

Mutual recognition of freezing and confiscation orders

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The Committee on Civil Liberties, Justice and Home Affairs adopted the report by Nathalie GRIESBECK (ALDE, FR) on the proposal for a regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders.

The committee recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the Commission proposal as follows.

Respect for fundamental rights: this Regulation is without prejudice to the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the TEU and in the **Charter of Fundamental Rights of the European Union**, in particular the right of defence, the right to a fair trial and the right to property.

Freezing and confiscation decisions: Members proposed to **reconcile the procedures** concerning the mutual recognition of freezing orders and the mutual recognition of confiscation orders or to **harmonise** this new instrument with other existing European legislative instruments in this area, for example by specifying that: (i) a State shall accept to receive freezing or confiscation orders in at least one other language than its national language; (ii) both decisions shall each be accompanied by a certificate; (iii) the *non bis in idem* principle shall be respected.

Mandatory and optional grounds for non-recognition and non-execution of a freezing or confiscation order: Members proposed the insertion of a clause of non-recognition and non-execution of freezing or confiscation orders, based on the failure to observe fundamental rights.

They also suggested making non-recognition and non-enforcement compulsory in the event that the confiscation order relates to a specific item of property which is not the property of the natural or legal person against whom the confiscation order was made in the issuing Member state or of any other natural or legal person who was a party to the proceedings in the issuing State.

On the other hand, the executing authority may decide not to recognise and not to execute confiscation orders if the standard certificate for issuing a confiscation order is incomplete, manifestly incorrect or manifestly does not correspond to the confiscation order or if the conduct on which the confiscation order is based does not constitute an offence under the law of the executing State.

Procedures for recognition of freezing and confiscation orders: Members suggested improving the efficiency and speed of these procedures by, *inter alia*:

- **facilitated procedures** for forwarding decisions;
- **a stepped-up role for central national authorities**, whose support role is important;
- **tighter deadlines for authorities** to communicate with each other, decide to execute (or not) orders forwarded by issuing states, and give immediate notification that such decisions have been taken and orders executed. The executing authority shall: (i) take the decision on the recognition and execution of the confiscation order without delay and, no later than 10 working days after the executing authority has received the confiscation order; (ii) carry out the confiscation without delay, no later than **10 working days** following the taking of the decision and no later than **48 hours** after the executing authority has received the freezing order; (iii) communicate the decision on a freezing

order to the issuing authority immediately and at the latest within 12 hours by any means capable of producing a written record.

Procedural safeguards: Members proposed to strengthen the provisions on procedural safeguards concerning the right to an effective remedy for all concerned as well as the right to information of such persons and also the procedural rights of third persons who might be affected by these decisions of freezing and confiscation.

Re-use of frozen property: each Member State shall take the necessary measures to establish a national centralised office responsible for the management of frozen property with a view to possible later confiscation and confiscated assets and properties. Such property shall be earmarked as a matter of priority for law enforcement and organised crime prevention projects and for other projects of public interest and **social utility**. They shall also take the necessary measures, including the setting up of a national fund to guarantee appropriate **compensation for the families** of police officers and public servants killed in the line of duty and police officers and public servants permanently disabled in the line of duty. Each Member State shall earmark a portion of confiscated assets for this purpose.