

Judicial cooperation: orders freezing assets or evidence. Framework decision. Initiative France, Sweden and Belgium

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PURPOSE: to present a Communication from the Governments of the French Republic, the Kingdom of Sweden and the Kingdom of Belgium on the Initiative of these countries regarding the adoption by the Council of a Framework Decision on the execution in the European Union of orders freezing assets or evidence. **CONTENT:** This explanatory note seeks to explain the basis for the Initiative regarding the Framework Decision on the execution of orders freezing assets or evidence. The offences that may give rise to the freezing of assets or evidence under this Directive have been defined restrictively. At this stage of the discussions in the European Union, it was decided that it would be difficult to seek to use this instrument to abolish the conditions of double criminality and double punishability that still exist in many Member States. However, a restrictive list of offences should enable this problem to be overcome. Furthermore, the production of a certificate - at the same time as the order that is to be executed - will enable the court that orders the measures to attest, on its own responsibility, that the freezing order comes within the scope of the instrument. Execution can be refused only on formal grounds (certificate missing or incomplete). The drafters of the initiative wanted to avoid a situation where the State executing a freezing order did not know exactly what to do with the asset that was frozen. The text therefore provides not only for the execution of the freezing order but also for what will happen to the asset which has been frozen once the order has been executed. Against this background, a Framework Decision was a natural choice of instrument involving the approximation of legislation, especially procedural legislation.