



**COUNCIL OF  
THE EUROPEAN UNION**

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**REPORT**

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from : Article 36 Committee  
on : 8 to 10 October 2001

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to: Coreper/Council

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Subject : Draft Framework Decision on the execution in the European Union of orders freezing assets or evidence

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**I INTRODUCTION**

On 30 November 2000 France, Sweden and Belgium submitted an initiative with a view to the adoption by the Council of a Framework decision on the execution in the European Union of orders freezing assets or evidence.<sup>1</sup>

The European Parliament was invited by the Council by letter dated 9 February 2001 to give its opinion on the draft. The opinion was delivered on 20 September 2001.<sup>2</sup>

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<sup>1</sup> Documents 13986/00 COPEN 81 + ADD 1. Document 5126/01 COPEN 1 and OJ C 75, 7.3.2001, p. 3.

<sup>2</sup> PE 309.466.

The examination of the instrument has been actively pursued during the last months. For the purpose of the implementation of the conclusions drawn at the extraordinary JHA Council on 20 September 2001 (conclusion 22) and the extraordinary European Council on 21 September 2001 (conclusion 5), the work on the instrument has been further intensified. The instrument is on the agenda of the joint JHA/ECOFIN Council on 16 October 2001.

The Article 36 Committee examined at its meeting on 8 to 10 October 2001 two key questions in respect of the draft on the basis of document 12445/01 COPEN 57. It was agreed to submit the two questions to Coreper/Council.<sup>1</sup> The aim of the Presidency is to reach agreement on the questions at the joint JHA/ECOFIN Council meeting on 16 October 2001 with a view to the adoption of the instrument as soon as possible in compliance with the mandate given by the European Council.

The two key questions are set out under II below. Certain other questions, as well as the text resulting from the proceedings, with observations by delegations in footnotes to the text, are set out in document 12445/01 COPEN 57.

## **II QUESTIONS SUBMITTED TO THE COREPER / COUNCIL**

### **1. Freezing with a view to restitution of property to its rightful owner**

The original proposal covered the issue of restitution. However, a number of delegations did not favour the inclusion of this issue. In addition, the Legal Service of the Council was in the process of examining whether restitution may be dealt with under the third pillar or would need to be addressed as a civil law claim under the first pillar. For these reasons it was decided at the meeting of the Working Party on 5 and 6 July 2001 to provisionally set aside the issue of restitution and focus on freezing with a view to confiscation and freezing of evidence.

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<sup>1</sup> The additional information given by certain delegations on their positions at the meeting of the Working Party on Cooperation in Criminal Matters on 10 October 2001 following the debate in the Article 36 Committee has been taken into account.

Taking into account the urgency of the adoption of the instrument, the Presidency proposed to exclude restitution from its scope.

Several delegations, including in particular the French, Italian, Finnish, Luxembourg and Portuguese delegations, underlined that they would have preferred that restitution was covered by the instrument. The Finnish delegation was in addition in favour of the inclusion of freezing for the purpose of ensuring the payment of damages. However, considering the mandate given by the European Council, the delegations would be prepared, as a compromise, to accept the exclusion of restitution combined with a Council declaration. The declaration should specify that the Council agrees that the examination of the issue of restitution shall be pursued with a view to the adoption of an additional instrument on that issue as soon as possible.

The Presidency proposes on this basis the exclusion of restitution combined with the draft Council declaration set out in the Annex.

*Is the proposal by the Presidency to exclude restitution from the scope of the instrument and to agree on the draft Council declaration set out in the Annex acceptable?*

## **2. Article 2 - Offences**

### **The approach to follow regarding the list of offences**

The Framework decision applies to freezing orders made in respect of the offences defined in Article 2. The offences may be defined in different ways. The Working Party has discussed the possibility of generic references to types of offences, the possibility of specific references to offences defined in existing instruments and the possibility of a more open approach. The option of a combined approach whereby the instrument as a minimum would apply to offences defined in existing instruments has also been mentioned.

It was agreed to delete paragraph 2 of Article 2.

It was agreed to submit the following options to the Council:

- a. A generic list along the lines of Article 2(1) in the Annex to document COPEN 57.

Several delegations could support this approach.

- b. A more precise list containing specific references to offences defined in European Union instruments or other international instruments.

The Netherlands, Luxembourg, Italian, Danish and Greek delegations favoured this approach. The Danish delegation could accept this approach, but could also accept the approach under point c.

- c. A broad scope without a list combined with a clause allowing for the use of the principle of double criminality. The German and Austrian delegations favoured this approach. The Danish delegation could accept this approach, but could also accept the approach under b.
- d. A broad scope based on a maximum penalty of at least 6 months for the offence concerned in the Issuing State, without a double criminality clause, as proposed by the European Parliament.

The Commission supported this approach.

Having in mind ongoing negotiations concerning the draft Framework Decision on the fight against terrorism, the Presidency proposes, as a compromise, to proceed on the basis of the approach under point b (a precise list). This approach would ensure that the offences to which the Framework Decision would apply would be defined in a precise legal manner. Ongoing proceedings concerning the draft Framework Decision on a European arrest warrant should also be kept in mind.

*The Coreper/ Council is invited to decide which approach should be retained.*

### **III OTHER QUESTIONS**

Certain other questions remain outstanding. Those are set out in the cover note to document 12445/01 COPEN 57 and in the footnotes to the text in the Annex of that document. The opinion of the European Parliament has not yet been examined. The Working Party will examine Articles 3, 5, 7, 8 and 10 and the opinion of the European Parliament at its meeting on 10 and 11 October 2001.

### **IV CONCLUSIONS**

The Coreper/ Council is invited to examine the questions set out under point II above with a view to :

- reaching agreement on these questions at the joint JHA/ECOFIN Council meeting on 16 October 2001, and
- the formal adoption of the Framework decision as soon as possible thereafter.

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**Draft Council declaration for entry in the minutes of the Council at the adoption of the draft Framework decision on the execution in the European Union of orders freezing assets or evidence.**

"The Council notes that for the reason of the urgency of the adoption of the Framework Decision, it has not been possible to fully consider the issue of freezing with a view to restitution of property to its rightful owner, and that this issue therefore has been excluded from the scope of the Framework Decision. The Council agrees that the examination of the question shall be pursued with a view to the adoption of an additional instrument on freezing with a view to restitution as soon as possible."

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