



2016/0412(COD)

13.7.2017

DRAFT 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 mutual recognition of freezing and confiscation orders
(COM(2016)0819 – C8-0002/2017 – 2016/0412(COD))

Rapporteur: Pavel Svoboda

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 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.

Or. en

Amendment 2

Proposal for a regulation

Recital 22

Text proposed by the Commission

(22) The executing authority should

Amendment

(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.

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 *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.

Or. en

Amendment 3

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 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 *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.

Or. en

Amendment 4

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) The recognition and execution of a freezing order or a confiscation order **may** be refused **only based on the grounds** stated in this Regulation. In particular, the executing authority **may not** 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.

Or. en

Amendment 5

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 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

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

Or. en

Amendment 6

Proposal for a regulation Recital 29 a (new)

Text proposed by the Commission

Amendment

(29 a) Where there are doubts with regard 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.

Or. en

Amendment 7

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 co-operation*** 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 ***and should use modern communication technologies accepted under the procedural rules of the Member States concerned.***

Or. en

Amendment 8

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

Amendment

1. This Regulation lays down the rules under which a Member State shall

1. This Regulation lays down the rules ***and conditions*** under which a Member

recognise and execute in its territory a freezing or a confiscation order issued by another Member State within the framework of criminal proceedings.

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.

Or. en

Amendment 9

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 legal principles as enshrined in Article 6 TEU.

Or. en

Amendment 10

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 information*** 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.

Or. en

Amendment 11

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.

Or. en