

Mutual recognition of freezing and confiscation orders

2016/0412(COD) - 04/10/2018 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 531 votes to 51, with 26 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission proposal as follows:

Scope: the Regulation shall apply to all freezing and confiscation orders issued within the framework of proceedings in criminal matters. It also covers other types of order issued without a final conviction. Freezing orders and confiscation orders that are issued within the framework of proceedings in civil or administrative matters shall be excluded from the scope of this Regulation.

Such affected persons, who can be natural persons or legal persons, shall include the person against whom a freezing order or confiscation order was issued or the person who owns the property that is covered by that order, as well as any third parties whose rights in relation to that property are directly prejudiced by that order, including bona fide third parties.

The issuing authority shall ensure that, when issuing a freezing order or confiscation order, the principles of necessity and **proportionality** are respected. In any case, the safeguards under the Charter of Fundamental Rights shall apply to all proceedings covered by this Regulation.

Transmission, recognition and execution of confiscation and freezing orders: a freezing order shall be transmitted by means of a freezing certificate. The issuing authority shall transmit the freezing certificate directly to the executing authority or, where applicable, to the central authority, by any means capable of producing a written record under conditions that allow the executing authority to establish the authenticity of the freezing certificate.

The executing authority shall recognise a freezing order transmitted and shall take the measures necessary for its execution in the same way as for a domestic freezing order issued by an authority of the executing State.

The executing authority may decide **not to recognise or execute** a freezing order only where:

- executing the freezing order would be contrary to the principle of *ne bis in idem*;
- there is a privilege or immunity under the law of the executing State that would prevent the freezing of the property concerned;
- the freezing certificate is incomplete or manifestly incorrect;
- the conduct in connection with which the freezing order was issued does not constitute a criminal offence under the law of the executing State;
- the execution of the freezing order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter, in particular the right to an effective remedy, the right to a fair trial or the right of defence.

Time limits: the executing authority shall take the decision on the recognition and execution of the freezing order and execute that order without delay and with the **same speed and priority as for a similar domestic case** after the executing authority has received the freezing certificate.

The executing authority should start taking the concrete measures necessary to execute such orders **no later than 48 hours** after the decision on the recognition and execution thereof has been taken. The executing authority shall communicate, without delay and by any means capable of producing a written record, the decision on the recognition and execution of the confiscation order to the issuing authority.

The executing authority shall take the decision on the recognition and execution of the confiscation order without delay and no later than **45 days** after the executing authority has received the confiscation certificate.

The **non-execution** of a confiscation order under this Article may only be justified where the property: (i) has already been confiscated; (ii) has disappeared; (ii) has been destroyed; (iv) cannot be found in the location indicated on the confiscation certificate; or (v) cannot be found because its location has not been indicated in a sufficiently precise manner.

Restitution of frozen property confiscated from the victim: rules for the disposal of frozen or confiscated property should give **priority to the compensation of, and restitution of property to, victims.**

The obligation to restitute frozen property to the victim shall be subject to the following conditions: (i) the victim's title to the property shall not be contested, meaning that it is accepted that the victim is the rightful owner of the property and there are no serious claims putting that into question; (ii) the property shall not be required as evidence in criminal proceedings in the executing State; (iii) and the rights of affected persons, in particular the rights of bona fide third parties, should not be prejudiced.

Each Member State shall consider establishing a **national fund** to guarantee appropriate compensation for victims of crime, such as families of police officers and public servants killed or permanently disabled in the line of duty. Member States may earmark a portion of confiscated assets for that purpose.