Mutual recognition of freezing and confiscation orders

2016/0412(COD) - 28/11/2018 - Final act

PURPOSE: to ensure the mutual recognition of freezing and confiscation orders.

LEGISLATIVE ACT: Regulation (EU) 2018/1805 of the European Parliament and of the Council on the mutual recognition of freezing orders and confiscation orders.

CONTENT: the Regulation lays down the rules under which a Member State recognises and executes in its territory freezing and confiscation orders issued by another Member State within the framework of proceedings in criminal matters, including terrorism related offences. As crime is often transnational in nature, effective cross-border cooperation is essential in order to freeze and confiscate the instrumentalities and proceeds of crime.

Scope of application

The Regulation applies to all freezing and confiscation orders issued in the context of criminal proceedings. It does not apply to decisions issued in civil or administrative proceedings. It covers a wide range of types of criminal confiscation, such as value-based and non-conviction-based confiscation, including some preventive confiscation systems, provided that there is a link with a criminal offence.

In any event, the guarantees provided for in the Charter of Fundamental Rights of the European Union shall apply to all procedures covered by the Regulation.

Transmission, recognition and execution of confiscation and freezing orders

The issuing authority shall transmit a freezing certificate or confiscation certificate, together with the freezing order or confiscation order, where applicable, either directly to the executing authority or to the central authority of the executing State, as applicable, by any means capable of producing a written record under conditions that allow the executing authority to establish authenticity of the certificate.

This Regulation shall permit the executing authorities not to recognise or execute confiscation orders on the basis of the principle of *ne bis in idem*, on the basis of the rights of affected persons or on the basis of the right to be present at the trial.

In exceptional circumstances, it shall be possible not to recognise or execute a freezing order or confiscation order where such recognition or execution would prevent the executing State from applying its constitutional rules relating to freedom of the press or freedom of expression in other media.

Time limits

The Regulation sets a deadline of 45 days for the recognition of a confiscation order and, in urgent cases, a deadline of 48 hours for the recognition and 48 hours for the execution of freezing orders. These deadlines may only be extended under strict conditions.

The non-execution of a confiscation order 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

The Regulation contains provisions guaranteeing respect for victims' rights to compensation and restitution in cross-border cases.

Each Member State shall consider:

- establishing a national centralised office responsible for the management of frozen property, with a view to possible later confiscation, as well as for the management of confiscated property. Frozen property and confiscated property could 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 ;

- 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 could earmark a portion of confiscated assets for that purpose.

ENTRY INTO FORCE: 18.12.2018.

APPLICATION: from 19.12.2020.