



Security Union: Regulation on the mutual recognition of freezing and confiscation orders – Questions and Answers

Brussels, 21 December 2016

Today, the European Commission adopted a proposal on the recognition of freezing and confiscation orders across borders.

This proposal is part of the Action Plan to strengthen the [fight against terrorist financing](#) presented in February 2016.

Why adopt a new regulation on freezing and confiscation orders?

Confiscating assets generated by criminal activities is a very efficient tool to fight crime and terrorism, as it deprives criminals from the proceeds of their illegal activities and terrorists from organising an attack. At the moment, 98.9% of estimated criminal profits are not confiscated and remain at the disposal of criminals.

The recognition of a confiscation and freezing order from one EU country to the other is still too slow, allowing criminals to keep their assets or move them across Europe. The 2015 and 2016 terror attacks showed the need for stronger and seamless judicial cooperation throughout the EU.

The proposed Regulation will facilitate cross-border recovery of criminal assets and lead to more efficient freezing and confiscation of funds from illicit origin in the EU without cumbersome formalities. Recovered assets will be used for the compensation of victims, where national legislation allows it. It also provides additional funds to invest back into law enforcement activities or other crime prevention initiatives or it can be used for other public interest or social purposes.

What are confiscation and freezing orders?

Freezing order

A freezing order is a judicial decision issued to freeze an asset or funds in order to provisionally prevent the destruction, transformation, moving, transfer or disposal of property. The freezing order can be followed by a confiscation.

For instance, someone is arrested for terrorism and the judge suspects that he is planning an attack with other people. The judge can decide to issue a freezing order to freeze his bank account.

Confiscation order

A confiscation order is a judicial decision resulting in the confiscation of property.

There are different types of confiscation orders:

- *Classic confiscation order*: following a criminal conviction the direct proceed of a crime is confiscated. For example: the confiscation of a car from a person convicted for car theft.
- *Extended confiscation order*: following a criminal conviction, the authority can issue a confiscation order on a criminal asset which is not the direct proceeds of the crime for which the person was convicted. For example: the confiscation of a large villa bought with money from drug trafficking.
- *Third party confiscation order*: to deprive someone else than the offender (person or company) from criminal property transferred to him by the offender. For instance, a criminal who buys a house under the name of his wife or another family member.
- *Non-conviction based order*: confiscation measure taken in the absence of a conviction and directed against an asset from illicit origin/ Example: the suspect is not convicted, because he is sick or has escaped.

What rules already exist at EU level to facilitate freezing and confiscation?

The current EU legal framework sets out common minimum rules for freezing and confiscation orders. It is based on the 2014 [Directive](#) on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union and the [Framework Decision on confiscation of crime-related proceeds](#).

Rules for mutual recognition of freezing and confiscation orders enabling national orders to be executed in the territory of other EU Member States are based on two instruments: the [Framework Decision on mutual recognition of freezing orders](#) and the [Framework Decision on mutual recognition of confiscation orders](#).

However, the current EU legislation on mutual recognition is outdated and is no longer aligned with the latest national and EU rules on freezing and confiscation. This creates loopholes that are exploited by criminals.

Whereas the 2014 [Directive](#) on the freezing and confiscation makes it easier for authorities to seize and take away assets at national level, today's proposal aims at improving the cross-border enforcement of freezing and confiscation orders. Together the Directive and the proposed Regulation will create a more effective asset recovery system in the European Union.

What is the principle of mutual recognition of judicial decisions?

The mutual recognition principle means that a judicial decision taken in one EU Member State is recognised, and where necessary, enforced by another EU Member State without being assessed again. Mutual recognition is based on mutual trust between Member States' authorities.

The regulation sets out a limited number of reasons on which recognition and execution can be refused. Common EU certificates, annexed to the Regulation, contain all necessary information for the executing State to facilitate the recognition.

There are several EU laws on judicial cooperation in criminal matters that are based on the principle of mutual recognition, such as the [European Arrest Warrant](#).

How will the Regulation work?

The proposed Regulation will improve co-operation between authorities to ensure that they can swiftly and efficiently freeze and confiscate assets across the EU.

Whenever a competent authority in one EU country decides to freeze or confiscate property in another Member State, it can request the other Member State to do so by filling in a standard form for freezing order or a standard certificate for the confiscation order. The authority in the other Member State must recognise the request and execute the freezing or confiscation order within short time limits. It can only refuse to recognise and execute such orders on the basis of a limited number of reasons, set out in the regulation.

What would the new rules cover?

The proposed Regulation will cover mutual recognition of all types of freezing and confiscation orders for which common minimum rules are set by the 2014 [Directive](#) on the freezing and confiscation of instrumentalities and proceeds of crime.

In addition, it will cover all orders for non-conviction based confiscation issued during a criminal procedure, for example in the following cases:

- the perpetrator of an offence died or could not be identified;
- the suspect enjoys immunity;
- in case of prescription of a criminal offence;
- when a criminal court can confiscate an asset without conviction because the court has decided that such an asset is the proceeds of a crime. This requires the court to establish that an advantage was derived from a criminal offence.

In order to be included in the scope of the Regulation, these types of confiscation orders must be issued within the framework of criminal proceedings. It does not include confiscation or freezing orders issued in civil or administrative proceedings.

All safeguards applicable to criminal proceedings will have to be ensured in the issuing State.

What benefits will the new proposal bring?

This proposed Regulation improves the current legal framework for the mutual recognition of freezing and confiscation orders by bringing the following benefits:

- **Widening the scope of freezing and confiscation orders types covered compared to the current mutual recognition laws**

The proposal covers mutual recognition of all types of freezing and confiscation orders issued during criminal proceedings. It includes classic, extended and third party confiscation as well as non-conviction based confiscation decided by a criminal court.

- A directly applicable single law for both freezing and confiscation orders

One single law for mutual recognition of both freezing and confiscation orders will replace the [Framework Decisions on mutual recognition for freezing](#) and [confiscation orders](#). Member States will be bound by the regulation. This will ensure uniformity in the application of this instrument and avoid problems due to late or incorrect transposition by Member States. This will be the first Regulation proposed by the Commission in the field of mutual recognition in criminal matters since the entry into force of the Lisbon Treaty.

- Clear deadlines for freezing and confiscation orders

Freezing as a precautionary measure needs to be carried out quickly, short deadlines are therefore set for the recognition and execution of freezing orders. The execution of confiscation orders can take place within a longer time period, however clear deadlines are also set to ensure efficient cross-border procedures.

- A standard certificate and a standard form

A standard certificate for mutual recognition of confiscation orders and a standard form for freezing orders will allow for speedy and efficient action.

They contain all the relevant information on the order, which will help the executing authority to reach the targeted property and will facilitate the recognition and enforcement of the foreign order by the competent national authorities. The freezing order will be issued in a standard form to simplify the mutual recognition procedure and will not be accompanied by a domestic freezing order.

- Efficient communication between the competent authorities

To allow smooth and swift recognition and execution of freezing and confiscation orders the competent authorities have to communicate whenever necessary at all stages of the procedure. For instance, before applying one of the grounds for refusal, a consultation has to take place between the executing and issuing authorities.

- Victims' rights

The proposal also aims at improving the protection of victims of crime in cross-border cases. It addresses victims' needs to get compensation for damages or to get stolen assets restituted from the State where the property was confiscated. A possibility to receive a decision on compensation or restitution during criminal proceedings exists in several Member States but there is currently no specific provision which takes into account such a decision in cross border confiscation cases. The proposal addresses this issue. In cases where the victim has been granted a decision on compensation or restitution and the assets have been confiscated in another State following the mutual recognition procedure, the victim's right to compensation or restitution will have priority over the issuing and executing State's interests.

What are the deadlines for the freezing and confiscation orders?

Deadline for confiscation orders

Different time limits are set separately for the decision on the recognition and for the execution of the confiscation order. Firstly, the executing authority must take the decision on the recognition and execution of the confiscation order as soon as possible, at the latest 30 days after the receipt of the confiscation order. Secondly, the executing authority must carry out the confiscation without delay and not later than 30 days after taking the decision to recognise and execute the confiscation order.

Deadline for freezing orders

Three different time limits are set separately for the decision on the recognition, for the execution of the freezing order and for the reporting back to the issuing authority.

Firstly, the executing authority must take the decision on the recognition and execution of the freezing order as soon as possible and at the latest within 24 hours after the receipt of the freezing order.

Secondly, the executing authority must carry out the freezing without delay and not later than 24 hours after taking the decision to recognise and execute the freezing order and it must communicate its decision without delay to the issuing authority.

In addition to these deadlines, the regulation requires the executing authority to report to the issuing one about the measures taken within 3 days.

What happens with the confiscated funds and assets?

If the confiscation order is accompanied by a decision to compensate the victim, this person should recover the assets or funds.

Otherwise, when a confiscation order is executed in another country, both countries split the amount between themselves, if it is above 10,000 euros. Under this threshold, the executing State will keep

this money. Countries can also agree otherwise on the disposal of assets.

How are fundamental rights safeguarded?

Safeguards are included in the proposed Regulation to ensure that the mutual recognition of freezing or confiscation orders is in line with fundamental rights protected by the [EU Charter of Fundamental Rights](#) (the Charter) and the [European Convention on Human Rights](#) (ECHR).

For instance, the Regulation includes grounds for refusal when the rules on the right to be present at the trial ('in absentia') or when the rights of third parties "in good faith" ('bona fide') are not respected. There is an obligation to inform interested parties of the execution of a freezing order, including of the reasons why it is carried out and the legal remedies available. There is also an obligation for Member States to provide for legal remedies in the executing State.

All applicable criminal law procedural safeguards should be ensured by the Member States. Furthermore, for those orders falling within the scope of Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime, Article 8 of the Directive also includes a list of safeguards that need to be ensured by the issuing Member States, and [Articles 47 and 48 of the Charter apply](#).

Applicable criminal law standards also include the relevant legislation at EU level on procedural rights in criminal proceedings: [Directive on the right to interpretation and translation](#), the [Directive on the right to information](#), [Directive on the right of access to a lawyer](#), [Directive on the presumption of innocence and the right to be present at the trial](#), [Directive on the procedural safeguards for children](#) and [Directive on legal aid](#).

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