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Mutual recognition of freezing and confiscation orders

Impact Assessment (SWD(2016) 468, SWD(2016) 469 (summary)) of a Commission proposal for a regulation of the European Parliament and the Council on the mutual recognition of freezing and confiscation orders (COM(2016) 819))

Background

This note seeks to provide an initial analysis of the strengths and weaknesses of the European Commission's [impact assessment](#) (IA) accompanying its above-mentioned [proposal](#), submitted on 21 December 2016 and referred to Parliament's Committee on Civil Liberties, Justice and Home Affairs.

This legislative proposal is part of the Commission 2017 work programme, as well as the [European Agenda on Security](#) of 28 April 2015 and the [Action Plan](#) for strengthening the fight against terrorist financing. The European Parliament's 2016 resolution¹ on the fight against corruption called on the European Commission to strengthen EU measures on the tracing, freezing and confiscation of proceeds of crime. The European Parliamentary Research Service's Cost of Non-Europe report in the area of organised crime and corruption,² which accompanied the own-initiative report leading to this resolution, found that national authorities do not use the possibilities for police and judicial cooperation, such as mutual recognition, to their full potential. According to the report, the development of future – and improvement of existing – mutual recognition instruments for freezing and confiscation orders could be one of the possible options for action at EU level. The Commission proposal concurs with recent initiatives taken outside the EU, such as the Council of Europe [Action Plan](#) of 2 March 2016, on combating transnational organised crime. According to the IA, the recent terrorist attacks in the EU, and notably in France, Belgium and Germany, further exemplify the urgent need to act in the area of freezing and confiscation of criminal assets.

The principle of mutual recognition is enshrined in Article 82(1) TFEU, which specifies, among other things, that judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgements and judicial decisions. Mutual recognition of freezing and confiscation orders concerns cooperation between Member States regarding recovery of criminal assets in cross-border cases. The current EU legal framework in the area of freezing and confiscation includes two types of measures, namely:

- 1) *mutual recognition instruments*:
 - a) Council Framework Decision [2003/577/JHA](#) on the execution in the EU of orders freezing property or evidence;
 - b) Council Framework Decision [2006/783/JHA](#) on the application of the principle of mutual recognition to confiscation orders.
- 2) *harmonisation measures* establishing minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crimes with a cross-border dimension:

¹ European Parliament resolution of 25 October 2016 on [the fight against corruption and follow-up of the CRIM resolution](#), P8_TA-PROV (2016)0403.

² Van Ballegooij, W. and Zandstra, T., [Organised Crime and Corruption. Cost of Non-Europe Report](#), In-Depth Analysis. EPRS, European Parliament, March 2015, pp.22 and 26.

- a) Council Framework Decision [2001/500/JHA](#) on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (a new [proposal](#) for a directive on countering money laundering by criminal law was submitted on 21 December 2016);
- b) Council Framework Decision [2005/212/JHA](#) on confiscation of crime-related proceeds, instrumentalities and property;
- c) Directive [2014/42/EU](#) on the freezing and confiscation of instrumentalities and proceeds of crime in the EU, replacing certain provisions of the above-mentioned Council framework decisions.

When adopting the latter directive, the European Parliament and the Council called on the Commission to present a legislative proposal on mutual recognition of freezing and confiscation orders at the earliest possible opportunity.³ The directive covers eurocrimes⁴ and sets minimum rules for national freezing and confiscation regimes. It requires ordinary and value confiscation, including where the conviction results from proceedings in absentia. It provides rules for extended confiscation and enables criminal non-conviction-based confiscation (NCBC), where no prior criminal conviction is required, in cases of illness or absconding. The directive also for the first time enables the confiscation of assets in the possession of third parties. Finally, it introduces a number of procedural safeguards. According to the IA, some Member States go beyond the requirements of the directive, in particular with regard to criminal NCBC (eight Member States) and the civil or administrative NCBC (seven Member States). Therefore, important differences are expected to persist in areas outside the scope of the directive (IA, p.16) and the Member States have generally acknowledged the need to improve mutual recognition of freezing and confiscation orders with a new legislative instrument (IA, p.35).

Problem definition

The IA identifies two **general problems** in the context of mutual recognition of freezing and confiscation orders within the EU, namely:

1. Insufficient recovery of criminal assets in cross-border cases.
2. Insufficient protection of victims' rights to restitution and compensation in cross-border cases.

Three **specific problems** (one of them with sub-headings) are listed under the first general problem:

1. The excessively limited scope of the current mutual recognition legal framework – current mutual recognition instruments do not cover all the types of freezing and confiscation orders that can be adopted at national level, in particular with regard to NCBC.
 - a. Non-alignment of current mutual recognition framework decisions with Directive 2014/42/EU, leaving Member States broad possibilities to refuse execution in certain cases.
 - b. No coverage of more modern forms of NCBC, including notably civil and administrative NCBC.
2. Current procedures and certificates are too complex and inefficient (for example, no time limits or time limits that are not mandatory).
3. Inconsistent implementation of existing mutual recognition framework decisions into national law, which would not be efficiently addressed through infringement proceedings.

The IA does not explain the link between the general and specific problems, but seems to suggest that deficiencies in the existing EU legislation and its implementation are the underlying causes of insufficient recovery of criminal assets in cross-border cases (IA, pp. 16 and 21). To illustrate the scale of the problem, the IA draws on data of the United Nations, several Member States and Europol, among others. The results of the survey carried out by Europol⁵ on criminal asset recovery in the EU concluded that 98.9 % of estimated criminal profits are not confiscated and remain at the disposal of criminals. The IA acknowledges that there is a lack of

³ [Statement by the European Parliament and the Council on an analysis to be carried out by the Commission](#), Council Doc. 7329/1/14 REV 1 ADD 1, 31 March 2014.

⁴ Particularly serious crimes with a cross-border dimension: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

⁵ [Does crime still pay? Criminal asset recovery in the EU. Survey of statistical information](#), Europol, 2016.

systematically collected data, but the estimates based on the scarce data available suggest that criminal activity generates significant income, the percentages of criminal assets confiscated are low and requests to freeze and confiscate assets in cross-border cases are still very few in comparison with other requests for cooperation.

Objectives of the legislative proposal

The IA identifies the following general and specific objectives of the Commission proposal:

General objectives:

- to freeze and confiscate more assets deriving from criminal activities in cross-border cases in order to prevent and combat crime, including terrorism and organised crime;
- to enhance the protection of victims' rights in cross-border cases.

Specific objectives:

- to improve mutual recognition of freezing and confiscation orders in cross-border cases by extending the scope of mutual recognition instruments;
- to provide simpler and faster procedures and certificates;
- to increase the number of victims receiving cross-border compensation.

According to the proposal's explanatory memorandum, the latter is a major novelty in the EU legal framework as neither of the two framework decisions contains any provisions on victims. As envisaged in the IA, the proposed regulation contains specific rules on the restitution and compensation of victims.

The IA states that the objectives are in line with relevant policy strategies, such as the European Agenda on Security and the Action Plan for strengthening the fight against terrorist financing. Contrary to the recommendations of the Better Regulation Guidelines, the IA does not include any *operational* objectives for the preferred option, nor does it discuss how or when the achievement of objectives will be measured.

Range of options considered

The IA briefly touches upon the reasons why the following three policy options were discarded early on (IA, pp.34-35):

1. Codification into one legal instrument of the existing Framework Decisions 2003/577/JHA on the execution of freezing orders and 2006/783/JHA on confiscation orders – too limited in scope and does not take into account recent developments.
2. Limitation of the scope to specific offences (e.g. 'eurocrimes') - would lead to different regimes for mutual recognition (one for eurocrimes and one for other offences), adding complexity to the system.
3. Empowering all asset recovery offices (AROs) to manage also frozen assets – not directly linked to the strengthening of mutual recognition of freezing and confiscation orders, therefore discarded.

The four retained policy options (IA, pp.36-40) are summarised below:

Option 1. Maintaining the status quo

According to the IA, if no EU action is taken cross-border cooperation between the authorities is likely to increase, but not sufficiently to become a true deterrent for cross-border criminality, which is also increasing. Implementation of Directive 2014/42/EU and the parallel use of mutual legal assistance (MLA)⁶ and the mutual recognition instruments will continue. Infringement procedures against those Member States that have not yet, or not correctly, transposed the two framework decisions (legally possible since the entry into force of the Lisbon Treaty) are unlikely to address the identified problems.

⁶ MLA is provided for in international conventions and is based on cooperation between different authorities. It is currently used in parallel with mutual recognition, but it is not mandatory and not all of the international *acquis* is binding or applicable between all EU Member States, according to the IA.

Option 2. Non-regulatory option

This option consists of periodic evaluation of judicial cooperation in the area of confiscation and the training of law enforcement and judicial authorities. This option would go against the expectations of stakeholders, who generally acknowledged that a new legislative instrument is needed. This view was expressed in the different expert meetings summarised in Annex 2 of the IA.

Option 3. Minimal regulatory option

Option 3 entails a new mutual recognition instrument codifying the existing Framework Decisions 2003/577/JHA and 2006/783/JHA into one legal instrument. The scope would align with that of Directive 2014/42/EU in terms of freezing and confiscation measures covered (including extended confiscation and some limited forms of NCBC). Option 3 could be combined with elements of option 2. Unlike Directive 2014/42/EU, the new instrument under option 3 would cover all criminal offences and would not be limited to eurocrimes, as the legal basis would be Article 82 TFEU, which does not require such limitation. It would introduce simplified mutual recognition certificates, possibly a European Asset Freezing Order for freezing orders only, short mandatory deadlines for the recognition and execution of freezing orders and harmonised grounds for refusal based on fundamental rights. The IA does not provide further explanation as to the nature of these harmonised grounds. Option 3 could include specific rules on the restitution and compensation of victims.

Option 4. Medium and maximum regulatory option

Option 4 envisages the adoption of a new mutual recognition instrument that would entail an obligation to recognise all freezing orders and all confiscation measures (conviction- and non-conviction-based), which meet certain stringent minimum standards, including in particular strong fundamental rights standards. Like option 3, option 4 would provide for simplified mutual recognition certificates, possibly a European Asset Freezing Order for freezing orders only, short mandatory deadlines for the recognition and execution of freezing orders and harmonised grounds for refusal based on fundamental rights. Option 4 would also be identical to option 3 in terms of allowing victims to benefit from asset recovery in cross-border cases. It includes two sub-options:

- *4(a), medium option:* the new instrument would cover all freezing and confiscation orders issued in the context of criminal proceedings;
- *4(b), maximum option:* as 4a, but in addition the new instrument would cover all freezing and confiscation orders made in civil or administrative proceedings where it is shown that the property is the proceeds of criminal conduct.

The IA does not explain what the strong fundamental rights standards or harmonised grounds for refusal in option 4 would be. As for the choice of legal instrument, the IA argues that 'there seems to be little need to leave the margin [for transposition] to Member States to adapt it to their national situation. A regulation would be directly applicable, would provide greater legal certainty and would avoid the transposition problems that the Framework Decisions were subject to' (IA, pp.39-40).

The following table summarises the scope of the mutual recognition instrument under the regulatory options (Table 5 of the IA, p.40):

Specific objective 1: extending the scope of mutual recognition instrument	Option 3	Option 4a	Option 4b
Confiscation after criminal conviction	x	x	x
Extended confiscation	x	x	x
Confiscation from a third party	x	x	x
Criminal NCBC	Absconding	x	x
	Illness	x	x
	Death		x
	Other forms of NCBC		x
Civil and administrative NCBC (necessary link with a criminal conduct)			x
Specific objective 2: faster and simpler procedures and certificates	x	x	x
Specific objective 3: increase the number of victims receiving compensation	x	x	x

This table includes specific objectives, but does not report on general objectives. Therefore, it is not clear how the achievement of specific objectives contributes to the achievement of the general objectives. Since the minimum regulatory option (option 3) is presented separately, it is not clear why the IA chose to present options 4a and 4b jointly and not to discuss them as stand-alone options. The IA does not check the regulatory options in the light of the principle of subsidiarity. **The IA selects sub-option 4a as the preferred option.**

Scope of the Impact Assessment

The IA provides a qualitative discussion and measurement for each option and sub-option in terms of effectiveness, compliance costs, impact on fundamental rights and impact on the legal system/proportionality. The results of the comparison of options and their impacts is provided in table form in Section 8 (IA, pp.50-54). The indicators used in the comparison include specific and general objectives, administrative costs, benefits, impact on fundamental rights and impact on domestic justice systems. No operational objectives are included. In terms of the impact on fundamental rights of option 3, the IA argues that alignment with Directive 2014/42/EU, which already provides in its Article 8 for a number of procedural safeguards, should not raise particular fundamental rights issues. As for sub-option 4a, the safeguards of criminal proceedings would apply and alignment with Directive 2014/42/EU should not raise particular fundamental rights issues. Sub-option 4b would need to be accompanied by a strong set of procedural safeguards and an effective judicial review (IA, p.53).

When discussing the impact on domestic justice systems of option 3 and sub-option 4a, the IA states that a directly applicable instrument would only need to be applied by practitioners, with the result that foreign orders would be executed like domestic ones, without the need to modify the executing Member State's internal legal system and way of working. However, the IA does not discuss the fact that for the 12 Member States that have more restrictive approaches to confiscation, the adoption of a regulation, under both sub-options 4a and 4b, would mean that the Member States concerned would have to recognise and execute judicial decisions that would not be taken in a comparable domestic situation (for instance, NCBC in case of death). This may lead to questions regarding compliance with the public order of the executing Member States. Sub-option 4b, according to the IA, may create legal issues regarding the recognition of orders unfamiliar in the domestic systems and result in a certain hesitation to execute such orders.

In general, the question of the legal instrument is left outside the scope of the impact analysis and the choice in favour of a regulation seems pre-determined. Among other things, the IA argues that a more ambitious approach than option 3 was generally considered to be more appropriate during the expert meeting. In particular, the 15 Member States which have more extensive forms of NCBC would like to have their domestic freezing and confiscation orders recognised and executed throughout the EU (IA, p.37, p.14). Politically, it would be an option more easily accepted by Member States (IA, p.55).

A quantification of costs and income under the different options for 28 Member States is provided in Table 6 (IA, p.49). The assumptions for costs and income estimation are set out in Annex 7 of the IA. These estimations are based on data from a very limited number of Member States (mainly UK) extrapolated for 28 Member States. The costs of the preferred option are estimated between €12.4 million and €18.6 million and its benefits between €16.1 and €24.2 million for 28 Member States collectively.

Subsidiarity / proportionality

The IA provides a general discussion of subsidiary for the initiative as a whole. According to the IA, 'mutual recognition is in accordance with the principle of subsidiarity since it aims at recognising each other's decisions without full harmonisation of national rules, and cannot be achieved by Member States acting alone' (IA, pp.32-33). Moreover, criminal activity and investment of criminal assets have a cross-border dimension that justifies European action. The IA admits that the proposal goes beyond the scope of Directive 2014/42/EU (IA, p.55). However, according to the explanatory memorandum, the proposal does not go beyond the minimum required in order to achieve the stated objective at European level and what is necessary for that purpose, since it is limited to confiscation and freezing orders issued in criminal proceedings (option 4a).

At the time of writing, two national parliaments had submitted information for exchange and political dialogue about the choice of legal instrument.⁷ The German Bundesrat considered the regulation – directly applicable – difficult to manage, the current draft going far beyond a mutual recognition of decisions taken in courts of Member States, and advocated the inclusion of a provision allowing rejections for fundamental rights' reasons, taking into account the latest case law of the Court of Justice of the European Union.⁸ The Bundesrat feared that the various obligations envisaged by the proposed draft would create considerable administrative burden. The Czech Chamber of Deputies considered the choice of legal instrument (regulation) as inappropriate, stating that EU legislation should lay down rules and framework for cross-border cooperation in the field of mutual recognition, while the choice of form and their implementation should be left to the discretion of Member States. The deadline for contributions was 9 May 2017.

Budgetary or public finance implications

According to its explanatory memorandum, the legislative proposal does not have an impact on the EU budget and should have positive consequences for national and European economies (explanatory memorandum, p.11). On p. 48 the IA states: 'where Member States are successful in confiscating assets, the amount gained is likely to be higher than the amount expended in the process of confiscating the assets. Therefore, if an instrument is enacted and enforced, it should result in a net monetary gain for Member States'. The IA does not define criteria for Member States to be 'successful' in confiscation.

SME test / Competitiveness

Annex 3 of the IA mentions that the initiative does not contain regulatory obligations for businesses and thus does not create additional costs related thereto. On a long-term basis, the initiative should help legitimate business, which is adversely affected by competition from illegal actors (IA, p. 63).

Simplification and other regulatory implications

According to Article 39 of the Commission proposal, the proposed regulation will replace the following mutual recognition instruments: Framework Decision 2003/577/JHA and Framework Decision 2006/783/JHA. The IA repeatedly highlights the advantages of a new legislative instrument compared to the current double legal regime of using MLA and mutual recognition instruments for recognition and enforcement of freezing and confiscation orders. Clear rules and simplified certificates would make the use of mutual recognition more convenient for practitioners, who currently have to familiarise themselves with two sets of rules, procedures and forms and may continue to prefer the traditional MLA route (IA, p. 31). Furthermore, the IA argues, the initiative is likely to reduce the administrative burdens for judges and prosecutors through the simplification of the certificates they have to fill in for mutual recognition requests (IA, p. 63). In addition, a directly applicable instrument would have the advantage that foreign orders would have to be executed like domestic ones, without the need for executing Member States to modify their internal legal system and their way of working.

Quality of data, research and analysis

The problem definition in the IA is based on data from the following: the implementation reports for the framework decisions on mutual recognition ([COM\(2008\) 885](#) for freezing orders and [COM\(2010\) 428](#) for confiscation orders), the [impact assessment](#) accompanying the Commission proposal for Directive 2014/42/EU, a comparative law study carried out in 2013, externalised by the Commission,⁹ and several dedicated expert meetings and conferences (summary provided in Annex 2 of the IA and results integrated in the IA section discussing the options). A separate ex-post evaluation of the existing mutual recognition instruments was not

⁷ See the Platform for EU Interparliamentary Exchange (IPEX).

⁸ [Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen](#), ECJ/C-404/15, in which the Court was asked to interpret Article 1(3) of the Framework Decision on the European Arrest Warrant, and in particular whether this provision was to be read as a fundamental rights exception.

⁹ [Comparative law study on the implementation of mutual recognition of orders to freeze and confiscate criminal assets in the European Union](#), JUST/2011/JPEN/PR/0153/A4, final findings report, European Commission, Publications Office of the European Union, Luxembourg, 2014.

carried out. The IA states that an exemption from the need to carry out such an evaluation was granted by Commission Vice-President Frans Timmermans on 18 November 2016, but provides no further information (IA, footnote 12, p.7). Some data on the progress of implementation of Directive 2014/42/EU was gathered during the expert meetings in April and November 2016; the results are briefly summarised on pp.14-15 of the IA. Overall, the IA lacks sound data in relation to amounts frozen, confiscated and recovered, as well as on the costs of carrying out confiscation-related activities. This is openly recognised throughout the document, which states the reasons for data availability constraints when discussing statistical data for the policy context (IA, pp.6-7), the scale of the problem (IA, p.23) and estimating compliance costs (IA, p.45).

Stakeholder consultation

The IA identifies the stakeholders affected by the proposed regulatory solution as being public administrations, courts and citizens (IA, Annex 3, p.63). The IA states that no public consultation was carried out because of the nature of the topic and the political urgency (IA, p.15) and that an exemption to the requirement to carry out such a consultation was granted in a similar way to that for the ex-post evaluation (IA, footnote 12, p. 7). Further explanation is provided in Annex 2, which states that 'due to time constraints the consultation strategy was based on a targeted consultation (bilateral contacts, stakeholder- and experts meetings and written consultations)' (IA, p.60). These consultations took place on several occasions in 2016 and covered Member States' justice and interior ministries; national law enforcement authorities, prosecutors, judges and other criminal justice practitioners involved in the making and execution of freezing and confiscation orders; defence lawyers and bar associations; criminal law experts; national asset recovery agencies, the Camden Assets Recovery Interagency Network (CARIN) and ARO networks; EU institutions and bodies – Eurojust, European Judicial Network (EJN) in criminal matters, Europol; civil society, and academia (IA, p.60).

A brief summary of the consultation process is provided in Annex 2 of the IA and stakeholder views are integrated into the discussion of each option considered, including their breakdown by category (Member States, judges, prosecutors and defence lawyers). Stakeholder views on regulatory options have diverged as to what kind of measures a new EU instrument should cover. Among other concerns, some experts felt that, unless there is more harmonisation in the area, a mutual recognition instrument needs to be limited. Others considered that mutual recognition is a good alternative to further harmonisation. The IA does not mention whether stakeholders were consulted on the choice of instrument (a regulation or a directive), or how the preferred option accommodates the divergent views of the stakeholders.

Monitoring and evaluation

The IA states that five years after the adoption of the proposed act the Commission will conduct an evaluation. Given the poor quality of available data and the lack of statistical data on asset confiscation, the new legal instrument should include the introduction of reporting obligations for Member States in relation to cross-border asset confiscation work at least on an annual basis (IA, p.56). The proposal contains provisions on statistics collection by Member States (article 35) and an obligation for the Commission to submit a report on the application of the regulation at the latest five years from the date of its application (article 38).

Commission Regulatory Scrutiny Board

On 23 November 2016 the Commission's Regulatory Scrutiny Board (RSB) issued a positive [opinion](#) with reservations on the draft IA report. The RSB recommended further clarification and improving the presentation of the following aspects of the IA: the context of the initiative, victims' compensation needs, the content of the options, their implications for Member States and the results of the expert meeting. The RSB regretted that the planning of the initiative did not allow sufficient time to conduct an evaluation of the existing framework and an open public consultation, and that both requirements received exemption. The RSB noted that such input would have usefully informed the IA, given its overall weak evidence base. It reiterated that the information collected during the expert meeting should be better reflected throughout the report, highlighting the different stakeholders' views on the key problems, the options and their impacts. Annex 1 (IA, pp.57-59) explains how the

RSB recommendations were addressed in the final version of the IA, which appears to have made a genuine attempt to follow the RSB recommendations.

Coherence between the Commission's legislative proposal and IA

According to its explanatory memorandum, the legislative proposal appears to follow the recommendations of the IA insofar as the preferred medium regulatory option 4a, in the form of an EU regulation covering all types of freezing and confiscation orders issued in the context of criminal proceedings, including criminal NCBC, is the basis for the proposal. However, articles 9 and 18 of the proposal, laying down the grounds for non-recognition,¹⁰ seem to lack the 'harmonised grounds for non-recognition based on fundamental rights' that the IA announced for option 4 on p. 37.

Conclusions

The IA for the proposed regulation has a number of weaknesses that could be attributed to political urgency and the need for EU action in the area of freezing and confiscation of criminal assets, notably since the recent terrorist attacks in France, Belgium and Germany. Overall, the IA lacks sound data and this is openly recognised throughout the document. In the context of the IA, no public consultation took place and no ex-post evaluation of existing mutual recognition instruments was carried out. The IA does not explain clearly how addressing the deficiencies in the existing EU legislation and its implementation would increase recovery of criminal assets in cross-border cases, as there is a general lack of data in this policy context. As for the options proposed, the IA could perhaps have clarified why sub-options 4a and 4b were discussed jointly, whereas option 3 was presented as a stand-alone option. In addition to this, the regulatory options could have been checked in the light of the principle of subsidiarity. The IA could have explained in more detail what it means by 'harmonised grounds for non-recognition based on fundamental rights', which seem not to have been included in articles 9 and 18 of the proposal. In general, the choice of legal instrument is left outside the scope of the impact analysis and the choice in favour of a regulation seems rather pre-determined. The IA could have addressed the impact of adopting a regulation on those 12 Member States that currently have more restrictive approaches to confiscation. Finally, it could have stated whether stakeholders were consulted on the choice of instrument, and how the preferred option accommodates the divergent views of the stakeholders on the issue of mutual recognition as an alternative to further harmonisation.

This note, prepared by the Ex-Ante Impact Assessment Unit for the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), analyses whether the principal criteria laid down in the Commission's own Better Regulation Guidelines, as well as additional factors identified by the Parliament in its Impact Assessment Handbook, appear to be met by the IA. It does not attempt to deal with the substance of the proposal. It is drafted for informational and background purposes to assist the relevant parliamentary committee(s) and Members more widely in their work.

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¹⁰ In its [resolution](#) of 27 February 2014, Parliament called for a reform of the European Arrest Warrant to include fundamental rights and proportionality safeguards and insisted on the inclusion of a fundamental rights non-recognition ground in the Directive on the European Investigation Order. For further information, see Van Ballegooij, W. and Bard P., 'Mutual recognition and individual rights. Did the Court get it right?', *New Journal of European Criminal Law*, Vol. 7, No. 4, 2016.