Basic information

2016/0412(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Mutual recognition of freezing and confiscation orders See also JHA act 2003/577/JHA 2001/0803(CNS) See also JHA act 2006/783/JHA 2002/0816(CNS) **Subject** 2.50.04.02 Electronic money and payments, cross-border credit transfers 7.30.30.08 Capital outflow, money laundering 7.40.04 Judicial cooperation in criminal matters	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
LIBE Civil Liberties, Justice and Home Affairs	GRIESBECK Nathalie (ALDE)	09/03/2017
	Shadow rapporteur POGLIESE Salvatore Domenico (PPE) PAVEL Emilian (S&D) MACOVEI Monica (ECR) SPINELLI Barbara (GUE/NGL) JOLY Eva (Verts/ALE) CORRAO Ignazio (EFDD) FONTANA Lorenzo (ENF)	

Committee for opinion	Rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs	MARTUSCIELLO Fulvio (PPE)	11/04/2017
JURI Legal Affairs	SVOBODA Pavel (PPE)	02/02/2017

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	3646	2018-11-06
Justice and Home Affairs (JHA)	3528	2017-03-28

	Justice and Home Affairs (JHA)	3584	2017-12-08
	Justice and Home Affairs (JHA)	3564	2017-10-13

European Commission	Commission DG	Commissioner
	Justice and Consumers	JOUROVÁ Věra

Key events

Date	Event	Reference	Summary
21/12/2016	Legislative proposal published	COM(2016)0819	Summary
13/02/2017	Committee referral announced in Parliament, 1st reading		
28/03/2017	Debate in Council		
13/10/2017	Debate in Council		
11/01/2018	Vote in committee, 1st reading		
11/01/2018	Committee decision to open interinstitutional negotiations with report adopted in committee		
12/01/2018	Committee report tabled for plenary, 1st reading	A8-0001/2018	Summary
15/01/2018	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
17/01/2018	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72)		
03/10/2018	Debate in Parliament		
04/10/2018	Decision by Parliament, 1st reading	T8-0380/2018	Summary
04/10/2018	Results of vote in Parliament		
06/11/2018	Act adopted by Council after Parliament's 1st reading		
14/11/2018	Final act signed		
14/11/2018	End of procedure in Parliament		
28/11/2018	Final act published in Official Journal		

Technical information

Procedure reference	2016/0412(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	See also JHA act 2003/577/JHA 2001/0803(CNS) See also JHA act 2006/783/JHA 2002/0816(CNS)
Legal basis	Treaty on the Functioning of the European Union TFEU 082-p1

Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Procedure completed
Committee dossier	LIBE/8/08869

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE609.537	28/09/2017	
Amendments tabled in committee		PE612.375	27/10/2017	
Committee opinion	ECON	PE608.163	08/11/2017	
Committee opinion	JURI	PE599.855	06/12/2017	
Committee report tabled for plenary, 1st reading/single reading		A8-0001/2018	12/01/2018	Summary
Text adopted by Parliament, 1st reading/single reading		T8-0380/2018	04/10/2018	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00038/2018/LEX	14/11/2018	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2016)0819	21/12/2016	Summary
Document attached to the procedure	SWD(2016)0468	23/12/2016	
Document attached to the procedure	SWD(2016)0469	23/12/2016	
Commission response to text adopted in plenary	SP(2018)755	21/11/2018	
Follow-up document	COM(2026)0156	10/04/2026	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	CZ_CHAMBER	COM(2016)0819	04/04/2017	
Contribution	DE_BUNDESRAT	COM(2016)0819	04/04/2017	
Contribution	ES_PARLIAMENT	COM(2016)0819	09/05/2017	

Contribution	PT_PARLIAMENT	COM(2016)0819	10/05/2017	
Reasoned opinion	CZ_SENATE	PE606.278	27/06/2017	

Additional information		
Source	**Document**	**Date**
European Parliament	Briefing	
European Commission	EUR-Lex	

Final act	
Regulation 2018/1805 OJ L 303 28.11.2018, p. 0001	Summary

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.

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.

Mutual recognition of freezing and confiscation orders

2016/0412(COD) - 12/01/2018 - Committee report tabled for plenary, 1st reading/single reading

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.

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.