Mutual recognition of freezing and confiscation orders

2016/0412(COD) - 21/12/2016 - Legislative proposal

PURPOSE: to lay down the rules for the mutual recognition of freezing and confiscation orders.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: after the entry into force of the Lisbon Treaty, confiscation was given strategic priority at EU level as an effective instrument to fight organised crime.

Directive 2014/42/EU establishes common minimum rules for the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

Based on the European Agenda on Security of 28 April 2015 which highlighted the need for measures to address terrorist financing in a more effective and comprehensive manner, the Commission adopted, in February 2016, a communication on an action plan for strengthening the fight against terrorist financing, highlighting the need to ensure that criminals who fund terrorism are deprived of their assets.

In October 2016, the European Parliament adopted a resolution on the fight against corruption which once again called on the Commission to submit a proposal on the strengthening of mutual recognition of freezing and confiscation orders.

Recent research estimates that illicit markets in the European Union generate about **EUR 110 billion**, i.e. approximately 1% of the EU's GDP in 2010. However, and although existing statistics are limited, the amount of money currently being recovered from proceeds of crime within the EU is only a small proportion: 98.9% of estimated criminal profits are not confiscated and remain at the disposal of criminals.

The implementation reports on Framework Decision 2003/577/JHA and Framework Decision 2006/783 /JHA were adopted in 2008 and 2010. A comparative law study on the implementation of mutual recognition of freezing and confiscation orders in the EU20 was carried out in 2013 and concluded that one coherent instrument for mutual recognition could be envisaged.

IMPACT ASSESSMENT: the preferred option of the Commission is a **mutual recognition instrument** with an extended scope and improved provisions that ensure a wider circulation of freezing and confiscation orders issued within the framework of criminal proceedings in the European Union.

The requirement to recognise a greater range of freezing and confiscation orders should increase the amount of criminal assets frozen and seized across Member State borders.

CONTENT: based on existing EU legislation on mutual recognition of freezing and confiscation orders, the proposed 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**.

This proposal **covers 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 covers all criminal offences. It is not limited to the areas of particularly serious crime with a cross-border dimension so-called 'Eurocrimes'.

The proposed Regulation seeks to improve the current mutual recognition legal framework in several ways:

- **apply directly a legal instrument in the Member States** to improve mutual recognition of freezing and confiscation orders bringing clarity and eliminating problems with transposition into national systems;
- **extend the scope compared to the current mutual recognition instruments and Directive 2014 /42/EU**: the proposed Regulation will cover **third-party confiscation** and **criminal non-conviction based confiscation**, for instance in the cases of death of a person, immunity, prescription, cases where the perpetrator of an offence cannot be identified. This requires the court to establish that an advantage was derived from a criminal offence;
- **set clear deadlines for freezing and confiscation orders**: 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. The executing authority must take the decision on the recognition and execution of the confiscation order as soon as possible and not later than 30 days after the receipt of the confiscation order.
- **improve the speed and efficiency of the mechanism thanks to a standardised certificate** for mutual recognition of confiscation orders and a standard form for freezing orders which are annexed to the proposal;
- ensure that, in cases where the issuing State confiscates property, the **victim's right** to compensation and restitution has priority over the executing and issuing States' interest.
- introduce a **general obligation of competent authorities to consult each other** where necessary during the mutual recognition procedure.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.