



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from :	Secretariat
to :	Coreper
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Subject :	Draft Framework Decision on the execution in the European Union of orders freezing property or evidence

The attached text has been established in accordance with the conclusions drawn at the JHA Council on 28 February 2002 for the purpose of the reconsultation of the European Parliament on the draft Framework Decision on the execution in the European Union of orders freezing property or evidence.

COUNCIL FRAMEWORK DECISION .../.../JHA

of

on the execution in the European Union of orders
freezing property or evidence

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 31(a) and 34 (2)(b) thereof,

Having regard to the initiative by the Republic of France, the Kingdom of Sweden and the Kingdom of Belgium,

Having regard to the Opinion of the European Parliament,

Whereas:

- (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.
- (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.

- (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.
- (4) cooperation between Member States, based on the principle of mutual recognition and immediate execution of judicial decisions, presupposes confidence that the decisions to be recognized and enforced will always be taken in compliance with the principles of legality, subsidiarity and proportionality.
- (5) Rights granted to the parties or bona fide interested third parties should be preserved,
- (6) This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected by the Charter of Fundamental Rights of the European Union, notably Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to freeze property for which a freezing order has been issued when objective elements exist for believing that the freezing order is issued for the purpose of prosecuting or punishing a person on account of his or her sex, race, religion, ethnic origin, nationality, political opinion or sexual orientation, or that that person's position may be prejudiced for any of these reasons.
This Framework Decision shall not prevent any Member State from applying its constitutional rules relating to due process, freedom of association, freedom of the press and freedom of expression in other media.

HAS ADOPTED THIS FRAMEWORK DECISION:

TITLE I

SCOPE

ARTICLE 1

Objective

The purpose of the Framework Decision is to establish the rules under which a Member State shall recognize 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.

ARTICLE 2

Definitions

For the purposes of this Framework Decision,

- (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;
- (b) "executing State" shall mean the Member State in whose territory the property or evidence is located;
- (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.

- (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 :
- is the proceeds of an offence referred to in Article 3, or equivalent to either the full value or part of the value of such proceeds, or
 - constitutes the instrumentalities or the objects of such an offence;
- (e) "evidence" shall mean objects, documents or data which could be produced as evidence in criminal proceedings concerning an offence referred to in Article 3.

ARTICLE 3

Offences

1. This Framework Decision applies to freezing orders issued for purposes of:
 - i. securing evidence, or
 - ii. subsequent confiscation of property.

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:
 - participation in a criminal organisation ,
 - terrorism,
 - trafficking in human beings,
 - sexual exploitation of children and child pornography,
 - illicit trafficking in narcotic drugs and psychotropic substances,
 - illicit trafficking in weapons, munitions and explosives,

- corruption,
- 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 of 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 product piracy,
- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- motor vehicle crime,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Tribunal,
- unlawful seizure of aircraft/ships,
- sabotage,

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.

4. For cases not covered by paragraph 2, the executing State may subject the recognition and enforcement of a freezing order made for purposes referred to in paragraph 1(i) to the condition that the acts for which the order was issued constitute an offence under the laws of that State, whatever the constituent elements or however described under the law of the issuing State.

For cases not covered by paragraph 2, the executing State may subject the recognition and enforcement of a freezing order made for purposes referred to in paragraph 1(ii) to the condition that the acts for which the order was issued constitute an offence which, under the laws of that State, allows for such freezing, whatever the constituent elements or however described under the law of the issuing State.

TITLE II

PROCEDURE FOR EXECUTING FREEZING ORDERS

ARTICLE 4

Transmission of freezing orders

1. A freezing order within the meaning of this Framework Decision, together with the certificate provided for in Article 9, shall be transmitted by the judicial authority which issued it directly to the competent judicial authority for execution by any means capable of producing a written record under conditions allowing the executing State to establish authenticity.

2. The United Kingdom and Ireland, respectively, may, before the date referred to in Article 14(1), state in a declaration that the freezing order together with the certificate must be sent via a central authority or authorities specified by it in the declaration. Any such declaration may be modified by a further declaration or withdrawn any time. Any declaration or withdrawal shall be deposited with the General Secretariat of the Council and notified to the Commission. These Member States may at any time by a further declaration limit the scope of such a declaration for the purpose of giving greater effect to paragraph 1. They shall do so when the provisions on mutual assistance of the Schengen Implementation Convention are put into effect for them.

3. If the competent judicial authority for execution is unknown, the judicial authority in the issuing State shall make all necessary inquiries, including via the contact points of the European judicial network, in order to obtain the information from the executing State.

4. When the judicial authority in the executing State which receives a freezing order has no jurisdiction to recognise it and take the necessary measures for its execution, it shall, *ex officio*, transmit the freezing order to the competent judicial authority for execution and shall so inform the judicial authority in the issuing State which issued it.

ARTICLE 5

Recognition and immediate execution

1. The competent judicial authorities of the executing State shall recognise a freezing order, transmitted in accordance with Article 4, without any further formality being required and shall forthwith take the necessary measures for its immediate execution in the same way as for a freezing order made by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition or non-execution provided for in Article 7 or one of the grounds for postponement provided for in Article 8.

Whenever it is necessary to ensure that the evidence taken is valid and provided that such formalities and procedures are not contrary to the fundamental principles of law in the executing State, the judicial authority of the executing State shall also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order.

A report on the execution of the freezing order shall be made forthwith to the competent authority in the issuing State by any means capable of producing a written record.

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.
3. The competent judicial authorities of the executing State shall decide and communicate the decision on a freezing order as soon as possible and, whenever practicable, within 24 hours of receipt of the freezing order.

ARTICLE 6

Duration of the freezing

1. The property shall remain frozen in the executing State until that State has responded finally to any request made under Article 10(1)(a) or (b).
2. However, after consulting the issuing State, the executing State may in accordance with its national law and practises lay down appropriate conditions in the light of the circumstances of the case in order to limit the period for which the property will be frozen. If, in accordance with those conditions, it envisages lifting the measure, it shall inform the issuing State, which shall be given the opportunity to submit its comments.

3. The judicial authorities of the issuing State shall forthwith notify the judicial authorities of the executing State that the freezing order has been lifted. In these circumstances it shall be the responsibility of the executing State to lift the measure as soon as possible.

ARTICLE 7

Grounds for non-recognition or non-execution

1. The competent judicial authorities of the executing State may oppose the recognition or execution of the freezing order only if:
 - (a) the certificate provided for in Article 9 is not produced, is incomplete or manifestly does not correspond to the freezing order;
 - (b) there is an immunity or privilege under the law of the executing State which makes it impossible to execute the freezing order;
 - (c) it is instantly clear from the information provided in the certificate that rendering judicial assistance pursuant to Article 10 for the offence in respect of which the freezing order has been made, would infringe the ne bis in idem principle;
 - (d) if, in one of the cases referred to in Article 3(4), the act 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 may not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing Member State.

2. In case of paragraph 1(a), the competent judicial authority may:
 - specify a deadline for its presentation or completion or correction, or
 - accept an equivalent document, or
 - exempt the issuing authority from the requirement if it considers that the information provided is sufficient.
3. Any decision to refuse recognition or execution must be taken and notified forthwith to the competent judicial authorities of the issuing State by any means capable of producing a written record.
4. In case it is in practice impossible to execute the freezing order for the reason that the property or evidence have disappeared, have been destroyed, cannot be found in the location indicated in the certificate or the location of the property or evidence has not been indicated in a sufficiently precise manner, even after consultation with the issuing State, the competent judicial authorities of the issuing State shall likewise be notified forthwith.

ARTICLE 8

Grounds for postponement of execution

1. The competent judicial authority may postpone the execution of a freezing order transmitted in accordance with Article 4:
 - (a) where its execution might damage an ongoing criminal investigation, until such time as it deems reasonable;

- (b) where the property or evidence concerned have already been subjected to a freezing order in criminal proceedings, and until that freezing order is lifted;
 - (c) Where, in the case of an order freezing property in criminal proceedings with a view to its subsequent confiscation, that property is already subject to an order made in the course of other proceedings in the executing State and until that order is lifted. However, this provision shall only apply where such an order would have priority over subsequent national freezing orders in criminal proceedings under national law.
2. A report on the postponement of the execution of the freezing order, including the grounds for the postponement and, if possible, the expected duration of the postponement, shall be made forthwith to the competent authority in the issuing State by any means capable of producing a written record.
 3. As soon as the ground for postponement has ceased to exist, the competent judicial authority shall forthwith take the necessary measures for the execution of the freezing order and inform the competent authority in the issuing State thereof by any means capable of producing a written record.
 4. The judicial authority of the executing State shall inform the judicial authority of the issuing State about any other restraint measure to which the property concerned may be subjected.

ARTICLE 9

Certificate

1. The certificate, the standard form for which is given in the Annex, must be signed, and its contents certified as accurate, by the competent judicial authority in the issuing State that ordered the measure.

2. The certificate must be translated into the official language or one of the official languages of the executing State.

3. Any Member State may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

ARTICLE 10

Subsequent treatment of the frozen property

1. The transmission referred to in Article 4:

(a) shall be accompanied by a request for the evidence to be transferred to the issuing State

or

(b) shall be accompanied by a request for confiscation requiring either enforcement of a confiscation order that has been issued in the issuing State or confiscation in the executing State and subsequent enforcement of any such order,

or

(c) shall contain an instruction in the certificate that the property shall remain in the executing State pending a request referred to in (a) or (b). The issuing State shall indicate in the certificate the (estimated) date for submission of this request. Article 6(2) shall apply.

2. Requests referred to in paragraph 1(a) and (b) shall be submitted by the issuing State and processed by the executing State in accordance with the rules applicable to mutual assistance in criminal matters and the rules applicable to international cooperation relating to confiscation.

3. However, by way of derogation from the rules on mutual assistance referred to in paragraph 2, the executing State may not refuse requests referred to under paragraph 1(a) on grounds of absence of double criminality, where the requests concern the offences referred to in Article 3(2) and those offences are punishable in the issuing State by a prison sentence of at least three years.

ARTICLE 11

Legal remedies

1. Member States shall put in place the necessary arrangements to ensure that any interested party, including bona fide third parties, have legal remedies without suspensive effect against a freezing order executed pursuant to Article 5, in order to preserve their legitimate interests; the action shall be brought before a court in the issuing State or in the executing State in accordance with the national law of each.

2. The substantial reasons for issuing the freezing order can be challenged only in an action brought before a court in the issuing State.

3. If the action is brought in the executing State, the judicial authority of the issuing State shall be informed thereof and of the grounds of the action, so that it can submit the arguments that it deems necessary. It shall be informed of the outcome of the action.

4. The issuing and executing States shall take the necessary measures to facilitate the exercise of the right to bring an action mentioned in paragraph 1, in particular by providing adequate information to interested parties.

5. The issuing State shall ensure that any time limits for bringing an action mentioned in paragraph 1 are applied in a way that guarantees the possibility of an effective legal remedy for interested parties.

ARTICLE 12
Reimbursement

1. Without prejudice to Article 11(2), where the executing State under its law is responsible for injury caused to one of the parties mentioned in Article 11 by the execution of a freezing order transmitted to it pursuant to Article 4, the issuing State shall reimburse to the executing State any sums paid in damages by virtue of that responsibility to the said party except if, and to the extent that, the injury or any part of it is exclusively due to the conduct of the executing State.

2. Paragraph 1 is without prejudice to the national law of the Member States on claims by natural or legal persons for compensation of damage.

TITLE III

FINAL PROVISIONS

ARTICLE 13
Territorial application

This Framework decision shall apply to Gibraltar.

ARTICLE 14
Implementation

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

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.

3. The General Secretariat of the Council shall notify Member States and the Commission of the declarations made pursuant to Article 9(3).

ARTICLE 15

Entry into force

This Framework Decision shall enter into force on the day of its publication in the Official Journal.

Done at

For the Council

The President

Certificate provided for by Article 9

1. Issuing State ¹

2. Court or judicial authority issuing the freezing order and certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Telephone/fax/e-mail ²
 - 2.4. Language(s) in which it is possible to communicate with the issuing authority ³
 - 2.4.1. German
 - 2.4.2. English
 - 2.4.3. etc.

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

¹ Each heading of the certificate appears in all the official languages of the European Union: if necessary, headings will be translated on the reverse side of the page and refer to a number on the front side.

² Telephone and fax numbers should be given in full (i.e. number for callers from abroad); wherever possible, give numbers of direct lines.

³ Optional information not covered by Article 9.

- 3.4. counterfeiting the euro
 - 3.5. corruption
 - 3.6. trafficking in human beings
4. The suspect
- 4.1 where possible the name of the suspect(s)
5. A description of the relevant grounds for the freezing order and a summary of facts as known to the judicial authority issuing the freezing order and certificate
6. Freezing order
- 6.1. Date
 - 6.2. Purpose of the order
 - 6.2.1. subsequent confiscation
 - 6.2.2. evidence
 - 6.3. Property or evidence covered by the freezing order
 - 6.3.1. precise description of the property or evidence and , in case of a freezing order concerning the value of proceeds, the maximum amount for which recovery is sought in that property
 - 6.3.2. exact location of the property or evidence
 - 6.3.3. party having custody of the property or known beneficial owner of the property or evidence, if different

7. Action to be taken by the executing State after executing the freezing order
- 7.1. transfer the evidence to the issuing State
 - 7.1.1 request enclosed
 - 7.1.2 date for submission of the request
 - 7.2. keep the property in the executing State with a view to the execution of a confiscation order.
 - 7.2.1. request enclosed regarding enforcement of a confiscation order issued in the issuing State on (date)
 - 7.2.2. request enclosed regarding confiscation in the executing State and subsequent enforcement of such order
 - 7.2.3. estimated date for submission of a request referred to in 7.2.1 or 7.2.2
8. Person from whom information can be obtained on procedures for submitting appeals in the issuing State, and on availability of legal assistance and translation facilities
- 1. Name
 - 2. Address
 - 3. Telephone/fax/e-mail.
9. Additional information ¹

¹ Optional information not covered by Article 7.

10. Text of the freezing order attached to this certificate

The judicial authority of the issuing State certifies that the information contained in this certificate is correct.

Done at date

Signature and/or stamp

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