



**2016/0412(COD)**

28.9.2017

**\*\*\*I**

## **DRAFT REPORT**

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))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Nathalie Griesbeck

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	45



## DRAFT EUROPEAN PARLIAMENT 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  
(COM(2016)0819 – C8-0002/2017 – 2016/0412(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0819),
  - having regard to Article 294(2) and Article 82(1)(a) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0002/2017),
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Czech Senate, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to Rule 59 of its Rules of Procedure,
  - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs (A8-0000/2017),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **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

*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.

established by a legally binding and directly applicable legal act of the Union.  
***A regulation improves clarity and legal certainty, eliminates the problems of transposition into national systems and thus allows freezing and confiscation orders to be more rapidly and effectively enforced.***

Or. fr

### *Justification*

*The Commission's choice of a regulation, i.e. a directly enforceable legal instrument, is a genuine step forward. This is the most appropriate and effective form for such a mutual recognition instrument.*

## **Amendment 2**

### **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 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 and in the Charter of Fundamental Rights of the European Union (hereinafter 'the Charter')**.

Or. fr

## **Amendment 3**

### **Proposal for a regulation**

#### **Recital 20 a (new)**

#### *Text proposed by the Commission*

#### *Amendment*

***(20a) With a view to ensuring the transmission of the freezing and confiscation order to the competent authority of the executing State, the issuing authority should be able to make***

*use of any possible or relevant means of transmission, for example the secure telecommunications system of the European Judicial Network, Eurojust, or other channels used by judicial authorities.*

Or. fr

*Justification*

*Harmonisation with other European mutual recognition instruments. Seeks to facilitate the transmission of orders by the issuing state.*

**Amendment 4**

**Proposal for a regulation**  
**Recital 20 b (new)**

*Text proposed by the Commission*

*Amendment*

*(20b) The designation by the Member States of one or more central authorities, which may clearly play an administrative support and coordination role, is a key element in supporting the rapid mutual recognition of freezing and confiscation orders between the issuing and enforcing authorities and in speeding up these mutual recognition procedures. With that in mind, the European Judicial Network should also be strengthened to help the issuing and executing authorities to communicate more quickly with each other and cooperate more effectively.*

Or. fr

*Justification*

*Article 27(2) of the proposal for a regulation mentions the possibility for Member States of appointing a central authority to support and assist the competent national authorities, though it does not specify the role or importance of such authorities. However, these central authorities could provide genuine added value in facilitating mutual recognition, given the inadequacy of the current regime.*

## Amendment 5

### Proposal for a regulation

#### Recital 21

*Text proposed by the Commission*

(21) A confiscation order should be transmitted together with a standard certificate.

*Amendment*

(21) A confiscation **or freezing** order should be transmitted together with a standard certificate.

Or. fr

#### *Justification*

*For the purposes of simplification, it is useful to coordinate the mutual recognition procedures for freezing and confiscation orders respectively; accordingly, these two orders should each be accompanied by a certificate (in Annexes I and II).*

## Amendment 6

### Proposal for a regulation

#### Recital 21 a (new)

*Text proposed by the Commission*

*Amendment*

***(21a) When making a declaration concerning the language regime they are adopting pursuant to this Regulation, Member States should include at least one official language of the European Union other than their official language(s).***

Or. fr

#### *Justification*

*Harmonisation with other European mutual recognition instruments. The linguistic diversity of the EU should of course be defended, but should not be an obstacle to mutual recognition procedures. Accordingly, a Member State should agree to receive freezing or confiscation orders in at least one language other than its national language.*

## Amendment 7

### Proposal for a regulation

#### Recital 23



*Text proposed by the Commission*

(23) ***In light of the urgency of freezing and of its provisional nature, a freezing order should be issued in a standard form.***

The issuing authority should ascertain whether issuing the freezing order is necessary and proportionate for the purpose of provisionally preventing the destruction, transformation, moving, transfer or disposal of property. To align the conditions for issuing freezing orders in domestic and cross-border cases, a freezing order under this Regulation should be issued only when it could have been ordered in a similar domestic case.

*Amendment*

(23) The issuing authority should ascertain whether issuing the freezing order is necessary and proportionate for the purpose of provisionally preventing the destruction, transformation, moving, transfer or disposal of property. To align the conditions for issuing freezing orders in domestic and cross-border cases, a freezing order under this Regulation should be issued only when it could have been ordered in a similar domestic case.

Or. fr

*Justification*

*For the purposes of simplification, it is useful to coordinate the mutual recognition procedures for the freezing and confiscation orders respectively; accordingly, these two orders should each be accompanied by a certificate (in Annexes I and II).*

## **Amendment 8**

### **Proposal for a regulation Recital 25**

*Text proposed by the Commission*

(25) ***In*** the execution of a freezing order, the issuing authority and the executing authority should take due account of the confidentiality of the investigation. In particular, the executing authority should guarantee the confidentiality of the facts and the substance of the freezing order.

*Amendment*

(25) ***Without prejudice to the right to information of any person concerned, in*** the execution of a freezing order, the issuing authority and the executing authority should take due account of the confidentiality of the investigation. In particular, the executing authority should guarantee the confidentiality of the facts and the substance of the freezing order.

Or. fr

*Justification*

*It is necessary to clarify the relationship between the obligation to supply information and the requirements of confidentiality. The confidential nature of an inquiry must not mean that a person is deprived of his or her right to information.*

**Amendment 9**

**Proposal for a regulation**  
**Recital 26 a (new)**

*Text proposed by the Commission*

*Amendment*

***(26a) The principle of ne bis in idem is a fundamental principle of law in the Union, as recognised by the Charter and developed by the case-law of the Court of Justice of the European Union. Therefore the executing authority should be entitled to refuse to execute a confiscation or freezing order if execution would be contrary to that principle.***

Or. fr

*Justification*

*Harmonisation with other European mutual recognition instruments. Importance of the ne bis in idem principle in criminal and European law.*

**Amendment 10**

**Proposal for a regulation**  
**Recital 26 b (new)**

*Text proposed by the Commission*

*Amendment*

***(26b) The creation of an area of freedom, security and justice within the Union is based on mutual confidence and a presumption of compliance by other Member States with Union law and, in particular, with fundamental rights. However, that presumption is rebuttable. Consequently, if there are substantial grounds for believing that the execution of a confiscation or freezing order would***

*result in a breach of a fundamental right of the person concerned and that the executing State would disregard its obligations concerning the protection of fundamental rights recognised in the Charter, execution of the confiscation or freezing order should be refused.*

Or. fr

### *Justification*

*Les instruments de reconnaissance mutuelle contiennent, très souvent, une clause de non-reconnaissance fondée sur le respect des droits fondamentaux, soit implicite (Décision-cadre 2002/584), soit explicite (Décision-cadre 2005/214/JHA, Directive 2014/41/UE), en outre développée par le droit national. Deuxièmement, la Cour de Justice de l'Union européenne a confirmé l'existence et l'importance d'une telle clause (arrêt Aranyosi/Caldararu du 5 avril 2016 - C404/15). Troisièmement, l'insertion d'une telle clause pourra permettre de prévenir une contradiction possible entre le droit européen et le droit constitutionnel national. Dès lors il est important d'avoir une telle clause dans ce règlement européen.*

## **Amendment 11**

### **Proposal for a regulation Recital 26 c (new)**

*Text proposed by the Commission*

*Amendment*

*(26c) This Regulation respects the fundamental rights and observes the principles recognised by Article 6 of the TEU and in the Charter, notably Title VI thereof, by international law and international agreements to which the Union or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and in Member States' constitutions in their respective fields of application. Nothing in this Regulation may be interpreted as prohibiting refusal to execute a confiscation or freezing order when there are reasons to believe, on the basis of objective elements, that the confiscation or freezing order has been issued for the purpose of prosecuting or punishing a*

*person on account of his or her sex, racial or ethnic origin, religion, sexual orientation, nationality, language or political opinions, or that the person's position may be prejudiced for any of these reasons.*

Or. fr

### *Justification*

*Les instruments de reconnaissance mutuelle contiennent, très souvent, une clause de non-reconnaissance fondée sur le respect des droits fondamentaux, soit implicite (Décision-cadre 2002/584), soit explicite (Décision-cadre 2005/214/JHA, Directive 2014/41/UE), en outre développée par le droit national. Deuxièmement, la Cour de Justice de l'Union européenne a confirmé l'existence et l'importance d'une telle clause (arrêt Aranyosi/Caldararu du 5 avril 2016 - C404/15). Troisièmement, l'insertion d'une telle clause pourra permettre de prévenir une contradiction possible entre le droit européen et le droit constitutionnel national. Enfin, la jurisprudence de la CEDH a mis en lumière des difficultés, dans certains États membres, en matière de confiscation et de respect des droits fondamentaux. Dès lors il est important d'avoir une telle clause dans ce Règlement européen.*

## **Amendment 12**

### **Proposal for a regulation**

#### **Recital 26 d (new)**

*Text proposed by the Commission*

*Amendment*

*(26d) It is vital to take into account the rights of any third party affected by an order for the confiscation or freezing of specified property, for example because he is the owner of such property but has been unable to assert his rights in the proceedings in the issuing Member State because he is not a party to those proceedings. Accordingly, an executing authority should have the right to refuse to recognise or execute a confiscation or freezing order where it 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.*

*Justification*

*It is essential to take into consideration in the regulation the rights of third persons acting in good faith who could be affected by a confiscation or freezing order.*

**Amendment 13****Proposal for a regulation  
Recital 32 a (new)**

*Text proposed by the Commission*

*Amendment*

***(32a) Property frozen with a view to later confiscation, and property confiscated, should be managed adequately in order not to lose its economic value, to encourage its reuse for social purposes and to avoid the risk of further criminal infiltration. Accordingly, Member States should take the necessary measures, including sale or transfer of the property, to minimise such losses and to favour social aims. They should adopt all appropriate legislative or other measures such as the creation of centralised national property management offices or equivalent arrangements, with a view to the proper management of frozen or confiscated property. To that end, it would be useful to consider the formation of a Union fund that would collect a part of the confiscated assets from Member States. Such a fund should be accessible for pilot projects from EU citizens, associations, NGO groupings and any other civil society organisation, in order to encourage the effective reuse of confiscated property for social purposes.***

Or. fr

*Justification*

*It is important to promote, at European level and within the Member States, the best possible management of frozen and confiscated property and its reuse for social purposes, for the*

*compensation of victims, victims' families, and businesses which are victims of organised crime, or in order to combat organised crime.*

#### **Amendment 14**

##### **Proposal for a regulation Recital 32 b (new)**

*Text proposed by the Commission*

*Amendment*

***(32b) The practice of using confiscated assets for social purposes fosters and sustains the dissemination of a culture of legality, assistance to crime victims and action against organised crime, hence creating 'virtuous' mechanisms, which may also be implemented through non-governmental organisations, that benefit society and the socio-economic development of an area, using objective criteria. Accordingly, the Member States should be encouraged to develop such practices.***

Or. fr

#### *Justification*

*It is important to promote, at European level and within the Member States, the best possible management of frozen and confiscated property and its reuse for social purposes, for the compensation of victims, victims' families, and businesses which are victims of organised crime, or in order to combat organised crime.*

#### **Amendment 15**

##### **Proposal for a regulation Recital 32 c (new)**

*Text proposed by the Commission*

*Amendment*

***(32c) In order that civil society may concretely perceive the effectiveness of the action of the Member States against organised crime, including mafia-type crime, and that proceeds are actually taken away from the criminals, it is necessary to adopt common measures to***

*prevent criminal organisations from recovering possession of property illicitly obtained. Best practice in several Member States has shown that the following are effective tools: management and administration by Asset Management Offices (AMO) or similar mechanisms, as well as the use of the confiscated property for projects aimed at eliminating and preventing crime, and for other institutional or public purposes or social use.*

Or. fr

#### *Justification*

*It is important to promote, at European level and within the Member States, the best possible management of frozen and confiscated property and its reuse for social purposes, for the compensation of victims, victims' families, and businesses which are victims of organised crime, or in order to combat organised crime.*

#### **Amendment 16**

##### **Proposal for a regulation**

##### **Recital 35**

*Text proposed by the Commission*

*Amendment*

**(35) *In order to amend the certificate and the form set out in Annexes I and II to this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work for delegated acts, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.***

***deleted***

Or. fr

### *Justification*

*All the information appearing in the two certificates (in Annexes I and II) should, for reasons of legal certainty, be determined and laid down by the legislative authority. Delegation of powers for this purpose is neither necessary nor appropriate.*

### **Amendment 17**

#### **Proposal for a regulation**

#### **Article 1 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. The issuing authority shall ensure, when issuing a freezing or confiscation order, that the principles of necessity and proportionality are respected.***

Or. fr

### *Justification*

*Introduction of the principles of proportionality and necessity.*

### **Amendment 18**

#### **Proposal for a regulation**

#### **Article 2 – paragraph 1 – point 1**

*Text proposed by the Commission*

*Amendment*

(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;

(1) ‘confiscation order’ means a final 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;

Or. fr

### *Justification*

*This amendment is important to avoid confusion with financial ‘penalties’ or ‘sanctions’.*



## Amendment 19

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 3 – introductory part

Text proposed by the Commission

Amendment

(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 :

*(Does not affect the English version.)*

Or. fr

#### *Justification*

*[Aligning French text with the definition in Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.]*

## Amendment 20

### Proposal for a regulation

#### Article 3 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. 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 three years: :***

- ***participation in a criminal organisation,***
- ***terrorism,***
- ***trafficking in human beings,***
- ***sexual exploitation of children and child pornography,***
- ***illicit trafficking in narcotic drugs***

1. 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 ***referred to in Article 2(2) of Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States<sup>1a</sup>.***

*and psychotropic substances,*

- *illicit trafficking in weapons, munitions and explosives,*
- *corruption,*
- *fraud and fraud-related criminal offences as defined in Directive 2017/xxx/EU on the fight against fraud to the Union's financial interests by means of criminal law,*
- *fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,*
- *laundering of the proceeds of crime,*
- *counterfeiting currency, including the euro,*
- *computer-related crime,*
- *environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,*
- *facilitation of unauthorised entry and residence,*
- *murder, grievous bodily injury,*
- *illicit trade in human organs and tissue,*
- *kidnapping, illegal restraint and hostage-taking,*
- *racism and xenophobia,*
- *organised or armed robbery,*
- *illicit trafficking in cultural goods, including antiques and works of art,*
- *swindling,*
- *racketeering and extortion,*
- *counterfeiting and piracy of products,*
- *forgery of administrative*

- documents and trafficking thereof,*
- *fraud and counterfeiting of non-cash means of payment,*
  - *illicit trafficking in hormonal substances and other growth promoters,*
  - *illicit trafficking in nuclear or radioactive materials,*
  - *trafficking in stolen vehicles,*
  - *rape,*
  - *arson,*
  - *crimes within the jurisdiction of the International Criminal Court,*
  - *unlawful seizure of aircraft or ships,*
  - *sabotage.*

---

*<sup>1a</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member State (OJ L 190, 18.7.2002, p. 1).*

Or. fr

#### *Justification*

*For reasons of legal certainty and consistency with other EU mutual recognition instruments, it is necessary to refer directly to the list set out in Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.*

### **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

##### *Amendment*

1. A confiscation order 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

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.

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.

Or. fr

#### *Justification*

*For the purposes of simplification, it is useful to coordinate the recognition procedures for the freezing and confiscation orders respectively. Furthermore, reference to a 'certified copy' provides no added value and does not appear in any of the existing instruments for the mutual recognition of freezing and confiscation orders.*

### **Amendment 22**

#### **Proposal for a regulation**

##### **Article 5 – paragraph 2 – introductory part**

###### *Text proposed by the Commission*

2. A confiscation order concerning specific items of property may be transmitted to more than one executing State at the same time where:

###### *Amendment*

2. ***Without prejudice to paragraph 1,*** a confiscation order concerning specific items of property may be transmitted to more than one executing State at the same time where:

Or. fr

#### *Justification*

*Amendment to clarify the relationship between paragraphs 1 and 2.*

### **Amendment 23**

#### **Proposal for a regulation**

##### **Article 5 – paragraph 3 – introductory part**

###### *Text proposed by the Commission*

3. A confiscation order concerning an amount of money may be transmitted to more than one executing State at the same time, where the issuing authority deems that there is a specific need to do so, in

###### *Amendment*

3. ***Without prejudice to paragraph 1,*** a confiscation order concerning an amount of money may be transmitted to more than one executing State at the same time, where the issuing authority deems that

particular where:

there is a specific need to do so, in particular where:

Or. fr

*Justification*

*Amendment to clarify the relationship between paragraphs 1 and 3.*

**Amendment 24**

**Proposal for a regulation**

**Article 6 – paragraph 3 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

The issuing authority shall immediately inform the executing authority by any means capable of producing a written record:

The issuing authority shall immediately **and at the latest within 24 hours** inform the executing authority by any means capable of producing a written record:

Or. fr

*Justification*

*Des limitations temporelles précises sont nécessaires pour garantir une coopération rapide, efficace et cohérente entre les États membres en matière de reconnaissance mutuelle des décisions de gel ou confiscation et il y a lieu de fixer des délais serrés pour accélérer le processus. En outre, dans la mesure où une décision de confiscation peut être transmise à plusieurs États membres d'exécution, il est nécessaire d'imposer une obligation stricte d'information entre États membres, pour éviter tout risque d'exécution simultanée d'une décision de gel ou confiscation dans plusieurs États membres.*

**Amendment 25**

**Proposal for a regulation**

**Article 7 – title**

*Text proposed by the Commission*

*Amendment*

Standard certificate

Standard certificate **for issuing a confiscation order**

Or. fr

### *Justification*

*For the purposes of simplification, the recognition procedures for freezing and confiscation orders should be harmonised. Each of these two orders should accordingly be accompanied by a certificate (as shown in Annexes I and II).*

## **Amendment 26**

### **Proposal for a regulation**

#### **Article 8 – paragraph 4**

##### *Text proposed by the Commission*

4. As soon as the execution of the order has been completed the executing authority shall **inform** the issuing authority by any means capable of producing a written record.

##### *Amendment*

4. As soon as the execution of the order has been completed the executing authority shall **immediately and at the latest within 12 hours notify** the issuing authority by any means capable of producing a written record.

Or. fr

### *Justification*

*Precise time limits are needed to guarantee prompt, effective and consistent cooperation between Member States regarding the mutual recognition of freezing or confiscation orders and tight deadlines should be set in order to speed up the process.*

## **Amendment 27**

### **Proposal for a regulation**

#### **Article 9 – paragraph -1 (new)**

##### *Text proposed by the Commission*

##### *Amendment*

**-1. The issuing authority may refuse to recognise and execute a confiscation order if the certificate provided for in Article 7 is incomplete, manifestly incorrect or manifestly does not correspond to the confiscation order, and has not been completed following the consultation provided for in paragraph 2.**

Or. fr

*Justification*

*The first ground justifying non-recognition and non-execution of a confiscation order (incomplete or incorrect certificate) should be provided for in a ‘may’ clause. In contrast, the other grounds referred to in Article 9 concern situations that can all be regarded as serious. In those circumstances, the Member State concerned should be required to refuse recognition and execution (‘must’ clause).*

**Amendment 28**

**Proposal for a regulation**

**Article 9 – paragraph 1 –introductory part**

*Text proposed by the Commission*

*Amendment*

The executing authority **may** decide not to recognise and not to execute the freezing order **only** if:

The executing authority **must** decide not to recognise and not to execute the freezing order if:

Or. fr

*Justification*

*The first ground justifying non-recognition and non-execution of a confiscation order (incomplete or incorrect certificate) should be provided for in a ‘may’ clause. In contrast, the other grounds referred to in Article 9 concern situations that can all be regarded as serious. In those circumstances, the Member State concerned should be required to refuse recognition and execution (‘must’ clause).*

**Amendment 29**

**Proposal for a regulation**

**Article 9 – paragraph 1 –point a**

*Text proposed by the Commission*

*Amendment*

**(a) the certificate provided for in Article 7 is incomplete, manifestly incorrect or manifestly does not correspond to the confiscation order, and has not been completed following the consultation in accordance with paragraph 2;**

**deleted**

Or. fr

### *Justification*

*Voir l'amendement sur l'Article 9 - paragraphe 1 - nouveau sous paragraphe 1. Le premier motif de non-reconnaissance et de non-exécution d'une décision de confiscation (fondé sur le caractère incomplet ou incorrect du certificat) devrait être une possibilité pour les États membres (may-clause). En revanche les autres motifs de non-reconnaissance et de non-exécution des décisions de confiscation figurant à l'article 9 visent des situations qui peuvent toutes être considérées comme graves. À cet égard, l'État membre devrait plus fermement être tenu de refuser la reconnaissance et l'exécution (must-clause).*

### **Amendment 30**

#### **Proposal for a regulation**

#### **Article 9 – paragraph 1 –point d a (new)**

*Text proposed by the Commission*

*Amendment*

***(da) 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;***

Or. fr

### *Justification*

*The regulation must take account of the rights of third persons or bona fide third parties who could be affected by a confiscation or freezing order and who were not able to take part in the proceedings in the issuing State.*

### **Amendment 31**

#### **Proposal for a regulation**

#### **Article 9 – paragraph 1 –point g a (new)**

*Text proposed by the Commission*

*Amendment*

***(ga) there are substantial grounds for believing that executing the confiscation order would be incompatible with the obligations of the executing State in accordance with Article 6 of the Treaty on***



*Justification*

*Les instruments de reconnaissance mutuelle contiennent, très souvent, une clause de non-reconnaissance fondée sur le respect des droits fondamentaux, soit implicite (Décision-cadre 2002/584), soit explicite (Décision-cadre 2005/214/JHA, Directive 2014/41/UE), en outre développée par le droit national. Deuxièmement, la Cour de Justice de l'Union européenne a confirmé l'existence et l'importance d'une telle clause (arrêt Aranyosi/Caldararu du 5 avril 2016 - C404/15). Troisièmement, l'insertion d'une telle clause pourra permettre de prévenir une contradiction possible entre le droit européen et le droit constitutionnel national. Enfin, la jurisprudence de la CEDH a mis en lumière des difficultés, dans certains États membres en matière de confiscation et de respect des droits fondamentaux. Dès lors il est important d'avoir une telle clause dans ce Règlement européen.*

**Amendment 32**

**Proposal for a regulation  
Article 10 – paragraph 2**

*Text proposed by the Commission*

2. The executing authority shall take the decision on the recognition and execution of the confiscation order without delay and, without prejudice to paragraph 5, no later than **30** days after the executing authority has received the confiscation order.

*Amendment*

2. The executing authority shall take the decision on the recognition and execution of the confiscation order without delay and, without prejudice to paragraph 5, no later than **15** days after the executing authority has received the confiscation order.

*Justification*

*Precise time limits are needed to guarantee prompt, effective and consistent cooperation between Member States regarding the mutual recognition of freezing or confiscation orders and tight deadlines should be set in order to speed up the process.*

**Amendment 33**

**Proposal for a regulation  
Article 10 – paragraph 2 a (new)**

**2a.** *Where the issuing authority has legitimate grounds to believe that the property in question will imminently be moved or destroyed and that immediate confiscation is necessary, it shall indicate in the confiscation order that the measure has to be carried out on a specific date; the executing authority shall take full account of this requirement and execute the confiscation order by the specified deadline.*

Or. fr

*Justification*

*Precise time limits are needed to guarantee prompt, effective and consistent cooperation between Member States regarding the mutual recognition of freezing or confiscation orders and tight deadlines should be set in order to speed up the process.*

**Amendment 34**

**Proposal for a regulation  
Article 10 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. The executing authority shall communicate the decision on a confiscation order to the issuing authority ***without delay*** by any means capable of producing a written record.

3. The executing authority shall communicate the decision on a confiscation order to the issuing authority ***immediately*** by any means capable of producing a written record.

Or. fr

*Justification*

*Precise time restrictions are needed to guarantee prompt, effective and consistent cooperation between Member States regarding the mutual recognition of freezing or confiscation orders and tight deadlines should be set in order to speed up the process.*

## Amendment 35

### Proposal for a regulation

#### Article 12 a (new)

*Text proposed by the Commission*

*Amendment*

#### **Article 12a**

##### ***Obligation to inform the interested parties***

***1. Following the execution of the confiscation order, the executing authority shall notify its decision to the person against whom the confiscation order has been issued and to any interested party, including bona fide third parties.***

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

Or. fr

#### *Justification*

*The right to information in criminal proceedings is a fundamental right laid down in the Charter of Fundamental Rights of the European Union and secondary EU legislation. The regulation must take account of the rights of third persons or bona fide third parties who could be affected by a confiscation or freezing order and of their right to information.*

## Amendment 36

### Proposal for a regulation

#### Article 14 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. A freezing order shall be transmitted in the ***form*** referred to in Article 16 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

1. A freezing order shall be transmitted in the ***certificate*** referred to in Article 16 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.

conditions allowing the executing authority to establish authenticity.

Or. fr

*Justification*

*In order to simplify matters, procedures for the recognition of freezing and confiscation orders should be brought into line with each other. Each of these two orders should accordingly be accompanied by a certificate (as shown in Annexes I and II).*

**Amendment 37**

**Proposal for a regulation**

**Article 14 – paragraph 5 – point b**

*Text proposed by the Commission*

(b) shall contain an instruction that the property shall remain in the executing State pending the transmission of a confiscation order in accordance with Article 4. The issuing authority shall indicate the estimated date for this transmission in the *form* referred to in Article 16.

*Amendment*

(b) shall contain an instruction that the property shall remain in the executing State pending the transmission of a confiscation order in accordance with Article 4. The issuing authority shall indicate the estimated date for this transmission in the *certificate* referred to in Article 16.

Or. fr

*Justification*

*In order to simplify matters, procedures for the recognition of freezing and confiscation orders should be brought into line with each other. Each of these two orders should accordingly be accompanied by a certificate (as shown in Annexes I and II).*

**Amendment 38**

**Proposal for a regulation**

**Article 15 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. A freezing order concerning specific items of property may be transmitted to more than one executing State at the same time where:

*Amendment*

2. ***Without prejudice to paragraph 1,*** a freezing order concerning specific items of property may be transmitted to more than one executing State at the same time

where:

Or. fr

*Justification*

*Amendment to clarify the relationship between paragraphs 1 and 2.*

**Amendment 39**

**Proposal for a regulation**

**Article 15 – paragraph 3**

*Text proposed by the Commission*

3. A freezing order concerning an amount of money may be transmitted to more than one executing State at the same time, where the issuing authority deems there is a specific need to do so, in particular where the estimated value of the property which may be frozen in the issuing State and in any one executing State is not likely to be sufficient for the execution of the full amount covered by the freezing order.

*Amendment*

3. ***Without prejudice to paragraph 1,*** a freezing order concerning an amount of money may be transmitted to more than one executing State at the same time, where the issuing authority deems there is a specific need to do so, in particular where the estimated value of the property which may be frozen in the issuing State and in any one executing State is not likely to be sufficient for the execution of the full amount covered by the freezing order.

Or. fr

*Justification*

*Amendment to clarify the relationship between paragraphs 1 and 2.*

**Amendment 40**

**Proposal for a regulation**

**Article 16 – title**

*Text proposed by the Commission*

***Form of*** the freezing order

*Amendment*

***Standard certificate for issuing a*** freezing order

Or. fr

*Justification*

*In order to simplify matters, procedures for the recognition of freezing and confiscation orders should be brought into line with each other. Each of these two orders should accordingly be accompanied by a certificate (as shown in Annexes I and II).*

**Amendment 41**

**Proposal for a regulation  
Article 16 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. *The freezing order shall be issued in the form set out in Annex II.*

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

Or. fr

*Justification*

*In order to simplify matters, procedures for the recognition of freezing and confiscation orders should be brought into line with each other. Each of these two orders should accordingly be accompanied by a certificate (as shown in Annexes I and II).*

**Amendment 42**

**Proposal for a regulation  
Article 16 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. *The issuing authority shall complete the form, sign it and certify its content as accurate and correct.*

*deleted*

Or. fr

*Justification*

*In order to simplify matters, procedures for the recognition of freezing and confiscation orders should be brought into line with each other. Each of these two orders should accordingly be accompanied by a certificate (as shown in Annexes I and II).*

## Amendment 43

### Proposal for a regulation

#### Article 17 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***As soon as the execution of the order has been completed the executing authority shall notify this fact immediately, and at the latest within 12 hours, to the issuing authority by any means capable of producing a written record.***

Or. fr

#### *Justification*

*In order to simplify matters, procedures for the recognition of freezing and confiscation orders should be brought into line with each other (cf Article 8(4)). Precise time limits are needed to guarantee prompt, effective and consistent cooperation between Member States regarding the mutual recognition of freezing or confiscation orders and tight deadlines should be set in order to speed up the process.*

## Amendment 44

### Proposal for a regulation

#### Article 17 – paragraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

***In addition, the executing authority shall report on the measures taken for the execution of the freezing order and the results thereof, including a description of the property frozen and an estimation of its value, to the issuing authority within three days of the execution of the order by any means capable of producing a written record.***

Or. fr

#### *Justification*

*For the purposes of simplification, the recognition procedures for the freezing and*

*confiscation orders and the provisions concerning them should be harmonised. Please see the amendment deleting Article 25.*

## **Amendment 45**

### **Proposal for a regulation**

#### **Article 18 – paragraph -1 (new)**

*Text proposed by the Commission*

*Amendment*

**-1. The issuing authority may refuse to recognise and execute a freezing order if the certificate provided for in Article 16 is incomplete, manifestly incorrect or manifestly does not correspond to the confiscation order, and has not been completed following the consultation provided for in paragraph 2.**

Or. fr

#### *Justification*

*The first ground justifying non-recognition and non-execution of a freezing order (the incomplete or incorrect nature of the certificate) should be provided for in a ‘may’ clause. In contrast, the other grounds referred to in Article 18 concern situations which can all be regarded as serious. In those circumstances the Member State concerned should be required to refuse recognition and execution (‘must’ clause).*

## **Amendment 46**

### **Proposal for a regulation**

#### **Article 18 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. The executing authority **may** decide not to recognise and not to execute the freezing order **only** if:

1. The executing authority **must** decide not to recognise and not to execute the freezing order if:

Or. fr

#### *Justification*

*The first ground justifying non-recognition and non-execution of a freezing order (the incomplete or incorrect nature of the certificate) should be provided for in a ‘may’ clause. In*



*contrast, the other grounds referred to in Article 18 concern situations which can all be regarded as serious. In those circumstances the Member State concerned should be required to refuse recognition and execution ('must' clause).*

#### **Amendment 47**

##### **Proposal for a regulation**

##### **Article 18 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

*(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;* **deleted**

Or. fr

##### *Justification*

*Voir l'amendement relatif à l'Article 18 - paragraphe 1 - nouveau sous paragraphe 1. Le premier motif de non-reconnaissance et de non-exécution d'une décision de gel (fondé sur le caractère incomplet ou incorrect du certificat) devrait être une possibilité pour les États membres (may-clause). En revanche les autres motifs de non-reconnaissance et de non-exécution des décisions de gel figurant à l'article 18 visent des situations qui peuvent toutes être considérées comme graves. À cet égard, l'État membre devrait plus fermement être tenu de refuser la reconnaissance et l'exécution (must-clause).*

#### **Amendment 48**

##### **Proposal for a regulation**

##### **Article 18 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

**(da) the freezing 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.**

Or. fr

### *Justification*

*The regulation must take account of the rights of third persons acting in good faith who could be affected by a confiscation or freezing order and who were not able to take part in the proceedings in the issuing State.*

#### **Amendment 49**

##### **Proposal for a regulation**

##### **Article 18 – paragraph 1 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

***(ea) there are substantial grounds for believing that executing the confiscation order would be incompatible with the obligations of the executing State in accordance with Article 6 of the Treaty on European Union and the Charter.***

Or. fr

### *Justification*

*Les instruments de reconnaissance mutuelle contiennent, très souvent, une clause de non-reconnaissance fondée sur le respect des droits fondamentaux, soit implicite (Décision-cadre 2002/584), soit explicite (Décision-cadre 2005/214/JHA, Directive 2014/41/UE), en outre développée par le droit national. Deuxièmement, la Cour de Justice de l'Union européenne a confirmé l'existence et l'importance d'une telle clause (arrêt Aranyosi/Caldararu du 5 avril 2016 - C404/15). Troisièmement, l'insertion d'une telle clause pourra permettre de prévenir une contradiction possible entre le droit européen et le droit constitutionnel national. Enfin, la jurisprudence de la CEDH a mis en lumière des difficultés, dans certains États membres en matière de confiscation et de respect des droits fondamentaux. Dès lors il est important d'avoir une telle clause dans ce Règlement européen.*

#### **Amendment 50**

##### **Proposal for a regulation**

##### **Article 19 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. Where the issuing authority has indicated in the freezing order that there are legitimate grounds to believe that the property in question will imminently be moved or destroyed and that immediate

2. Where the issuing authority has indicated in the freezing order that there are legitimate grounds to believe that the property in question will imminently be moved or destroyed and that immediate

freezing is necessary, or if the issuing authority has indicated in the freezing order that the freezing measure has to be carried out on a specific date, the executing authority shall take full account of this requirement.

freezing is necessary, or if the issuing authority has indicated in the freezing order that the freezing measure has to be carried out on a specific date, the executing authority shall take full account of this requirement ***and execute the freezing order by the deadline set.***

Or. fr

#### *Justification*

*Precise time restrictions are needed to guarantee prompt, effective and consistent cooperation between Member States in the area of the mutual recognition of freezing or confiscation orders and tight deadlines should be set in order to speed up the process.*

### **Amendment 51**

#### **Proposal for a regulation Article 19 – paragraph 3**

##### *Text proposed by the Commission*

3. The executing authority shall take the decision on the recognition and execution of the freezing order, or on consulting the issuing authority in accordance with Article 18(2), as soon as possible and, without prejudice to paragraph 7 of this Article, no later than **24** hours after the executing authority has received the freezing order.

##### *Amendment*

3. The executing authority shall take the decision on the recognition and execution of the freezing order, or on consulting the issuing authority in accordance with Article 18(2), as soon as possible and, without prejudice to paragraph 7 of this Article, no later than **48** hours after the executing authority has received the freezing order.

Or. fr

#### *Justification*

*Precise time restrictions are needed to guarantee prompt, effective and consistent cooperation between Member States in the area of the mutual recognition of freezing or confiscation orders and tight deadlines should be set in order to speed up the process.*

### **Amendment 52**

#### **Proposal for a regulation Article 19 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. The executing authority shall communicate the decision on a freezing order to the issuing authority ***without delay*** by any means capable of producing a written record.

5. The executing authority shall communicate the decision on a freezing order to the issuing authority ***immediately*** by any means capable of producing a written record.

Or. fr

*Justification*

*Precise time restrictions are needed to guarantee prompt, effective and consistent cooperation between Member States in the area of the mutual recognition of freezing or confiscation orders and tight deadlines should be set in order to speed up the process.*

**Amendment 53**

**Proposal for a regulation  
Article 21 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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.

2. The notification shall contain 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. fr

*Justification*

*The right to information in criminal proceedings is a fundamental right laid down in the Charter of Fundamental Rights of the European Union and secondary EU legislation. The regulation must take account of the rights of third persons acting in good faith who could be affected by a confiscation or freezing order and of their right to information. Brief information is not enough.*

**Amendment 54**

**Proposal for a regulation  
Article 22 – paragraph 1**

*Text proposed by the Commission*

1. In the execution of a freezing order the issuing authority and the executing authority shall take due account of the confidentiality of the investigation.

*Amendment*

1. ***Without prejudice to the right to information of any person concerned***, in the execution of a freezing order, the issuing authority and the executing authority should take due account of the confidentiality of the investigation.

Or. fr

*Justification*

*The relationship between the obligation to supply information (Article 21) and the requirements of confidentiality (Article 22) should be clarified. The confidential nature of an inquiry must not mean that a person is deprived of their right to information.*

**Amendment 55**

**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, ***which may not extend beyond the execution date set for the freezing order.***

Or. fr

**Amendment 56**

**Proposal for a regulation**  
**Article 25**

*Text proposed by the Commission*

***Article 25***  
***Reporting***

*Amendment*

***deleted***

*The executing authority shall report on the measures taken for the execution of the freezing order and the results thereof, including a description of the property frozen and an estimation of its value, to the issuing authority within three days of the execution of the order by any means capable of producing a written record.*

Or. fr

*Justification*

*For the purposes of simplification, the recognition procedures for the freezing and confiscation orders and the provisions concerning them should be harmonised. See amendment to Article 17.*

**Amendment 57**

**Proposal for a regulation  
Article 27 – paragraph 2**

*Text proposed by the Commission*

2. Each Member State *may* designate, *if it is necessary as a result of the organisation of its internal system*, one or more central authorities responsible for the administrative transmission and reception of the freezing or confiscation orders and to assist the competent authorities. The Member States shall inform the Commission thereof.

*Amendment*

2. Each Member State *shall* designate one or more central authorities responsible for the administrative transmission and reception of the freezing or confiscation orders and to assist the competent authorities. The Member States shall inform the Commission thereof.

Or. fr

*Justification*

*The designation by the Member States of one or more central authorities, which can clearly play a role in administrative support and coordination, is a key factor in making procedures for mutual recognition of freezing and confiscation orders between the issuing and executing authorities quicker and more effective and should therefore be encouraged.*

## Amendment 58

### Proposal for a regulation Article 31 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***4a. Each Member State shall take the necessary measures, such as the establishment of national centralised offices or equivalent mechanisms, to ensure that property frozen with a view to possible later confiscation and property confiscated is properly managed. Such property shall be earmarked as a matter of priority for law enforcement and crime prevention projects and for other projects of public interest and social utility.***

Or. fr

*Justification*

*It is important to promote, at European level and in the Member States, the best possible management of frozen and confiscated property and its re-use for social purposes, for the compensation of victims, victims' families, and businesses which are victims of organised crime, or in order to combat organised crime.*

## Amendment 59

### Proposal for a regulation Article 31 – paragraph 4 b (new)

*Text proposed by the Commission*

*Amendment*

***4b. Frozen property which is not subsequently confiscated shall be returned immediately. The conditions or procedural rules under which such property is returned shall be determined by national law.***

Or. fr

## Amendment 60

### Proposal for a regulation Article 32 a (new)

*Text proposed by the Commission*

*Amendment*

#### *Article 32a*

#### *Safeguards*

*1. Member States shall take the necessary measures to ensure that the persons affected by the measures provided for under this Regulation have the right to an effective remedy and a fair trial, in order to uphold their rights.*

*2. Member States shall provide for the effective possibility for the person whose property is affected to challenge the freezing order before a court, in accordance with procedures provided for in national law.*

*3. Member States shall ensure that the time-limits for seeking a legal remedy shall be the same as those provided for in similar domestic cases and are applied in a way that guarantees the possibility of the effective exercise of these legal remedies for the parties concerned.*

*4. Without prejudice to Directives 2012/13/EU and 2013/48/EU, persons whose property is affected by a confiscation order shall have the right of access to a lawyer throughout the confiscation proceedings relating to the determination of the proceeds and instrumentalities, in order to uphold their rights. The persons concerned shall be informed of that right.*

*5. In proceedings as referred to in paragraph 2, the affected person shall have an effective possibility to challenge the circumstances of the case, including specific facts and available evidence on the basis of which the property concerned is considered to be property that is derived from criminal conduct.*



***7. Third persons shall have the effective possibility to claim title of ownership or other property rights.***

***8. Where, as a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure provided for under this Regulation, Member States shall take the necessary measures to ensure that the confiscation measure does not prevent those victims from seeking compensation for their claims.***

***9. The issuing authority and the executing authority shall inform each other about the legal remedies sought against the issuing, the recognition or the execution of a freezing or confiscation order.***

Or. fr

#### *Justification*

*It is vital that the provisions of this regulation should be brought into line with Directive 2014/42/EU and that the provisions on procedural rights and safeguards should be clarified and tightened up*

#### **Amendment 61**

##### **Proposal for a regulation Article 33 – paragraph 2**

###### *Text proposed by the Commission*

2. The substantive reasons for issuing the freezing or confiscation order shall not be challenged before a court in the executing State.

###### *Amendment*

2. ***Without prejudice to the fundamental guarantees and rights in force in the executing Member State,*** the substantive reasons for issuing the freezing or confiscation order shall not be challenged before a court in the executing State,

Or. fr

#### *Justification*

*The executing Member State must always be required to uphold fundamental rights, even in*

*the context of mutual recognition (see, for example, Directive 2014/41/EU).*

## **Amendment 62**

### **Proposal for a regulation Article 36**

*Text proposed by the Commission*

*Amendment*

#### **Article 36**

**deleted**

#### ***Amendments to the certificate and the form***

***The Commission shall be empowered to adopt delegated acts in accordance with Article 37 concerning any amendment to the certificate and to the form set out in Annexes I and II.***

Or. fr

#### *Justification*

*All the information appearing in the two certificates (in Annexes I and II) should, for reasons of legal certainty, be determined and fixed by the legislator. A delegation of powers for this purpose is neither necessary nor appropriate.*

## **Amendment 63**

### **Proposal for a regulation Article 37**

*Text proposed by the Commission*

*Amendment*

#### **Article 37**

**deleted**

#### ***Exercise of delegation***

- 1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.***
- 2. The delegation of power referred to in Article 36 shall be conferred for an indeterminate period of time from the [Date of application of this Regulation].***
- 3. The delegation of powers referred to in Article 36 may be revoked at any***

*time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.*

**4.** *As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*

**5.** *A delegated act adopted pursuant to Article 36 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [2 months] at the initiative of the European Parliament or the Council.*

Or. fr

#### *Justification*

*All the information appearing in the two certificates (in Annexes I and II) should, for reasons of legal certainty, be determined and fixed by the legislator. A delegation of powers for this purpose is neither necessary nor appropriate.*

#### **Amendment 64**

##### **Proposal for a regulation Annex II – title**

*Text proposed by the Commission*

*Amendment*

##### **FREEZING ORDER**

provided for in Article 16

##### **CERTIFICATE**

provided for in Article 16 *for issuing a confiscation order*

*Justification*

*For the purposes of simplification, the recognition procedures for freezing and confiscation orders should be harmonised; accordingly, these two orders should each be accompanied by a certificate (in Annexes I and II).*

## EXPLANATORY STATEMENT

The rapporteur welcomes **the presentation by the European Commission, on 21 December 2016, of a series of measures aimed at boosting the EU's capacity to combat the financing of organised crime and terrorism**. The three legislative proposals contained in this legislative package will enable the EU's legal framework in the areas of money laundering, illegal movements of cash and the freezing and confiscation of assets to be supplemented and reinforced, thereby constituting a more powerful and better-coordinated European response in this field.

The rapporteur therefore welcomes **the proposal by the Commission for a regulation on mutual recognition of freezing and confiscation orders**. Freezing and confiscation of the proceeds of crime are among the most effective means of combating organised crime. Money coming from and going to criminal organisations needs to be blocked. Having a mutual recognition instrument is of fundamental importance, given that the principle of mutual recognition of judgments and judicial decisions is a cornerstone of judicial cooperation in criminal matters in the EU. This is all the more crucial as the Commission's implementation reports on the existing framework decisions in this field show that the current system is ineffective.

Firstly, **the Commission's choice of a regulation as the form in which to couch this mutual recognition instrument for freezing and confiscation orders** is, in the rapporteur's view, a key feature of its proposal. There is no doubt that a regulation improves clarity and legal certainty and eliminates the problems of transposition into national systems, thereby allowing freezing and confiscation orders to be more rapidly and effectively enforced. It is therefore the most appropriate and effective form for this kind of mutual recognition instrument.

A second key point in the context of this regulation is **the importance of respecting fundamental rights and procedural safeguards**. The rapporteur therefore proposes adding a non-recognition and non-execution clause for freezing or confiscation orders for failure to observe fundamental rights – a requirement which Parliament has supported for a number of years. Another suggestion would be to make most grounds for non-recognition and non-execution compulsory. Finally, the rapporteur proposes adding or reinforcing provisions regarding procedural safeguards. These would concern the right to an effective remedy for all concerned as well as their right to information, and the procedural rights of third persons who might be affected by such freezing and confiscation orders.

In her work on this Commission proposal, the rapporteur has therefore **aimed for simplification and clarification**. With this aim in mind, it would be worth clarifying some provisions of the current regulation, aligning the procedures and arrangements concerning the mutual recognition of freezing and confiscation orders and harmonising the new instrument with the other European legislative instruments which exist in this field.

It is vital that **recognition procedures** for orders to freeze and confiscate assets and proceeds of crime be **speeded up and made more effective** by means of: facilitated procedures for forwarding orders; a stepped-up role for central national authorities, whose support role is important; and 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. These are all provisions which the rapporteur would like to see strengthened.

Finally, it is important to promote, at European level and in the Member States, the **best possible management of frozen and confiscated assets and their reuse for social purposes**, for the compensation of victims, victims' families, and businesses which are victims of organised crime, or in order to combat organised crime.