



2016/0412(COD)

06.12.2017

OPINION

of the Committee on Legal Affairs

for the Committee on Civil Liberties, Justice and Home Affairs

on the proposal for a regulation of the European Parliament and of the Council
on the mutual recognition of freezing and confiscation orders
(COM(2016)0819 – C8-0002/2017 – 2016/0412(COD))

Rapporteur: Pavel Svoboda

PA_Legam

SHORT JUSTIFICATION

According to latest research data, illicit markets in the European Union generate about 110 billion EUR, namely approximately 1% of the EU's GDP in 2010. Taking away the profit of criminal activity and making sure that "crime does not pay" is therefore a very effective mechanism to combat crime. Seizing assets generated by criminal activities aims at preventing and combatting crime, including organised crime, compensating victims and provides additional funds to invest back into law enforcement activities or other crime prevention initiatives.

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. A functioning asset recovery regime is a precondition if more criminal assets are to be seized. This includes an efficient mutual recognition framework for freezing and confiscation orders.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) Freezing and confiscation of instrumentalities and proceeds of crime are among the most effective means of **combatting** crime. The European Union is committed to ensuring more effective identification, confiscation and re-use of criminal assets²⁴.

Amendment

(3) Freezing and confiscation of instrumentalities and proceeds of crime are among the most effective means of **combating** crime, **infringements of the law, in particular by organised criminals, and terrorism, due to the fact that they deprive criminals of the proceeds of their illegal activities and prevent terrorists from organising an attack.** The European Union is committed to ensuring more effective identification, confiscation and re-use of criminal assets²⁴. **Confiscated criminal assets can be rechannelled into law enforcement, crime prevention or**

victim compensation.

²⁴ "The Stockholm programme – An open and secure Europe serving and protecting the citizens", OJ C 115, 4.5.2010, p.1.

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Amendment 2

Proposal for a regulation Recital 4

Text proposed by the Commission

(4) As crime is often transnational in nature, effective cross-border cooperation is essential in order to seize and confiscate the proceeds and instrumentalities of crime.

Amendment

(4) As crime is often transnational in nature, effective cross-border cooperation is essential in order to seize and confiscate the proceeds and instrumentalities of crime. ***Better cooperation encompassing the Member States and third countries will be achieved through decisive, rapid and concerted measures for the modernisation and implementation of the relevant legal acts of the Union.***

Amendment 3

Proposal for a regulation Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) The illegal proceeds of crimes committed by criminal organisations are widely laundered in the legal European economy and such capital, once reinvested in the regular economy, constitutes a severe threat to free enterprise and competition because it has a seriously distorting impact.

Amendment 4

Proposal for a regulation Recital 7 b (new)

(7b) Organised crime, corruption and money laundering pose serious threats to the economy of the Union by, for example, significantly reducing the tax revenues of Member States and the Union as a whole, and to the accountability of Union-funded projects, as criminal organisations operate in various sectors, many of which are subject to governmental control.

Amendment 5

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) In order to ensure effective mutual recognition of freezing and confiscation orders, the rules on recognition and execution of those orders should be established by a legally binding and directly applicable legal act of the Union.

Amendment

(11) In order to ensure effective mutual recognition of freezing and confiscation orders, the rules on recognition and execution of those orders should be established by a legally binding and directly applicable legal act of the Union **that is wider in scope than other legal acts to date and contains clear provisions for ordering the freezing and confiscation of assets. One single instrument for mutual recognition of both freezing and confiscation orders containing a standard certificate and form, together with applicable rules and deadlines, will ensure that the orders are recognised and executed without delay within the Union.**

Amendment 6

Proposal for a regulation

Recital 12

Text proposed by the Commission

(12) It is important to facilitate the mutual recognition and execution of orders to freeze and to confiscate property by

Amendment

(12) It is important to facilitate the mutual recognition and execution of orders to freeze and to confiscate property by

establishing rules obliging a Member State to recognise and execute in its territory freezing and confiscation orders issued by another Member State within the framework of criminal proceedings.

establishing rules obliging a Member State, ***without undue delay or additional formalities***, to recognise and execute in its territory freezing and confiscation orders issued by another Member State within the framework of criminal proceedings.

Amendment 7

Proposal for a regulation Recital 16

Text proposed by the Commission

(16) This Regulation ***does not have the effect of modifying*** the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the TEU.

Amendment

(16) This Regulation ***is without prejudice to*** the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the TEU.

Amendment 8

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union (the Charter) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR). This Regulation should be applied in accordance with those rights and principles.

Amendment

(17) This Regulation respects the fundamental ***and procedural*** rights and observes the ***relevant*** principles recognised in the Charter of Fundamental Rights of the European Union (the Charter) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ECHR). This Regulation should be applied in accordance with those rights and principles.

Amendment 9

Proposal for a regulation Recital 18

Text proposed by the Commission

(18) This Regulation should be applied

Amendment

(18) This Regulation should be applied

taking into account Directives 2010/64/EU³⁰, 2012/13/EU³¹, 2013/48/EU³², 2016/343³³, 2016/800³⁴ and 2016/1919 of the European Parliament and of the Council³⁵, which concern procedural rights in criminal proceedings.

³⁰ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

³¹ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

³² Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

³³ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

³⁴ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

³⁵ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L

in accordance with Directives 2010/64/EU³⁰, 2012/13/EU³¹, 2013/48/EU³², 2016/343³³, 2016/800³⁴ and 2016/1919 of the European Parliament and of the Council³⁵, which concern procedural rights in criminal proceedings.

³⁰ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings (OJ L 280, 26.10.2010, p. 1).

³¹ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ L 142, 1.6.2012, p. 1).

³² Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ L 294, 6.11.2013, p. 1).

³³ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ L 65, 11.3.2016, p. 1).

³⁴ Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings (OJ L 132, 21.5.2016, p. 1).

³⁵ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings (OJ L

Amendment 10

Proposal for a regulation Recital 22

Text proposed by the Commission

(22) The executing authority should recognise a confiscation order without further formalities and should take the necessary measures for its execution. The decision on the recognition and execution of the confiscation order should be taken and the confiscation should be carried out with the same *celerity* and priority as for a similar domestic case. *Time limits* should *be* set out in order to ensure a quick and efficient decision and execution of the confiscation order.

Amendment

(22) The executing authority should recognise a confiscation order without further formalities *or undue delay* and should take the necessary measures for its execution. The decision on the recognition and execution of the confiscation order should be taken *without any undue delay* and the confiscation should be carried out with the same *speed* and priority as for a similar domestic case. *This Regulation* should set out *time limits by which the different steps of the procedure must be completed* in order to ensure a quick and efficient decision and execution of the confiscation order.

Amendment 11

Proposal for a regulation Recital 24

Text proposed by the Commission

(24) The executing authority should recognise a freezing order without further formalities and should immediately take the necessary measures for its execution. The decision on the recognition and execution of the freezing order should be taken and the freezing should be carried out with the same *celerity* and priority as for a similar domestic case. *Time* limits should *be* set out in order to ensure a quick and efficient decision and execution of the freezing order.

Amendment

(24) The executing authority should recognise a freezing order without further formalities *or undue delay* and should immediately take the necessary measures for its execution. The decision on the recognition and execution of the freezing order should be taken *without undue delay* and the freezing should be carried out with the same *speed* and priority as for a similar domestic case. *This Regulation* should set out *firm time limits by which the different steps of the procedure must be completed* in order to ensure a quick and efficient decision and execution of the freezing

order.

Amendment 12

Proposal for a regulation Recital 26

Text proposed by the Commission

(26) The recognition and execution of a freezing order or a confiscation order ***should not be refused*** on grounds ***other than those*** stated in this Regulation. In particular, ***it should be possible for*** the executing authority ***not to*** recognise and execute a confiscation order on the basis of the principle ne bis in idem, of the rights of any interested party, or of the right to be present at the trial.

Amendment

(26) ***It should only be possible to refuse*** the recognition and execution of a freezing order or a confiscation order ***on the grounds*** stated in this Regulation. In particular, the executing authority ***may decide not to*** recognise and execute a confiscation order on the basis of the principle ne bis in idem, of the rights of any interested party, or of the right to be present at the trial.

Amendment 13

Proposal for a regulation Recital 27

Text proposed by the Commission

(27) Before deciding to apply a ground for non-recognition and non-execution, the executing authority should consult the issuing authority, in order to obtain ***any*** necessary additional information.

Amendment

(27) Before deciding to apply a ground for non-recognition and non-execution, the executing authority should consult the issuing authority ***without any undue delay***, in order to obtain necessary additional information.

Amendment 14

Proposal for a regulation Recital 29

Text proposed by the Commission

(29) The issuing authority should be notified without delay of the ***impossibility to execute*** an order. Such impossibility might arise from the ***reason*** that the property has already been confiscated, has

Amendment

(29) The issuing authority should be notified without ***undue*** delay of the ***reasons for which the execution of*** an order ***is impossible***. Such impossibility might arise from the ***fact*** that the property

disappeared, cannot be found in the location indicated by the issuing authority or the location of the property has not been indicated in a sufficiently precise manner.

has already been confiscated, has disappeared, cannot be found in the location indicated by the issuing authority or the location of the property has not been indicated in a sufficiently precise manner.

Amendment 15

Proposal for a regulation Recital 29 a (new)

Text proposed by the Commission

Amendment

(29 a) Where there are doubts as to the location of property which is the subject of a confiscation order, Member States should use all available means in order to identify the correct location of that property, including the use of all available information systems.

Amendment 16

Proposal for a regulation Recital 31

Text proposed by the Commission

Amendment

(31) The proper practical operation of this Regulation presupposes close communication between the competent national authorities involved, in particular in cases of simultaneous execution of a confiscation order in more than one Member State. The competent national authorities should therefore consult each other ***whenever necessary***.

(31) The proper practical operation of this Regulation presupposes close communication ***and optimal cooperation*** between the competent national authorities involved, in particular in cases of simultaneous execution of a ***freezing or*** confiscation order in more than one Member State. The competent national authorities should therefore consult each other ***and should use modern communication technologies accepted under the procedural rules of the Member States concerned***.

Amendment 17

Proposal for a regulation Recital 34

Text proposed by the Commission

(34) Any interested party, including bona fide third parties, should have legal remedies against the recognition and execution of a freezing or confiscation order to preserve his or her rights, including the effective possibility to challenge the order before a court or claim title of ownership or other property rights in accordance with Directive 2014/42/EU. The action should be brought before a court in the executing State.

Amendment

(34) Any interested party, including bona fide third parties, should have legal remedies against the recognition and execution of a freezing or confiscation order to preserve his or her rights, including the ***right of access to the file and the*** effective possibility to challenge the order before a court or claim title of ownership or other property rights in accordance with Directive 2014/42/EU. The action should be brought before a court in the executing State.

Amendment 18

**Proposal for a regulation
Article 1 – paragraph 1**

Text proposed by the Commission

1. This 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.

Amendment

1. This Regulation lays down the rules ***and conditions*** 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.

Amendment 19

**Proposal for a regulation
Article 1 – paragraph 2**

Text proposed by the Commission

2. This Regulation ***shall not have the effect of amending*** the obligation to respect the fundamental rights and legal principles as enshrined in Article 6 TEU.

Amendment

2. This Regulation ***is without prejudice to*** the obligation to respect the fundamental rights and ***fundamental*** legal principles as enshrined in Article 6 TEU ***and in the Charter of Fundamental Rights of the European Union. Any non-conviction based confiscation shall be consistent with the procedural safeguards contained in Article 6 of the European Convention on Human Rights and Article***

Amendment 20

Proposal for a regulation

Article 2 – paragraph 1 – point 3 – introductory part

Text proposed by the Commission

(3) 'property' means **property** of any **description**, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such **property**, which the issuing authority considers to be :

Amendment

(3) 'property' means **money or assets** of any **kind**, whether corporeal or incorporeal, movable or immovable, **as well as limited property rights**, and legal documents or instruments, **in any form, including electronic or digital**, evidencing **ownership or other** title or interest in such **assets**, which the issuing authority considers to be:

Amendment 21

Proposal for a regulation

Article 4 – paragraph 1

Text proposed by the Commission

1. A confiscation order, or a certified copy of it, shall be transmitted together with the certificate provided for in Article 7 by the issuing authority directly to the executing authority or, where applicable, to the central authority referred to in Article 27(2) by any means capable of producing a written record under conditions allowing the executing authority to establish authenticity.

Amendment

1. A confiscation order, or a certified copy of it, shall be transmitted together with the certificate provided for in Article 7 by the issuing authority directly to the executing authority or, where applicable, to the central authority referred to in Article 27(2) by any means capable of producing a written record under conditions allowing the executing authority to establish **its** authenticity.

Amendment 22

Proposal for a regulation

Article 6 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Where point (b) applies, the issuing authority shall inform the executing authority **as soon as possible** whether the

Amendment

Where point (b) applies, the issuing authority shall inform the executing authority **without undue delay** whether the

risk referred to has ceased to exist.

risk referred to has ceased to exist.

Amendment 23

Proposal for a regulation Article 7 – paragraph 1

Text proposed by the Commission

1. The issuing authority shall complete the certificate set out in Annex I, sign it and certify its content as being accurate and correct.

Amendment

1. The issuing authority shall complete ***without undue delay*** the certificate set out in Annex I, sign it and certify its content as being accurate and correct.

Amendment 24

Proposal for a regulation Article 7 – paragraph 2

Text proposed by the Commission

2. The issuing authority shall translate the certificate into an official language of the executing State or any other language indicated by that Member State in accordance with paragraph 3.

Amendment

2. The issuing authority shall translate ***without undue delay*** the certificate into an official language of the executing State or any other language indicated by that Member State in accordance with paragraph 3.

Amendment 25

Proposal for a regulation Article 8 – paragraph 1

Text proposed by the Commission

1. The executing authority shall without further formalities recognise a confiscation order transmitted in accordance with Article 4 and shall take the necessary measures for its execution in the same way as for a confiscation order made by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition and non-execution provided for

Amendment

1. The executing authority shall without further formalities ***or undue delay*** recognise a confiscation order transmitted in accordance with Article 4 and shall take the necessary measures for its execution in the same way as for a confiscation order made by an authority of the executing State, unless that authority decides to invoke one of the grounds for non-recognition and non-execution provided for

in Article 9 or one of the grounds for postponement provided for in Article 11.

in Article 9 or one of the grounds for postponement provided for in Article 11.

Amendment 26

Proposal for a regulation Article 11 – paragraph 2

Text proposed by the Commission

2. The executing authority shall without delay make a report to the issuing authority by any means capable of producing a written record on the postponement of the execution of the order, including the grounds for the postponement and, if possible, the expected duration of the postponement.

Amendment

2. The executing authority shall without delay make a report to the issuing authority, by any means capable of producing a written record, on the postponement of the execution of the order, including the grounds for the postponement and, if possible, the expected duration of the postponement. ***In the event of a postponement under point (b) of paragraph 1, the issuing authority shall, where a confiscation order is simultaneously executed in more than one Member State, issue fresh instructions as to the exact amount of money subject to confiscation.***

Amendment 27

Proposal for a regulation Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

Obligation to inform interested parties

Following the execution of a confiscation order, the executing authority shall, without delay, notify its decision to the person against whom the confiscation order has been issued and to any interested party, including bona fide third parties.

Amendment 28

Proposal for a regulation
Article 17 – paragraph 1

Text proposed by the Commission

The executing authority shall recognise a freezing order transmitted in accordance with Article 14 without further formalities and shall take the necessary measures to execute it unless that authority decides to invoke one of the grounds for non-recognition and non-execution provided for in Article 18 or one of the grounds for postponement provided for in Article 20.

Amendment

The executing authority shall recognise a freezing order transmitted in accordance with Article 14 without further formalities **or undue delay** and shall take the necessary measures to execute it unless that authority decides to invoke one of the grounds for non-recognition and non-execution provided for in Article 18 or one of the grounds for postponement provided for in Article 20.

Amendment 29

Proposal for a regulation
Article 18 – paragraph 1 – point a

Text proposed by the Commission

(a) the form provided for in Article 16 is incomplete or manifestly incorrect, and has not been completed following the consultation in accordance with paragraph 2;

Amendment

(a) the form provided for in Article 16 **has not been translated into an official language of the executing State or** is incomplete or manifestly incorrect and has not been completed following the consultation in accordance with paragraph 2;

Amendment 30

Proposal for a regulation
Article 21 – paragraph 1

Text proposed by the Commission

1. Without prejudice to Article 22, following the execution, the executing authority shall notify its decision to the person against whom the freezing order has been issued and to any interested party including bona fide third parties of which the executing authority has been informed in accordance with Article 14(6).

Amendment

1. Without prejudice to Article 22, following the execution, the executing authority shall, **without delay**, notify its decision to the person against whom the freezing order has been issued and to any interested party including bona fide third parties of which the executing authority has been informed in accordance with Article 14(6).

Amendment 31

Proposal for a regulation Article 21 – paragraph 2

Text proposed by the Commission

2. The notification shall contain **information, at least briefly**, on the reasons **of** the freezing order, on the authority **who** issued the order and on the existing legal remedies under the national law of the executing State.

Amendment

2. The notification shall contain **sufficient, comprehensible information** on the reasons **for** the freezing order, on the authority **which** issued the order and on the existing legal remedies under the national law of the executing State.

Amendment 32

Proposal for a regulation Article 22 – paragraph 3

Text proposed by the Commission

3. For the purpose of safeguarding ongoing investigations, the issuing authority may request the executing authority to keep the execution of the freezing order confidential for a limited period of time.

Amendment

3. For the purpose of safeguarding ongoing investigations, the issuing authority may request the executing authority to keep the execution of the freezing order confidential for a limited period of time. **The issuing authority shall inform the executing authority when the reasons for keeping the freezing order confidential no longer apply.**

Amendment 33

Proposal for a regulation Article 28 – paragraph 1

Text proposed by the Commission

1. Where necessary, the issuing authority and the executing authority shall consult each other, by any appropriate means, in order to ensure the efficient application of this Regulation.

Amendment

1. Where necessary, the issuing authority and the executing authority shall consult each other, by any appropriate means, **including by modern communication technologies**, in order to ensure the efficient application of this Regulation.

Amendment 34

Proposal for a regulation

Article 31 – paragraph 2 – point b

Text proposed by the Commission

(b) if the amount obtained from the execution of the confiscation order is more than EUR 10 000, **50** % of the amount shall be transferred by the executing State to the issuing State.

Amendment

(b) if the amount obtained from the execution of the confiscation order is more than EUR 10 000, **70** % of the amount shall be transferred by the executing State to the issuing State.

PROCEDURE – COMMITTEE ASKED FOR OPINION

Title	Mutual recognition of freezing and confiscation orders
References	COM(2016)0819 – C8-0002/2017 – 2016/0412(COD)
Committee responsible Date announced in plenary	LIBE 13.2.2017
Opinion by Date announced in plenary	JURI 13.2.2017
Rapporteur Date appointed	Pavel Svoboda 2.2.2017
Discussed in committee	19.6.2017 7.9.2017 10.10.2017
Date adopted	21.11.2017
Result of final vote	+: 24 –: 0 0: 0
Members present for the final vote	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Mady Delvaux, Rosa Estaràs Ferragut, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Sylvia-Yvonne Kaufmann, Gilles Lebreton, António Marinho e Pinto, Jiří Maštálka, Emil Radev, Julia Reda, Evelyn Regner, Pavel Svoboda, József Szájer, Axel Voss, Francis Zammit Dimech, Tadeusz Zwiefka
Substitutes present for the final vote	Isabella Adinolfi, Daniel Buda, Tiemo Wölken
Substitutes under Rule 200(2) present for the final vote	John Flack, Emma McClarkin

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

24	+
ALDE	Jean-Marie Cavada, António Marinho e Pinto
ECR	John Flack, Emma McClarkin
EFDD	Isabella Adinolfi, Joëlle Bergeron
ENF	Marie-Christine Boutonnet, Gilles Lebreton
GUE/NGL	Jiří Maštálka
PPE	Daniel Buda, Rosa Estaràs Ferragut, Emil Radev, Pavel Svoboda, József Szájer, Francis Zammit Dimech, Tadeusz Zwiefka
S&D	Mady Delvaux, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Sylvia-Yvonne Kaufmann, Evelyn Regner, Tiemo Wölken
VERTS/ALE	Max Andersson, Julia Reda

0	-

0	0

Key to symbols:

+ : in favour

- : against

0 : abstention