragraph 2;

deleted

Amendment 68

Proposal for a regulation
Article 9 – paragraph 1– point d

Text proposed by the Commission

Amendment

(d) the confiscation order is based on a criminal offence committed outside the territory of the issuing State and wholly or partially on the territory of the executing State and the conduct in connection with which the confiscation order is issued is not an offence in the executing State;

deleted

Amendment 69

Proposal for a regulation
Article 9 – paragraph 1– point d a (new)

Text proposed by the Commission

Amendment

(da) the confiscation order relates to a specific item of property which is not the property of the natural or legal person against whom the confiscation order was made in the issuing Member state or of any other natural or legal person who was a party to the proceedings in the issuing State;

Amendment 70

Proposal for a regulation
Article 9 – paragraph 1– point f

Text proposed by the Commission

Amendment

(f) if, in a case referred to in Article 3(2), the conduct on which the confiscation order is based does not

deleted

constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, execution of the confiscation 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, duties and customs and exchange regulations as the law of the issuing State;

Amendment 71

Proposal for a regulation Article 9 – paragraph 1– point g a (new)

Text proposed by the Commission

Amendment

(ga) there are substantial grounds for believing that executing the confiscation order would be incompatible with the obligations of the executing State in accordance with Article 6 TEU and the Charter.

Amendment 72

Proposal for a regulation Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The executing authority may decide not to recognise and not to execute confiscation orders if:

(a) the certificate provided for in Article 7 is incomplete, manifestly incorrect or manifestly does not correspond to the confiscation order, and has not been

completed following the consultation in accordance with paragraph 2 or if the conditions laid down in Article 7(2) are not respected;

(b) the confiscation order is based on a criminal offence committed outside the territory of the issuing State and wholly or partially on the territory of the executing State and the conduct in connection with which the confiscation order is issued is not an offence in the executing State;

(c) if, in a case referred to in Article 3(2), the conduct on which the confiscation order is based does not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, execution of the confiscation 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 or offences as regards taxes, duties and customs and exchange regulations as the law of the issuing State.

Amendment 73

Proposal for a regulation Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where the issuing authority has legitimate grounds to believe that the property in question will imminently be moved or destroyed and that immediate confiscation is necessary, it shall indicate in the confiscation order that the measure has to be carried out on a specific date. The executing authority shall take full account of this requirement and execute the confiscation order by the specified deadline.

Amendment 74

Proposal for a regulation Article 10 – paragraph 2

Text proposed by the Commission

2. The executing authority shall take the decision on the recognition and execution of the confiscation order without delay and, without prejudice to paragraph 5, no later than **30** days after the executing authority has received the confiscation order.

Amendment

2. The executing authority shall take the decision on the recognition and execution of the confiscation order without delay and, without prejudice to paragraph 5, no later than **10 working** days after the executing authority has received the confiscation order.

Amendment 75

Proposal for a regulation Article 10 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. If the executing authority consults the issuing authority in accordance with Article 9(2), the executing authority shall take the decision on the recognition and execution of the confiscation order without delay and at the latest 48 hours following the consultation.

Amendment 76

Proposal for a regulation Article 10 – paragraph 3

Text proposed by the Commission

3. The executing authority shall communicate the decision on a confiscation order to the issuing authority ***without delay*** by any means capable of producing a written record.

Amendment

3. The executing authority shall communicate the decision on a confiscation order to the issuing authority ***immediately and at the latest within 12 hours*** by any means capable of producing a written record.

Amendment 77

Proposal for a regulation
Article 10 – paragraph 4

Text proposed by the Commission

4. Unless grounds for postponement pursuant to Article 11 exist, the executing authority shall carry out the confiscation without delay and without prejudice to paragraph 5 of this Article , not later than **30** days following the taking of the decision referred to in paragraph 2 of this Article.

Amendment

4. Unless grounds for postponement pursuant to Article 11 exist, the executing authority shall carry out the confiscation without delay and without prejudice to paragraph 5 of this Article , not later than **10 working** days following the taking of the decision referred to in paragraph 2 of this Article.

Amendment 78

Proposal for a regulation
Article 10 – paragraph 5

Text proposed by the Commission

5. Where it is not possible in a specific case to meet the time limits set out in paragraphs 2 or 4, the executing authority shall, without delay, inform the issuing authority by any means, giving the reasons for the delay and shall consult with the

Amendment

5. Where it is not possible in a specific case to meet the time limits set out in paragraphs 2 or 4, the executing authority shall, without delay ***and at the latest within 2 working days***, inform the issuing authority by any means, ***capable of***

issuing authority on the appropriate timing to carry out the confiscation. In such a case, the time limit laid down in paragraphs 2 or 4, may be extended by a maximum of **30** days.

producing a written record giving the reasons for the delay and shall consult with the issuing authority on the appropriate timing to carry out the confiscation. In such a case, the time limit laid down in paragraphs 2 or 4, may be extended by a maximum of **20 working** days.

Amendment 79

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

2. The executing authority shall ***without delay*** make a report to the issuing authority by any means capable of producing a written record on the postponement of the execution of the order, including the grounds for the postponement and, if possible, the expected duration of the postponement.

Amendment

2. The executing authority shall ***immediately and at the latest within 48 hours*** make a report to the issuing authority by any means capable of producing a written record on the postponement of the execution of the order, including the grounds for the postponement and, if possible, the expected duration of the postponement. ***In the event of a postponement under the provisions of point (b) of paragraph 1, the issuing authority shall, in cases of execution of a confiscation order in more than one Member State, issue new instructions as to the exact amount of money subject to confiscation.***

Amendment 80

Proposal for a regulation Article 11 – paragraph 3

Text proposed by the Commission

3. As soon as the ground for

Amendment

3. As soon as the ground for

postponement has ceased to exist, the executing authority shall *without delay* take the necessary measures for the execution of the order and inform the issuing authority thereof by any means capable of producing a written record.

postponement has ceased to exist, the executing authority shall *immediately and at the latest within 10 working days* take the necessary measures for the execution of the order and inform the issuing authority thereof by any means capable of producing a written record.

Amendment 81

Proposal for a regulation Article 12 – paragraph 1

Text proposed by the Commission

Where it is impossible to execute the confiscation order because the property to be confiscated has already been confiscated, has disappeared, has been destroyed, or cannot be found in the location indicated in the certificate or because the location of the property has not been indicated in a sufficiently precise manner, even after consultation with the issuing authority, the issuing authority shall be notified *without delay*. Where possible, the order may be executed on other property in accordance with Article 8(2) or (3).

Amendment

Where it is impossible to execute the confiscation order because the property to be confiscated has already been confiscated, has disappeared, has been destroyed, or cannot be found in the location indicated in the certificate or because the location of the property has not been indicated in a sufficiently precise manner, even after consultation with the issuing authority, the issuing authority shall be notified *immediately and at the latest within 48 hours*. Where possible, the order may be executed on other property in accordance with Article 8(2) or (3).

Amendment 82

Proposal for a regulation Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12 a

Obligation to inform the interested parties

1. Following the execution of the confiscation order and at the latest within 48 hours after its execution, the executing authority shall notify its decision to the person against whom the confiscation order has been issued and to any interested party, including bona fide third parties

2. The notification shall indicate the reasons for the confiscation order, the authority which issued the order and the existing legal remedies under the national law of the executing State.

3. The notification shall contain relevant information, in such a way that the person can lodge effective legal remedies, on the reasons of the confiscation order, on the authority who issued the order and on the existing legal remedies under the national law of the executing State.

Amendment 83

Proposal for a regulation Article 13 – paragraph 1 – point a

Text proposed by the Commission

(a) the issuing of the order is necessary and proportionate in order to provisionally prevent the destruction, transformation, moving, transfer or disposal of property with a view to possible subsequent confiscation taking into account the rights of the person concerned;

Amendment

(a) the issuing of the order is necessary and proportionate in order to provisionally prevent the destruction, transformation, moving, transfer or disposal of property with a view to possible subsequent confiscation taking into account the rights of the person concerned ***and any third party acting in good faith;***

Amendment 84

Proposal for a regulation
Article 13 – paragraph 1 – point b

Text proposed by the Commission

(b) the order could have been ordered under the same conditions in a similar domestic case; and

Amendment

(b) the order could have been ordered under the same conditions in a similar domestic case; and ***the reason or reasons for the order are properly indicated.***

Amendment 85

Proposal for a regulation
Article 13 – paragraph 1 – point c

Text proposed by the Commission

(c) ***the reason or reasons for the order are properly indicated, at least briefly.***

Amendment

deleted

Amendment 86

Proposal for a regulation
Article 14 – paragraph 1

Text proposed by the Commission

1. A freezing order shall be transmitted in the ***form*** referred to in Article 16 by the issuing authority 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.

Amendment

1. A freezing order shall be transmitted in the ***certificate*** referred to in Article 16 by the issuing authority directly to the executing authority ***and communicated*** 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 ***its*** authenticity.

Amendment 87

Proposal for a regulation

Article 14 – paragraph 5 – point b

Text proposed by the Commission

(b) shall contain an instruction that the property shall remain in the executing State pending the transmission of a confiscation order in accordance with Article 4. The issuing authority shall indicate the estimated date for this transmission in the *form* referred to in Article 16.

Amendment

(b) shall contain an instruction that the property shall remain in the executing State pending the transmission of a confiscation order in accordance with Article 4. The issuing authority shall indicate the estimated date for this transmission in the *certificate* referred to in Article 16.

Amendment 88

Proposal for a regulation

Article 14 – paragraph 8

Text proposed by the Commission

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

Amendment

8. Where the executing authority which receives a freezing order has no competence to recognise it and take the necessary measures for its execution, it shall immediately *and at the latest within 2 working days*, transmit the freezing order to the competent executing authority in its Member State and shall inform the issuing authority.

Amendment 89

Proposal for a regulation

Article 15 – paragraph 1

Text proposed by the Commission

1. A freezing order may only be transmitted pursuant to Article 14 to one executing State at any one time.

Amendment

1. ***In principle***, a freezing order may only be transmitted pursuant to Article 14 to one executing State at any one time.

Amendment 90

Proposal for a regulation

Article 15 – paragraph 2 – introductory part

Text proposed by the Commission

2. A freezing order concerning specific items of property may be transmitted to more than one executing State at the same time where:

Amendment

2. ***Without prejudice to paragraph 1***, a freezing order concerning specific items of property may be transmitted to more than one executing State at the same time where:

Amendment 91

Proposal for a regulation

Article 15 – paragraph 3

Text proposed by the Commission

3. A freezing order concerning an amount of money 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 execution of the full amount covered by the freezing order.

Amendment

3. ***Without prejudice to paragraph 1***, a freezing order concerning an amount of money 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 execution of the full amount covered by the freezing order.

Amendment 92

Proposal for a regulation Article 16 – title

Text proposed by the Commission

Form of the freezing order

Amendment

Standard certificate for issuing a freezing order

Amendment 93

Proposal for a regulation Article 16 – paragraph 1

Text proposed by the Commission

1. The freezing order shall be issued in the form set out in Annex II.

Amendment

deleted

Amendment 94

Proposal for a regulation Article 16 – paragraph 2

Text proposed by the Commission

2. The issuing authority shall complete the *form*, sign it and certify its content as accurate and correct.

Amendment

2. The issuing authority shall complete the *certificate set out in Annex II*, sign it and certify its content as accurate and correct.

Amendment 95

Proposal for a regulation Article 17 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. As soon as the execution of the order has been completed the executing authority shall immediately and at the latest within 12 hours notify to the issuing authority by any means capable of producing a written report.

Amendment 96

Proposal for a regulation Article 17 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. In addition, the executing authority shall report on the measures taken for the execution of the freezing order and the results thereof, including a description of the property frozen and an estimation of its value, to the issuing authority within 3 working days of the execution of the order by any means capable of producing a written record.

Amendment 97

Proposal for a regulation Article 18 – title

Text proposed by the Commission

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

Amendment

Mandatory and optional grounds for non-recognition and non-execution of freezing orders

Amendment 98

Proposal for a regulation

Article 18 – paragraph 1 – introductory part

Text proposed by the Commission

1. The executing authority ***may decide not to*** recognise ***and not to*** execute the freezing order ***only*** if:

Amendment

1. The executing authority ***shall not*** recognise ***or*** execute the freezing order if:

Amendment 99

Proposal for a regulation

Article 18 – paragraph 1 – point a

Text proposed by the Commission

(a) the form provided for in Article 16 is incomplete or manifestly incorrect, and has not been completed following the consultation in accordance with paragraph 2;

Amendment

deleted

Amendment 100

Proposal for a regulation

Article 18 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) the order is based on a criminal offence committed outside the territory of the issuing State and wholly or partially on the territory of the executing State, and the conduct in connection with which the freezing order is issued is not an offence in the executing State;

deleted

Amendment 101

Proposal for a regulation

Article 18 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) the freezing order relates to a specific item of property which is not the property of the natural or legal person against whom the confiscation order was made in the issuing Member state or of any other natural or legal person who was a party to the proceedings in the issuing State;

Amendment 102

Proposal for a regulation

Article 18 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) in a case referred to in Article 3(2), the conduct on which the freezing order is based does not constitute an offence under the law of the executing State;

deleted

however, in relation to taxes or duties, customs and exchange, 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, duties and customs and exchange regulations as the law of the issuing State;

Amendment 103

Proposal for a regulation Article 18 – paragraph 1 – point e a (new)

Text proposed by the Commission

Amendment

(ea) there are substantial grounds for believing that executing the freezing order would be incompatible with the obligations of the executing State in accordance with Article 6 TEU and the Charter.

Amendment 104

Proposal for a regulation Article 18 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The executing authority may decide not to recognise and not to execute the freezing orders if:

(a) the certificate provided for in Article 16 is incomplete or manifestly incorrect, and has not been completed following the consultation in accordance with paragraph 2 or if the conditions laid down

in Article 16(3) are not respected

(b) the order is based on a criminal offence committed outside the territory of the issuing State and wholly or partially on the territory of the executing State, and the conduct in connection with which the freezing order is issued is not an offence in the executing State;

(c) in a case referred to in Article 3(2), the conduct on which the freezing order is based does not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, 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 or offences as regards taxes, duties and customs and exchange regulations as the law of the issuing State.

Amendment 105

Proposal for a regulation Article 18 – paragraph 3

Text proposed by the Commission

3. The executing authority may decide to lift the freezing order if, during the execution, it becomes aware that one of the grounds for non-recognition and non-execution applies.

Amendment

3. The executing authority may decide to lift the freezing order if, during the execution, it becomes aware that one of the grounds for non-recognition and non-execution applies. ***The executing authority shall communicate to the issuing authority, by any means capable of producing a written record, the reasons for the decision to revoke the freezing order.***

Amendment 106

Proposal for a regulation
Article 19 – paragraph 2

Text proposed by the Commission

2. Where the issuing authority has indicated in the freezing order that there are legitimate grounds to believe that the property in question will imminently be moved or destroyed and that immediate freezing is necessary, or if the issuing authority has indicated in the freezing order that the freezing measure has to be carried out on a specific date, the executing authority shall take full account of this requirement.

Amendment

2. Where the issuing authority has indicated in the freezing order that there are legitimate grounds to believe that the property in question will imminently be moved or destroyed and that immediate freezing is necessary, or if the issuing authority has indicated in the freezing order that the freezing measure has to be carried out on a specific date, the executing authority shall take full account of this requirement ***and execute the freezing order by the specified deadline.***

Amendment 107

Proposal for a regulation
Article 19 – paragraph 3

Text proposed by the Commission

3. The executing authority shall take the decision on the recognition and execution of the freezing order, or on consulting the issuing authority in accordance with Article 18(2), as soon as possible and, without prejudice to paragraph 7 of this Article, no later than **24** hours after the executing authority has received the freezing order.

Amendment

3. The executing authority shall take the decision on the recognition and execution of the freezing order, or on consulting the issuing authority in accordance with Article 18(2), as soon as possible and, without prejudice to paragraph 7 of this Article, no later than **48** hours after the executing authority has received the freezing order.

Amendment 108

Proposal for a regulation

Article 19 – paragraph 4

Text proposed by the Commission

4. If the executing authority consults the issuing authority in accordance with Article 18(2), the executing authority shall take the decision on the recognition and execution of the freezing order without delay.

Amendment

4. If the executing authority consults the issuing authority in accordance with Article 18(2), the executing authority shall take the decision on the recognition and execution of the freezing order without delay **and at the latest 48 hours following the consultation.**

Amendment 109

Proposal for a regulation

Article 19 – paragraph 5

Text proposed by the Commission

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

Amendment

5. The executing authority shall communicate the decision on a freezing order to the issuing authority **immediately and at the latest within 12 hours** by any means capable of producing a written record.

Amendment 110

Proposal for a regulation

Article 19 – paragraph 7

Text proposed by the Commission

7. Where it is not possible in a specific case to meet the time limits set out in paragraphs 3 or 6, the executing authority shall immediately inform the issuing authority by any means, giving the reasons for the delay and shall consult with the

Amendment

7. Where it is not possible in a specific case to meet the time limits set out in paragraphs 3, **4, 5** or 6, the executing authority shall immediately **and at the latest within 2 working days** inform the issuing authority by any means **capable of**

issuing authority on the appropriate timing to carry out the freezing.

producing a written report, giving the reasons for the delay and shall consult with the issuing authority on the appropriate timing to carry out the freezing.

Amendment 111

Proposal for a regulation Article 20 – paragraph 2

Text proposed by the Commission

2. The executing authority shall immediately report to the *issuing* authority by any means capable of producing a written record on the postponement of the execution of the order, 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 necessary measures for the execution of the order and inform the issuing authority thereof by any means capable of producing a written record.*

Amendment

2. The executing authority shall immediately *and at the latest within 48 hours* report to the *issuing* authority by any means capable of producing a written record on the postponement of the execution of the order, including the grounds for the postponement and, if possible, the expected duration of the postponement.

Amendment 112

Proposal for a regulation Article 20 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. As soon as the ground for postponement has ceased to exist, the executing authority shall immediately take the necessary measures for the execution of the order and inform the issuing authority thereof by any means

capable of producing a written record.

Amendment 113

Proposal for a regulation Article 21 – paragraph 1

Text proposed by the Commission

1. ***Without prejudice to Article 22, following the execution,*** the executing authority shall notify its decision to the person against whom the freezing order has been issued and to any interested party including bona fide third parties of which the executing authority has been informed in accordance with Article 14(6).

Amendment

1. The executing authority shall notify its decision to the person against whom the freezing order has been issued and to any interested party including bona fide third parties of which the executing authority has been informed in accordance with Article 14(6).

Amendment 114

Proposal for a regulation Article 21 – paragraph 2

Text proposed by the Commission

2. The notification shall ***contain information, at least briefly, on*** the reasons of the freezing order, ***on*** the authority who issued the order and ***on*** the existing legal remedies under the national law of the executing State.

Amendment

2. The notification shall ***indicate*** the reasons of the freezing order, the authority who issued the order and the existing legal remedies under the national law of the executing State.

Amendment 115

Proposal for a regulation Article 21 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. *The notification shall contain relevant information, in such a way that the person can lodge effective legal remedies, on the reasons of the freezing order, on the authority who issued the order and on the existing legal remedies under the national law of the executing State.*

Amendment 116

Proposal for a regulation Article 22 – paragraph 2

Text proposed by the Commission

Amendment

2. The executing authority shall, in accordance with its national law, guarantee the confidentiality of the facts and the substance of the freezing order, except to the extent necessary to execute it. If the executing authority cannot comply with the requirement of confidentiality, it shall notify the issuing authority immediately.

2. ***Without prejudice to the right to information of any person concerned,*** the executing authority shall, in accordance with ***Union law and*** its national law, guarantee the confidentiality of the facts and the substance of the freezing order, except to the extent necessary to execute it. If the executing authority cannot comply with the requirement of confidentiality, it shall notify the issuing authority immediately ***and at the latest within 3 working days and indicate the reasons for this by any means capable of producing a written record.***

Amendment 117

Proposal for a regulation Article 22 – paragraph 3

Text proposed by the Commission

3. For the purpose of safeguarding ongoing investigations, the issuing authority may request the executing authority to keep the execution of the freezing order confidential for a limited period of time.

Amendment

3. For the purpose of safeguarding ongoing investigations, the issuing authority may request the executing authority to keep the execution of the freezing order confidential for a limited period of time, ***which may not extend beyond the execution date of the freezing order.***

Amendment 118

**Proposal for a regulation
Article 23 – paragraph 2**

Text proposed by the Commission

2. After consulting the issuing authority, the executing authority, taking into account the circumstances of the case, may make a reasoned request to the issuing authority to limit the period for which the property shall be frozen. If the issuing authority does not agree to such a limitation, it shall inform the executing authority thereof, stating its reasons. If the issuing authority does not do so within ***six*** weeks of receiving the request, the executing authority may lift the freezing order.

Amendment

2. After consulting the issuing authority, the executing authority, taking into account the circumstances of the case, may make a reasoned request ***including any relevant supporting evidence, by any means capable of producing a written record,*** to the issuing authority to limit the period for which the property shall be frozen. If the issuing authority does not agree to such a limitation, it shall inform the executing authority thereof, stating its reasons. If the issuing authority does not do so within ***four*** weeks of receiving the request, the executing authority may lift the freezing order.

Amendment 119

**Proposal for a regulation
Article 25**

Text proposed by the Commission

Amendment

Article 25

deleted

Reporting

The executing authority shall report on the measures taken for the execution of the freezing order and the results thereof, including a description of the property frozen and an estimation of its value, to the issuing authority within three days of the execution of the order by any means capable of producing a written record.

Amendment 120

**Proposal for a regulation
Article 27 – paragraph 2**

Text proposed by the Commission

Amendment

2. Each Member State *may* designate, *if it is necessary as a result of the organisation of its internal system, one or more central authorities* responsible for the administrative transmission and reception of the freezing or confiscation orders *and to assist the competent authorities*. The Member States shall inform the Commission thereof.

2. Each Member State *shall* designate, *one central authority* responsible for *assisting the competent authorities with* the administrative transmission and reception *and the logging* of the freezing or confiscation orders. The Member States shall inform the Commission thereof.

Amendment 121

**Proposal for a regulation
Article 28 – paragraph 1**

Text proposed by the Commission

Amendment

1. Where necessary, the issuing authority and the executing authority shall consult each other, by any appropriate means, in order to ensure the efficient application of this Regulation.

1. Where necessary, the issuing authority and the executing authority shall **rapidly** consult each other, by any appropriate means, in order to ensure the efficient application of this Regulation.

Amendment 122

Proposal for a regulation Article 28 – paragraph 2

Text proposed by the Commission

2. All communications, including those intended to deal with difficulties concerning the transmission or authenticity of any document needed for the execution of the freezing or confiscation order, shall be made by direct contact between the issuing State and the executing authority involved **or, where the Member State has designated a central authority in accordance with Article 27(2), with the involvement of that central authority.**

Amendment

2. All communications, including those intended to deal with difficulties concerning the transmission or authenticity of any document needed for the execution of the freezing or confiscation order, shall be made by direct contact between the issuing State and the executing authority involved, **with the assistance of the** central authority in accordance with Article 27(2).

Amendment 123

Proposal for a regulation Article 30 – subparagraph 1

Text proposed by the Commission

The issuing authority shall immediately inform the executing authority by any means capable of producing a written record of any decision or measure as a result of which the order ceases to be enforceable or shall be withdrawn for any other reason.

Amendment

The issuing authority shall immediately **and at the latest within 48 hours** inform the executing authority by any means capable of producing a written record of any decision or measure as a result of which the order ceases to be enforceable or shall be withdrawn for any other reason.

Amendment 124

Proposal for a regulation Article 30 – subparagraph 2

Text proposed by the Commission

The executing State shall terminate the execution of the order as soon as it is informed by the issuing authority of that decision or measure.

Amendment

The executing State shall terminate the execution of the order as soon as it is informed by the issuing authority of that decision or measure ***and shall immediately notify the termination to the issuing State by any means capable of producing a written record.***

Amendment 125

Proposal for a regulation Article 31 – paragraph 2 – point b

Text proposed by the Commission

(b) if the amount obtained from the execution of the confiscation order is more than EUR 10 000, **50 %** of the amount shall be transferred by the executing State to the issuing State.

Amendment

(b) if the amount obtained from the execution of the confiscation order is more than EUR 10 000, **30% of the amount shall accrue to the executing State and 70%** of the amount shall be transferred by the executing State to the issuing State.

Amendment 126

Proposal for a regulation Article 31 – paragraph 3

Text proposed by the Commission

3. Where a judicial authority of the issuing State has issued a decision to compensate or retribute the victim, the corresponding sum, in so far as it does not exceed the confiscated sum, shall accrue to the issuing State for the purposes of compensation or restitution of the victim. Any remaining property is to be disposed of in accordance with paragraph 2.

Amendment

3. Where a judicial authority of the issuing State has issued a decision to compensate or retribute the victim, the corresponding sum, in so far as it does not exceed the confiscated sum, shall accrue to the issuing State ***solely*** for the purposes of compensation or restitution of the victim. Any remaining property is to be disposed of in accordance with paragraph 2.

Amendment 127

Proposal for a regulation

Article 31 – paragraph 4 – point c

Text proposed by the Commission

(c) 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.***

Amendment

(c) The property may be used for public interest or social purposes in the executing State in accordance with its laws.

Amendment 128

Proposal for a regulation

Article 31 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Each Member State shall take the necessary measures to establish a national centralised office responsible for the management of frozen property with a view to possible later confiscation and confiscated assets and properties. Such

property shall be earmarked as a matter of priority for law enforcement and organised crime prevention projects and for other projects of public interest and social utility.

Amendment 129

Proposal for a regulation Article 31 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. Each Member State shall take the necessary measures, including the setting up of a national fund to guarantee appropriate compensation for the families of police officers and public servants killed in the line of duty and police officers and public servants permanently disabled in the line of duty. Each Member State shall earmark a portion of confiscated assets for this purpose.

Amendment 130

Proposal for a regulation Article 31 – paragraph 4 c (new)

Text proposed by the Commission

Amendment

4c. Frozen property which is not subsequently confiscated shall be returned immediately. The conditions or procedural rules under which such property is returned shall be determined by national law.

Amendment 131

Proposal for a regulation

Article 31 – paragraph 5

Text proposed by the Commission

5. The issuing authority shall communicate the decision referred to in paragraph 3 and 4(d) to the executing authority. If a procedure to compensate or retribute the victim is pending in the issuing State, the executing State shall withhold the disposition of the confiscated property until the decision is communicated to the executing authority.

Amendment

5. The issuing authority shall communicate the decision referred to in paragraph 3 and 4(d) to the executing authority ***by any means capable of producing a written record***. If a procedure to compensate or retribute the victim is pending in the issuing State, the executing State shall withhold the disposition of the confiscated property until the decision is communicated to the executing authority.

Amendment 132

Proposal for a regulation

Article 32 – paragraph 2

Text proposed by the Commission

2. Where the executing State has had costs which it considers large or exceptional, the executing authority may propose to the issuing authority that the costs be shared. The issuing authority shall take into account such a proposal on the basis of detailed specifications given by the executing authority.

Amendment

2. Where the executing State has had costs which it considers large or exceptional, the executing authority may propose to the issuing authority that the costs be shared. The issuing authority shall take into account such a proposal on the basis of detailed specifications given by the executing authority ***and inform the executing authority of its conclusions by any means capable of producing a written record***.

Amendment 133

Proposal for a regulation

Article 32 a (new)

Article 32 a

Safeguards

1. Member States shall take the necessary measures to ensure that the persons affected by the measures provided for under this Regulation have the right to an effective remedy and a fair trial, in order to uphold their rights.

2. Member States shall provide for the effective possibility for the person whose property is affected to challenge the freezing or confiscation order before a court, in accordance with procedures provided for in national law. Such procedures may provide that when the initial freezing or confiscation order has been taken by a competent authority other than a judicial authority, such order shall first be submitted for validation or review to a judicial authority before it can be challenged before a court.

3. Without prejudice to Directive 2012/13/EU and Directive 2013/48/EU, persons whose property is affected by a freezing or a confiscation order shall have the right of access to a lawyer throughout the freezing or confiscation proceedings relating to the determination of the proceeds and instrumentalities in order to uphold their rights. The persons concerned shall be informed of that right.

4. Member States shall ensure that the time-limits for seeking a legal remedy shall be the same as those provided for in similar domestic cases and are applied in a way that guarantees the possibility of the effective exercise of these legal remedies for the parties concerned.

5. In proceedings as referred to in paragraph 2, the affected person shall have an effective possibility to challenge the circumstances of the case, including specific facts and available evidence on

the basis of which the property concerned is considered to be property that is derived from criminal conduct.

6. Third persons shall have the effective possibility to claim title of ownership or other property rights.

7. Where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Regulation, Member States shall take the necessary measures to ensure that the confiscation measure does not prevent those victims from seeking compensation for their claims.

8. The issuing authority and the executing authority shall inform each other about the legal remedies sought against the issuing, the recognition or the execution of a freezing or confiscation order.

Amendment 134

Proposal for a regulation Article 33 – paragraph 1

Text proposed by the Commission

1. Any interested party, including bona fide third parties, shall have legal remedies, including those provided for in Article 8 of Directive 2014/42/EU, against the recognition and execution of an order pursuant to Article 8 and 17, in order to preserve their rights. The legal remedy shall be brought before a court in the executing State in accordance with its national law. The action may have suspensive effect under the law of the executing State.

Amendment

1. Any interested party, including bona fide third parties, shall have legal remedies, including those provided for in Article 8 of Directive 2014/42/EU, against the recognition and execution of an order pursuant to Article 8 and 17, in order to preserve their rights. The legal remedy ***against the recognition and the execution of a freezing or confiscation order*** shall be brought before a court in the executing State in accordance with its national law. The action may have suspensive effect under the law of the executing State.

Amendment 135

Proposal for a regulation

Article 33 – paragraph 2

Text proposed by the Commission

2. The substantive reasons for issuing the freezing or confiscation order shall not be challenged before a court in the executing State.

Amendment

2. ***Without prejudice to the fundamental guarantees and rights in force in the executing Member State***, the substantive reasons for issuing the freezing or confiscation order shall not be challenged before a court in the executing State.

Amendment 136

Proposal for a regulation

Article 35 – paragraph 1 – introductory part

Text proposed by the Commission

Member States shall regularly collect and maintain comprehensive statistics from the relevant authorities. The statistics collected shall be sent to the Commission each year and shall include, in addition to those foreseen in Article 11(2) of Directive [2014/42/EU](#):

Amendment

Member States shall regularly collect and maintain comprehensive statistics from the relevant authorities ***and from the central authority referred to in Article 27(2)***. The statistics collected shall be sent to the Commission each year and shall include, in addition to those foreseen in Article 11(2) of Directive [2014/42/EU](#):

Amendment 137

Proposal for a regulation

Article 35 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The Commission shall submit an annual report to the European Parliament, the Council and the European Economic and Social Committee compiling statistics received and accompanied by a comparative analysis.

Amendment 138

Proposal for a regulation Article 36

Text proposed by the Commission

Amendment

Article 36

deleted

Amendments to the certificate and the form

The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning any amendment to the certificate and to the form set out in Annexes I and II.

Justification

All the information appearing in the two certificates (in Annexes I and II) should, for reasons of legal certainty, be determined and fixed by the legislator. A delegation of powers for this purpose is neither necessary nor appropriate.

Amendment 139

Proposal for a regulation Article 37

Text proposed by the Commission

Amendment

Article 37

deleted

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 the [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 of revocation 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. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*
- 5. 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 2 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 [2 months] at the initiative of the European Parliament or the Council.*

Justification

All the information appearing in the two certificates (in Annexes I and II) should, for reasons of legal certainty, be determined and fixed by the legislator. A delegation of powers for this purpose is neither necessary nor appropriate.

Amendment 140

Proposal for a regulation
Article 38 – title

Text proposed by the Commission

Amendment

Review clause

Reporting and review clause

Amendment 141

Proposal for a regulation
Article 38 – paragraph 1

Text proposed by the Commission

Amendment

By [**five** years from the date of application of this Regulation] at the latest, the Commission shall submit a report to the European Parliament, the Council and the European Economic and Social Committee on the application of this Regulation. If necessary, the report shall be accompanied by proposals for adaptation of this Regulation.

By [**three** years from the date of application of this Regulation] at the latest, **and every three years thereafter**, the Commission shall submit a report to the European Parliament, the Council and the European Economic and Social Committee on the application of this Regulation. **The report shall include, among others, the following elements:**

- (a) an overview of the statistics provided by Member States under Article 35; and**
- (b) an assessment of the possible impact of cross-border freezing and confiscation orders on fundamental rights and freedoms and the rule of law.**

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

Justification

The Commission should regularly report on the statistics and on the possible impact on fundamental rights, in order to present a review of this Regulation if necessary.

Amendment 142

Proposal for a regulation
Annex I – section M – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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

Central authority responsible for **assisting the competent authorities, logging all confiscation orders transmitted and received at the national level and streamlining the** transmission and reception of **the** confiscation orders in **accordance with Article 27(2)**:

Amendment 143

Proposal for a regulation

Annex II – title

Text proposed by the Commission

Amendment

FREEZING ORDER

provided for in Article 16

CERTIFICATE

provided for in Article 16 **for issuing a confiscation order**

Justification

For the purposes of simplification, the recognition procedures for freezing and confiscation orders should be harmonise; accordingly, these two orders should each be accompanied by a certificate (in Annexes I and II).

Amendment 144

Proposal for a regulation

Annex II – section M – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

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

Central authority responsible for **assisting the competent authorities, logging all freezing orders transmitted and received at the national level and streamlining the** transmission and reception of **the** freezing

orders in *accordance with Article 27(2)*:

EXPLANATORY STATEMENT

The rapporteur welcomes **the presentation by the European Commission, on 21 December 2016, of a series of measures aimed at boosting the EU's capacity to combat the financing of organised crime and terrorism.** The three legislative proposals contained in this legislative package will enable the EU's legal framework in the areas of money laundering, illegal movements of cash and the freezing and confiscation of assets to be supplemented and reinforced, thereby constituting a more powerful and better-coordinated European response in this field.

The rapporteur therefore welcomes **the proposal by the Commission for a regulation on mutual recognition of freezing and confiscation orders.** Freezing and confiscation of the proceeds of crime are among the most effective means of combating organised crime. Money coming from and going to criminal organisations needs to be blocked. Having a mutual recognition instrument is of fundamental importance, given that the principle of mutual recognition of judgments and judicial decisions is a cornerstone of judicial cooperation in criminal matters in the EU. This is all the more crucial as the Commission's implementation reports on the existing framework decisions in this field show that the current system is ineffective.

Firstly, **the Commission's choice of a regulation as the form in which to couch this mutual recognition instrument for freezing and confiscation orders** is, in the rapporteur's view, a key feature of its proposal. There is no doubt that a regulation improves clarity and legal certainty and eliminates the problems of transposition into national systems, thereby allowing freezing and confiscation orders to be more rapidly and effectively enforced. It is therefore the most appropriate and effective form for this kind of mutual recognition instrument.

A second key point in the context of this regulation is **the importance of respecting fundamental rights and procedural safeguards.** The rapporteur therefore proposes adding a non-recognition and non-execution clause for freezing or confiscation orders for failure to observe fundamental rights – a requirement which Parliament has supported for a number of years. Another suggestion would be to make most grounds for non-recognition and non-execution compulsory. Finally, the

rapporteur proposes adding or reinforcing provisions regarding procedural safeguards. These would concern the right to an effective remedy for all concerned as well as their right to information, and the procedural rights of third persons who might be affected by such freezing and confiscation orders.

In her work on this Commission proposal, the rapporteur has therefore **aimed for simplification and clarification**. With this aim in mind, it would be worth clarifying some provisions of the current regulation, aligning the procedures and arrangements concerning the mutual recognition of freezing and confiscation orders and harmonising the new instrument with the other European legislative instruments which exist in this field.

It is vital that **recognition procedures** for orders to freeze and confiscate assets and proceeds of crime be **speeded up and made more effective** by means of: facilitated procedures for forwarding orders; a stepped-up role for central national authorities, whose support role is important; and tighter deadlines for authorities to communicate with each other, decide to execute (or not) orders forwarded by issuing states, and give immediate notification that such decisions have been taken and orders executed. These are all provisions which the rapporteur would like to see strengthened.

Finally, it is important to promote, at European level and in the Member States, the **best possible management of frozen and confiscated assets and their reuse for social purposes**, for the compensation of victims, victims' families, and businesses which are victims of organised crime, or in order to combat organised crime.