

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0172/2002

16 May 2002

REPORT

on the draft Council framework decision on the execution in the European Union of orders freezing property or evidence
(6980/2002 – C5-0152/2002 – 2001/0803(CNS))

Reconsultation

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Luís Marinho

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

	Page
PROCEDURAL PAGE	4
DRAFT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT	16

PROCEDURAL PAGE

At the sitting of 20 September 2001, Parliament established its position regarding the initiative by the Governments of the French Republic, the Kingdom of Sweden and the Kingdom of Belgium for the adoption by the Council of a framework decision on the execution in the European Union of orders freezing assets or evidence (5126/2001 – 2001/0803 (CNS)).

By letter of 3 April 2002 the Council reconsulted Parliament, pursuant to Article 39(1) of the EU Treaty, on the draft Council framework decision on the execution in the European Union of orders freezing property or evidence (6980/2002 – 2001/0803(CNS)).

At the sitting of 8 April 2002 the President of Parliament announced that he had referred this draft Council framework decision to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs as the committee responsible (C5-0152/2002).

The Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had appointed Luís Marinho rapporteur at its meeting of 27 February 2002.

It considered the draft Council framework decision and the draft report at its meeting of 14 May 2002.

At the latter meeting it adopted the draft legislative resolution by 33 votes to 2, with 6 abstentions.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Robert J.E. Evans, vice-chairman; Lousewies van der Laan, vice-chairman; Giacomo Santini, vice-chairman; Luís Marinho, (rapporteur and for Sérgio Sousa Pinto), Hans Blokland (for Ole Krarup, pursuant to Rule 153(2) of the Rules of Procedure), Giuseppe Brienza, Kathalijne Maria Buitenweg (for Alima Boumediene-Thiery), Marco Cappato (for Mario Borghezio), Charlotte Cederschiöld, Carmen Cerdeira Morterero, Ozan Ceyhun, Carlos Coelho, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Marie-Thérèse Hermange (for Thierry Cornillet), Jorge Salvador Hernández Mollar, Pierre Jonckheer, Anna Karamanou (for Gerhard Schmid), Margot Keßler, Timothy Kirkhope, Eva Klamt, Lucio Manisco (for Fodé Sylla), Hartmut Nassauer, William Francis Newton Dunn, Arie M. Oostlander (for Bernd Posselt), Elena Ornella Paciotti, Paolo Pastorelli (for Mary Elizabeth Banotti), Hubert Pirker, Martine Roure, Heide Rühle, Olle Schmidt (for Francesco Rutelli), Ilka Schröder, Ole Sorensen (for Baroness Sarah Ludford), Patsy Sörensén, The Earl of Stockton (for The Lord Bethell), Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco, Gianni Vattimo (for Walter Veltroni), Christian Ulrik von Boetticher and Olga Zrihen Zaari (for Martin Schulz) .

The report was tabled on 16 May 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the draft Council framework decision on the execution in the European Union of orders freezing property or evidence (6980/2002 – C5-0152/2002 – 2001/0803(CNS))

(Consultation procedure - reconsultation)

The European Parliament,

- having regard to the draft Council framework decision (6980/2002¹),
 - having regard to the initiative by the Governments of the French Republic, the Kingdom of Sweden and the Kingdom of Belgium (5126/2001²),
 - having regard to its position of 20 September 2001 on the first consultation³,
 - having regard to Article 34(2)(b) of the EU Treaty,
 - having been consulted once again by the Council, pursuant to Article 39(1) of the EU Treaty (C5-0152/2002),
 - having regard to Rules 106 and 67 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs (A5-0172/2002),
1. Approves the draft Council framework decision as amended;
 2. Calls on the Council to notify Parliament should it intend to depart from the text approved by Parliament;
 3. Asks to be consulted again if the Council intends to make substantial modifications to the draft Council framework decision;
 4. Instructs its President to forward this opinion to the Council, the Commission and the Governments of the French Republic, the Kingdom of Sweden and the Kingdom of Belgium.

¹ Not yet published in the OJ.

² OJ C 75, 7.3.2001, p. 3-13.

³ OJ C 77, 28.3.2002, p. 45.

Amendment 1

Title

On the initiative by the Governments of the French Republic, the Kingdom of Sweden and the Kingdom of Belgium for the adoption by the Council of a Framework Decision on the execution in the European Union of orders freezing property *or evidence*.

On the initiative by the Governments of the French Republic, the Kingdom of Sweden and the Kingdom of Belgium for the adoption by the Council of a Framework Decision on the execution in the European Union of orders freezing property ***with a view to obtaining and securing, or subsequently seizing, the evidence of an offence***.

Justification

This new wording of the Title clearly states the purpose of the initiative and is therefore in accordance with the eighth general principle of the Interinstitutional Agreement of 22 December 1998 on common guidelines for the quality of the drafting of Community legislation, which reads as follows: 'The title of an act shall give as succinct and full an indication as possible of the subject matter which does not mislead the reader as to the content of the enacting terms'.

Amendment 2

Recital 1

(1) The European Council, meeting in Tampere on 15 and 16 October 1999, endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.

(1) The European Council, meeting in Tampere on 15 and 16 October 1999, endorsed ***(in particular in conclusion 33)*** the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.

Justification

Following on from what was laid down at the 3 December 1998 Council meeting of Justice and Home Affairs Ministers (paragraph 45(f) of the Vienna Action Plan), Tampere European Council conclusion 33 contains a political mandate for the introduction of the mutual recognition of judicial decisions and judgments, of which the initiative under consideration is an expression. It is very important, therefore, that the initiative should mention it.

Amendment 3 Recital 1a (new)

(1a) Pursuant to Tampere European Council conclusion 36, the existing relations for cooperation amongst the Member States must be replaced by a system under which judicial decisions on criminal matters taken both prior to and on conclusion of a trial are mutually recognised throughout the area of freedom, security and justice.

Justification

From a judicial point of view and in accordance with the requirements of everyday life, the creation of the area of freedom, security and justice calls for judicial decisions to be mutually recognised throughout that area. Furthermore, the establishment of such an area should constitute fulfilment of the desires expressed in Tampere European Council conclusion 36.

Amendment 4 Recital 2

(2) The principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent authorities quickly to ***secure evidence and to seize property which are easily movable.***

(2) The principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent ***judicial*** authorities quickly to ***seize property which is easily movable with a view to seizing it at a later stage or to obtaining or securing evidence of an offence.***

Justification

When such important decisions are taken which may affect the rights of the general public, those decisions should be taken by the judicial authorities. This is no obstacle to the establishment of a procedure to be used in urgent cases which enables decisions to be taken immediately and ensures that those decisions achieve the desired objective.

Furthermore, the purpose of the initiative is clearly to enable property to be frozen rapidly, so that evidence of an offence can be obtained or secured, or that frozen property can subsequently be seized.

Amendment 5

Recital 3

(3) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition in criminal matters, giving first priority (measures 6 and 7) to the adoption of an instrument applying the principle of mutual recognition to the freezing of ***evidence and property***.

(3) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition in criminal matters, giving first priority (measures 6 and 7) to the adoption of an instrument applying the principle of mutual recognition to the freezing of ***property with a view to the subsequent seizure thereof or to obtaining or securing evidence of an offence***.

Justification

The purpose of the initiative is clearly to enable property to be frozen rapidly, so that evidence of an offence can be obtained or secured, or that frozen property can subsequently be seized.

Amendment 6

Recital 3a (new)

(3a) Orders freezing property or evidence must be subject to adequate checks and must be issued by the appropriate judicial

authorities.

Justification

It must be ensured that all orders freezing property or evidence are subject to judicial review which enables an appeal to be lodged against such orders in cases in which an order is deemed to be unlawful on account of a flaw in either its form or its substance.

Amendment 7

Article 1

The purpose of the Framework Decision is to establish the rules under which a Member State shall recognise and execute in its territory a freezing order issued by a judicial authority of another Member State. It shall not have the effect of amending the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

The purpose of the Framework Decision is to establish the rules under which a Member State shall recognise and execute in its territory a freezing order ***which has been issued in respect of property (with a view to the subsequent seizure thereof), or in order to obtain or secure evidence of an offence,*** by a judicial authority of another Member State ***in the framework of criminal proceedings.*** It shall not have the effect of amending the obligation to respect the fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Justification

The purpose of the initiative is clearly to enable property to be frozen rapidly, so that evidence of an offence can be obtained or secured, or that frozen property can subsequently be seized.

Furthermore, it must be stipulated that freezing orders must be issued in the framework of criminal proceedings.

Amendment 8

Article 2, subparagraph (a)

(a) 'issuing State' shall mean the Member

(a) 'issuing State' shall mean the Member

State in which a judicial authority, as defined in the national law of the issuing State, has made, validated or in any way confirmed a freezing order in the framework of criminal proceedings;

State in which a judicial authority, as defined in the national law of the issuing State, has made, validated or in any way confirmed a freezing order *issued* in the framework of criminal proceedings *with a view to the subsequent seizure of property or for the purpose of obtaining or securing evidence of an offence*;

Justification

The reasons set out in the first part of the Justification to the preceding amendment also apply here.

Amendment 9 Article 2, subparagraph (c)

(c) 'freezing order' shall mean any measure taken by a competent judicial authority in the issuing State in order provisionally to prevent the destruction, transformation, moving, transfer or disposal of property that could be subject to confiscation or evidence.

(c) 'freezing order' shall mean any measure taken, *in the framework of criminal proceedings*, by a competent judicial authority in the issuing State in order provisionally to prevent the destruction, transformation, moving, transfer or disposal of property that could be subject to confiscation or evidence.

Justification

The reasons set out under Amendment 7 apply here, too.

Amendment 10 Article 2, subparagraph (d)

(d) 'property' includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to, or interest in such property, which the competent judicial authority in the issuing State considers :

(d) 'property' includes property of any description, whether corporeal or incorporeal, movable or immovable, *data stored on any type of system or support*, and legal documents and instruments evidencing title to, or interest in such property, which the competent judicial

authority in the issuing State considers :

Justification

On account of the permanent technological revolution which is going on within the European Union and in the wider world, the major importance of the data stored in sophisticated computer and other systems (which in the very near future will begin to evolve in step with scientific knowledge) must be explicitly acknowledged.

Amendment 11

Article 3, paragraph 2, introductory sentence

2. The following offences, as they are defined by the law of the issuing Member State, and if they are punishable in the issuing Member State by a custodial sentence of a maximum of at least **three** years shall not be subject to verification of the double criminality:

2. The following offences, as they are defined by the law of the issuing Member State, and if they are punishable in the issuing Member State by a custodial sentence of a maximum of at least **two** years shall not be subject to verification of the double criminality:

Justification

Within the EU's common area of freedom, security and justice, in which there are no physical frontiers preventing criminals from moving around at will, there should be no penal frontiers either which prevent a law from being applied. For this reason, such frontiers should be gradually dismantled.

As a first step, therefore, the maximum length of a custodial sentence must be reduced to two years. If the wording of the initiative remains as it is, much property proceeding from offences will remain immune from any attempt to freeze it and from the implications of such an attempt.

Amendment 12

Article 3, paragraph 3

3. The Council may decide to add other categories of offence to the list contained in paragraph 2 at any time, acting unanimously after consultation of the European Parliament under the conditions

3. The Council may decide to add other categories of offence to the list contained in paragraph 2 at any time, acting unanimously after consultation of the European Parliament under the conditions

laid down in Article 39(1) of the TEU. The Council shall consider, in the light of the report submitted by the Commission pursuant to Article 14, whether the list should be extended *or amended*.

laid down in Article 39(1) of the TEU. The Council shall consider, in the light of the report submitted by the Commission pursuant to Article 14, whether the list should be extended.

Justification

Within the EU's common area of freedom, security and justice, in which there are no physical frontiers preventing criminals from moving around at will, there should be no penal frontiers either which prevent a law from being applied. For this reason, such frontiers should be gradually dismantled and the list of offences should be extended to cover (without verification of double criminality) all offences defined in accordance with the relevant legislation in force in each Member State, failing which many offences will go unpunished and the proceeds derived therefrom will remain beyond the reach of the law.

Amendment 13 Article 5, paragraph 2

2. Any additional coercive measures rendered necessary by the freezing order shall be taken in accordance with the applicable procedural rules of the executing state.

2. Any additional coercive measures rendered necessary by the freezing order shall be ***proportionate and*** taken in accordance with the applicable procedural rules of the executing state.

Justification

Self-explanatory.

Amendment 14 Article 11, paragraph 2a (new)

2a. In the executing State, an action may relate solely to the grounds for non-recognition or non-execution laid down in Article 7, the grounds for postponement of execution laid down in Article 8 and the conditions of execution referred to in Article 6(2).

Justification

The legislative proposal stipulates clearly and logically that actions in respect of the substance of a freezing order shall always be brought before the issuing State, although it does not specify the cases in which an action before the executing State is acceptable. Such cases must be identified.

Amendment 15
Article 14, paragraph 1

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by [...].

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by **31 December 2002**.

Justification

Of major importance is the political view expressed in conclusions 33, 36 and 37 of the Tampere European Council held on 15 and 16 October 1999, to the effect that the principle of the mutual recognition of judicial decisions should become the cornerstone of judicial cooperation in both civil and criminal matters within the EU and should be applied as quickly as possible and as a matter of priority to pre-trial orders, 'in particular to those which would enable competent authorities quickly to secure evidence and to seize assets which are easily movable'.

Amendment 16
Article 14, paragraph 2

2. By the same date Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established on the basis of this information and a written

2. By the same date Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established on the basis of this information and a written

report by the Commission, the Council shall, by [...], assess the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision.

report by the Commission, the Council shall, by **30 June 2003**, assess the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision.

Justification

The reasons set out in the Justification to the above amendment also apply to this amendment.

Amendment 17 Annex I, section 2.4

2.4. Language(s) in which it is possible to communicate with the issuing authority

- 2.4.1. **German**
- 2.4.2. **English**
- 2.4.3. **etc.**

2.4. Language(s) in which it is possible to communicate with the issuing authority

Justification

Any EU official language may be selected, for which reason there is no need to specify any particular one.

Amendment 18 Annex I, section 3

3. Offence(s) concerning which the freezing order has been made:

- 3.1. ***illicit trafficking in narcotic drugs***
- 3.2. ***fraud affecting the European Communities' financial interests***
- 3.3. ***laundering of the proceeds of crime***

3. Offence(s) concerning which the freezing order has been made:

Justification

The current list is that contained in the text of the original initiative published in OJ C 75, 7.3. 2001, page 3. It should be left blank so that any type of offence can be entered.

EXPLANATORY STATEMENT

I. INTRODUCTION

The European Union currently comprises 15 national legal systems which in certain respects differ significantly. This state of affairs leads to problems of all kinds whenever judicial proceedings involve more than one Member State.

The variety of procedures and languages used is also a constant source of delay in the forwarding of documents from one court to another, if those courts are not located within the same Member State.

Not until a single market without internal frontiers had been set up and brought into operation did the inescapable need to create a European area of justice covering both civil and criminal matters become apparent.

The exponential development of links between the citizens of the EU for family or financial reasons or in pursuit of trade has made it increasingly difficult for the Member States' governments to respond adequately to any civil or trade-related disputes which may arise out of such relations.

The Amsterdam Treaty represented a crucial step forward in this area, since it featured the 'communitarisation' of judicial cooperation in civil matters, which is now covered by Articles 61 and 65 of the EC Treaty (i.e. it is excluded from the European Union's third pillar, where it had originally been placed pursuant to the Maastricht Treaty).

The disappearance of internal frontiers between the Member States has called for cooperation between the Member States' judicial, crime-prevention, police or customs departments which has constantly proved inadequate as a means of combating the international activities of criminal organisations.

In the area of criminal law, however, the Member States were unable to overcome national barriers during the negotiations on the Amsterdam Treaty, and police and judicial cooperation in criminal matters was placed under Title VI of the Treaty on European Union (in the 'third pillar'), which goes against the interests and the needs of the people of Europe.

II. RECONSULTATION ON THE DRAFT COUNCIL FRAMEWORK DECISION ON THE EXECUTION IN THE EUROPEAN UNION OF ORDERS FREEZING PROPERTY OR EVIDENCE

1. General assessment of the reconsultation in relation to the consultation of 9 February 2001 and Parliament's position

In compliance with Tampere European Council conclusions 33, 36 and 37, the programme of measures referred to in conclusion 37 was adopted at the 30 November and 1 December Council meeting of Justice and Home Affairs Ministers.

In particular, measures 6 and 7 of that programme indicated that priority was to be given to adopting a tool enabling the Member States to apply Tampere conclusion 36.

With a view to putting those measures into practice, an initiative by the Governments of the French Republic, the Kingdom of Sweden and the Kingdom of Belgium was submitted on the same day as the above programme for the purpose of securing the adoption by the Council of a Framework Decision on the execution in the European Union of orders freezing property or evidence.

On 9 February 2001, Parliament was consulted by the Council in respect of that initiative. Your current rapporteur for this reconsultation was also rapporteur for the first consultation, and his draft report on that first consultation was adopted by the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs at its meeting of 11 July 2001. Parliament subsequently adopted a legislative resolution on the report on 20 September 2001.

Your rapporteur does not intend to describe the substance of the amendments which were tabled to the original version of the initiative. However, comment should be made regarding the substance of some of them, which referred to the essential aspect of the proposal, namely its scope. In those amendments it was proposed that the scope of freezing orders in respect of property should be extended so that such orders could apply to offences of any kind (without verification of double criminality) and not only to the rather short list of six types of offence proposed in the initiative, which Europol was responsible for dealing with.

Your rapporteur welcomes the fact that the revised version of the draft Council framework decision incorporates many of the amendments tabled by Parliament and that its scope has been greatly enlarged to cover 32 types of offence. Furthermore, other offences which are not explicitly listed may be recognised provided that, in certain cases, there is double criminality and that, in others, freezing on similar grounds is permitted under the laws of the executing State.

Your rapporteur is aware that Parliament's original amendments were conscientiously debated and analysed by the Council, that they were taken seriously and that they have been incorporated into the revised version of the draft text on which Parliament is now, as required, being reconsulted.

However, your rapporteur is also highly aware of the way in which the tragic events of 11 September 2001 have influenced the change in political thinking which is reflected in the profound changes which have been made to the original initiative.

The close parallels (save for the differences stemming from the fact that they serve different purposes) between the proposal under consideration here and the framework decision on a European arrest warrant should also be noted, as should the fact that the draft text constitutes a decisive step towards the creation of a European judicial area.

For the first time in the history of the European Union and, indeed, in the history of the human race, a group of countries is going to agree to the full mutual recognition of all the legal effects of certain court decisions in criminal matters which, once issued by the judicial authorities of one Member State, will be automatically accepted and executed by the authorities of another Member State.

Your rapporteur considers the substance of the draft Council framework decision to be nothing less than revolutionary by comparison with the traditional system and to open major prospects which were inconceivable until very recently. It constitutes a further step forward in the integration of the European Union in so far as it will make that Union a safer and fairer place.

2. The amendments

Your rapporteur welcomes the substance of the revised proposal in so far as it represents a significant improvement (in both form and content) over the earlier initiative.

However, your rapporteur still regards it as timid and inadequate in scope, for which reason he feels that some amendments need to be tabled to it.

Amendments 1, 2, 4, 5, 7 and 8 are tabled in order to make technical improvements to the text.

Amendments 3, 6 and 9, part of amendment 4 and part of amendment 7 are intended to ensure that all decisions relating to the freezing measures provided for in the initiative are taken exclusively by the judicial authorities of either the issuing State or the executing State and in the framework of criminal proceedings.

Amendments 11, 12, 13, 14 and 18 are aimed directly at the heart of the initiative, namely its scope. Your rapporteur considers that, for the purposes of issuing a freezing order, the maximum length (three years) of the sentence which may be imposed in respect of an offence to which verification of double criminality does not apply is excessive and should therefore be reduced to two years, failing which many proceeds of an offence will wrongly remain beyond the reach of the law.

Your rapporteur also believes that the Member States should not make execution in the case of offences which are not specifically listed in the initiative subject to double criminality or dependent on whether or not freezing in such cases is allowed under a Member State's domestic law.

The purpose of amendments 6 and 19 is to provide for judicial review of decisions and to stipulate the cases in which actions should be launched in the executing State; actions relating to substance should always be lodged in the issuing State.

Lastly, your rapporteur firmly believes that the framework decision must be brought into effect as a matter of urgency as a means of combating crime (organised or otherwise) and also that it could come into force earlier than is suggested in the legislative proposal. This is the reason for amendments 20 and 21.