



2016/0412(COD)

8.11.2017

OPINION

of the Committee on Economic and Monetary 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: Fulvio Martusciello

PA_Legam

AMENDMENTS

The Committee on Economic and Monetary 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 4 a (new)

Text proposed by the Commission

Amendment

(4a) In the area of financial services, several legal acts of the Union regarding financial markets provide for freezing and confiscation orders as sanctions for financial institutions. Effective cross-border cooperation of criminal courts and other national competent authorities is paramount for the stability of, and trust in, the Union financial system.

Amendment 2

Proposal for a regulation

Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) Whereas the mutual recognition of freezing and confiscation orders in the Union is an important step in the fight against crime, a considerable amount of assets are held offshore, unreported and untaxed, in third countries outside the Union. A comprehensive plan to discourage transfers of assets to third countries and to find an effective way to recover them would represent a major step forward.

Amendment 3

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 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.

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, ***civil and administrative*** proceedings.

Amendment 4

Proposal for a regulation

Recital 13

Text proposed by the Commission

(13) This Regulation should apply to 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 should therefore cover all types of orders covered by Directive 2014/42/EU, as well as other types of orders issued without final conviction within the framework of criminal proceedings. ***This Regulation should not apply to freezing and confiscation orders issued within the framework of civil or administrative proceedings.***

Amendment

(13) This Regulation should apply to all confiscation orders imposed by a court ***or a competent authority*** following proceedings in relation to a criminal, ***civil or administrative*** offence and all freezing orders issued with a view to possible subsequent confiscation. It should therefore cover all types of orders covered by Directive 2014/42/EU, as well as other types of orders issued without final conviction within the framework of criminal, ***civil and administrative*** proceedings.

Amendment 5

Proposal for a regulation

Recital 14

Text proposed by the Commission

(14) This Regulation should cover

Amendment

(14) This Regulation should cover

confiscation and freezing orders related to offences covered by Directive 2014/42/EU, as well as orders related to other offences. The offences should therefore not be limited to the areas of particularly serious *crime* with a cross-border dimension, as Article 82 TFEU does not require such limitation for measures laying down rules and procedures for ensuring mutual recognition of judgments in criminal matters.

confiscation and freezing orders related to offences covered by Directive 2014/42/EU, as well as orders related to other offences. The offences should therefore not be limited to the areas of particularly serious *crimes* with a cross-border dimension, as Article 82 TFEU does not require such limitation for measures laying down rules and procedures for ensuring mutual recognition of judgments in criminal matters. ***Tax fraud, aggravated tax fraud and tax evasion, for example, constitute particularly serious cross-border offences which should be included in the list of offences covered by this Regulation. However, given that in certain Member States such offences are not punishable by a custodial sentence of a maximum of at least three years, the maximum custodial sentence should be lowered to two years for those specific offences.***

Amendment 6

Proposal for a regulation Recital 18

Text proposed by the Commission

(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.

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, ***and Union legal acts regarding financial markets. Where non-conviction based confiscations constitute preventive confiscations following proceedings in relation to criminal activities, it is extremely important to ensure that the following strict conditions are met: non-conviction-based confiscations should only be imposed against a finite list of possible targets identified by law, such as suspects of organised crime or of terrorism; the prosecution should prove***

that the provenance of the property cannot be justified and that the property to be confiscated is either disproportionate with regard to the declared income or the activity carried out or is of illicit origin or the result of reinvestment of the proceeds of crime; and effective procedural safeguards should be in place in order to ensure that the targets of non-conviction-based confiscations have the right to a fair trial and the right to an effective remedy and that their presumption of innocence is respected.

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).

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 297, 4.11.2016, 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 297, 4.11.2016, p.1).

Amendment 7

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 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, ***civil and administrative*** proceedings.

Amendment 8

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

Text proposed by the Commission

(1) ‘confiscation order’ means a final penalty or measure imposed by a court following proceedings ***in relation to a criminal offence***, resulting in the final deprivation of property from a natural or legal person;

Amendment

(1) ‘confiscation order’ means a final penalty or measure imposed by a court ***or a competent authority*** following proceedings in relation to a criminal, ***civil or administrative*** offence, resulting in the final deprivation of property from a natural or legal person;

Amendment 9

Proposal for a regulation Article 2 – paragraph 1 – point 4

Text proposed by the Commission

(4) proceeds' means any economic

Amendment

(4) proceeds' means any economic

advantage derived directly or indirectly from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits;

advantage derived directly or indirectly from a criminal, ***civil or administrative*** offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits;

Amendment 10

Proposal for a regulation

Article 2 – paragraph 1 – point 5

Text proposed by the Commission

(5) 'instrumentalities' means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence ***or criminal offences*** ;

Amendment

(5) 'instrumentalities' means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal, ***civil or administrative*** offence;

Amendment 11

Proposal for a regulation

Article 2 – paragraph 1 – point 6

Text proposed by the Commission

(6) 'issuing State' means the Member State in which a freezing order or a confiscation order is issued within the framework of criminal proceedings;

Amendment

(6) 'issuing State' means the Member State in which a freezing order or a confiscation order is issued within the framework of criminal, ***civil and administrative*** proceedings;

Amendment 12

Proposal for a regulation

Article 2 – paragraph 1 – point 8 – point a – point 2

Text proposed by the Commission

(2) any other competent authority as defined by the issuing State which has competence in criminal proceedings to order the freezing of property or to execute a freezing order in accordance with national law. In addition, before it is transmitted to the executing authority the

Amendment

(2) any other competent authority as defined by the issuing State which has competence in criminal, ***civil and administrative*** proceedings to order the freezing of property or to execute a freezing order in accordance with national law. In addition, before it is transmitted to

freezing order shall be validated, after examination of its conformity with the conditions for issuing such an order under this Regulation, in particular the conditions set out in Article 13(1), by a judge, court, investigating judge or a public prosecutor in the issuing State. Where the order has been validated by such an authority, that authority may also be regarded as an issuing authority for the purposes of transmission of the order;

the executing authority the freezing order shall be validated, after examination of its conformity with the conditions for issuing such an order under this Regulation, in particular the conditions set out in Article 13(1), by a judge, court, investigating judge or a public prosecutor in the issuing State. Where the order has been validated by such an authority, that authority may also be regarded as an issuing authority for the purposes of transmission of the order;

Amendment 13

Proposal for a regulation

Article 2 – paragraph 1 – point 8 – point b

Text proposed by the Commission

(b) in respect of a confiscation order, a competent authority as defined by the issuing State which, in criminal proceedings, has competence to enforce a confiscation order issued by a court in accordance with national law;

Amendment

(b) in respect of a confiscation order, a competent authority as defined by the issuing State which, in criminal, ***civil and administrative*** proceedings, has competence to enforce a confiscation order issued by a court in accordance with national law;

Amendment 14

Proposal for a regulation

Article 3 – paragraph 1 – indent 12

Text proposed by the Commission

- ***computer-related crime,***

Amendment

– ***cybercrime,***

Amendment 15

Proposal for a regulation

Article 3 – paragraph 1 – indent 18

Text proposed by the Commission

- racism ***and*** xenophobia,

Amendment

- racism, xenophobia ***and***

antisemitism,

Amendment 16

Proposal for a regulation

Article 3 – paragraph 1 – indent 21 a (new)

Text proposed by the Commission

Amendment

- *market abuse,*

Amendment 17

Proposal for a regulation

Article 3 – paragraph 1 – indent 21 b (new)

Text proposed by the Commission

Amendment

- *manipulation of indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds,*

Amendment 18

Proposal for a regulation

Article 3 – paragraph 1 – indent 21 c (new)

Text proposed by the Commission

Amendment

- *manipulation of markets in financial instruments,*

Amendment 19

Proposal for a regulation

Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

- Ia. A freezing order or confiscation order shall give rise to execution without verification of the double criminality of the acts if the acts giving rise to the freezing or confiscation order constitute*

one or more of the following offences, as defined by the law of the issuing State, and are punishable in the issuing State by a custodial sentence of a maximum of at least two years:

- *tax fraud,*
- *aggravated tax fraud,*
- *tax evasion.*

Amendment 20

Proposal for a regulation

Article 3 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. *The Commission is empowered to adopt delegated acts in accordance with Article 37 concerning the regular update of the list of offences in paragraph 1.*

Amendment 21

Proposal for a regulation

Article 9 – paragraph 1 – subparagraph 1 – point f

Text proposed by the Commission

Amendment

(f) if, in a case referred to in Article 3(2), the conduct on which the confiscation order is based does not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, execution of the confiscation order shall not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing State;

(f) if, in a case referred to in Article 3(2), the conduct on which the confiscation order is based does not constitute an offence under the law of the executing State; however, in relation to taxes or duties, customs and exchange, execution of the confiscation order shall not be refused on the ground that the law of the executing State does not impose the same kind of tax or duty or does not contain the same type of rules *or offences* as regards taxes, duties and customs and exchange regulations as the law of the issuing State;

Amendment 22

Proposal for a regulation

Article 9 – paragraph 2

Text proposed by the Commission

2. In the cases referred to in paragraph 1, before deciding not to recognise and execute the confiscation order, either in whole or in part, the executing authority shall consult the issuing authority by any appropriate means and shall, where appropriate, request the issuing authority to supply any necessary information without delay.

Amendment

2. In the cases referred to in paragraph 1, before deciding not to recognise and execute the confiscation order, either in whole or in part, the executing authority shall consult the issuing authority by any appropriate means ***that produces a written record*** and shall, where appropriate, request the issuing authority to supply any necessary information without delay.

Amendment 23

Proposal for a regulation

Article 20 – paragraph 1 – point 4

Text proposed by the Commission

(4) However, this point shall only apply where such an order would have priority over subsequent national freezing orders in criminal proceedings under national law.

Amendment

(4) However, this point shall only apply where such an order would have priority over subsequent national freezing orders in criminal, ***civil or administrative*** proceedings under national law.

Amendment 24

Proposal for a regulation

Article 31 – paragraph 1

Text proposed by the Commission

1. The executing State shall manage the frozen or confiscated property with a view to preventing its depreciation in value, and in accordance with Article 10 of Directive 2014/42/EU.

Amendment

1. The executing State shall manage the frozen or confiscated property with a view to preventing its depreciation in value, and in accordance with Article 10 of Directive 2014/42/EU. ***A proper assessment of all confiscated goods shall be carried out by the executing Member State. In order to guarantee the security of assets subject to seizure or confiscation, the judicial authority may use legal***

professionals entrusted with public functions, such as notaries.

Amendment 25

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, **75 %** of the amount shall be transferred by the executing State to the issuing State ***minus the costs relating to the execution of the confiscation order, without exceeding 50 % of the amount.***

Amendment 26

Proposal for a regulation

Article 35 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. The Commission shall submit an annual report to the European Parliament, to the Council and to the European Economic and Social Committee compiling statistics collected and accompanied by a comparative analysis.

Amendment 27

Proposal for a regulation

Article 38 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. By ... [one year from the date of application of this Regulation], the Commission shall submit an assessment

to the European Parliament, to the Council and to the European Economic and Social Committee on the statistics relating to, and impact of, preventive confiscation orders and the consequences on cross-border cooperation in the event of the extension of such orders to all Member States.

Amendment 28

Proposal for a regulation

Annex I – section H – point 3 – indent 12

Text proposed by the Commission

- *computer-related crime,*

Amendment

– *cybercrime,*

Amendment 29

Proposal for a regulation

Annex I – section H – point 3 – indent 18

Text proposed by the Commission

□ *racism and xenophobia*

Amendment

□ *racism, xenophobia and antisemitism*

Amendment 30

Proposal for a regulation

Annex I – section H – point 3 – indent 21 a (new)

Text proposed by the Commission

Amendment

□ *market abuse,*

Amendment 31

Proposal for a regulation

Annex I – section H – point 3 – indent 21 b (new)

Text proposed by the Commission

Amendment

- manipulation of indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds,*

Amendment 32

Proposal for a regulation

Annex I – section H – point 3 – indent 21 c (new)

Text proposed by the Commission

Amendment

- manipulation of markets in financial instruments,*

Amendment 33

Proposal for a regulation

Annex I – section H – point 3 a (new)

Text proposed by the Commission

Amendment

3a. *Is the offence for which the confiscation order is issued punishable in the issuing State by a custodial sentence or detention order of a maximum of at least two years as defined by the law of the issuing State and included in the list of offences set out below? (please tick the relevant box)*

- *tax fraud,*
- *aggravated tax fraud,*
- *tax evasion.*

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	ECON 13.2.2017
Rapporteur Date appointed	Fulvio Martusciello 11.4.2017
Discussed in committee	4.9.2017 9.10.2017
Date adopted	6.11.2017
Result of final vote	+: 39 -: 1 0: 2
Members present for the final vote	Hugues Bayet, Pervenche Berès, Esther de Lange, Markus Ferber, Jonás Fernández, Neena Gill, Roberto Gualtieri, Brian Hayes, Gunnar Hökmark, Danuta Maria Hübner, Petr Ježek, Wajid Khan, Georgios Kyrtos, Werner Langen, Bernd Lucke, Olle Ludvigsson, Fulvio Martusciello, Gabriel Mato, Bernard Monot, Luděk Niedermayer, Anne Sander, Alfred Sant, Molly Scott Cato, Pedro Silva Pereira, Peter Simon, Theodor Dumitru Stolojan, Kay Swinburne, Paul Tang, Ramon Tremosa i Balcells, Marco Valli
Substitutes present for the final vote	Enrique Calvet Chambon, Mady Delvaux, Eva Joly, Jan Keller, Alain Lamassoure, Thomas Mann, Miguel Urbán Crespo, Lieve Wierinck
Substitutes under Rule 200(2) present for the final vote	Pascal Durand, Maria Heubuch, Carlos Iturgaiz, Gabriele Preuß

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

39	+
ALDE	Enrique Calvet Chambon, Petr Ježek, Ramon Tremosa i Balcells, Lieve Wierinck
EFDD	Marco Valli
GUE/NGL	Miguel Urbán Crespo
PPE	Esther de Lange, Markus Ferber, Brian Hayes, Gunnar Hökmark, Danuta Maria Hübner, Carlos Iturgaiz, Georgios Kyrtzos, Alain Lamassoure, Werner Langen, Thomas Mann, Fulvio Martusciello, Gabriel Mato, Luděk Niedermayer, Anne Sander, Theodor Dumitru Stolojan
S&D	Hugues Bayet, Pervenche Berès, Mady Delvaux, Jonás Fernández, Neena Gill, Roberto Gualtieri, Jan Keller, Wajid Khan, Olle Ludvigsson, Gabriele Preuß, Alfred Sant, Pedro Silva Pereira, Peter Simon, Paul Tang
VERTS/ALE	Pascal Durand, Maria Heubuch, Eva Joly, Molly Scott Cato

1	-
ENF	Bernard Monot

2	0
ECR	Bernd Lucke, Kay Swinburne

Key to symbols:

+ : in favour

- : against

0 : abstention