
REGULATION (EU) 2018/1805 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 November 2018

on the mutual recognition of freezing orders and confiscation orders

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 82(1)(a) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure(1),

Whereas:

(1) The Union has set itself the objective of maintaining and developing an area of freedom, security and justice.

(2) Judicial cooperation in criminal matters in the Union is based on the principle of mutual recognition of judgments and judicial decisions, which has commonly been referred to as the cornerstone of judicial cooperation in criminal matters within the Union since the Tampere European Council of 15 and 16 October 1999.

(3) The freezing and the confiscation of instrumentalities and proceeds of crime are among the most effective means of combatting crime. The Union is committed to ensuring more effective identification, confiscation and re-use of criminal assets in accordance with ‘The Stockholm programme — An open and secure Europe serving and protecting the citizens’(2).

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

(5) The current Union legal framework in relation to the mutual recognition of freezing orders and confiscation orders is composed of Council Framework Decisions 2003/577/JHA(3) and 2006/783/JHA(4).

(6) The Commission's implementation reports on Framework Decisions 2003/577/JHA and 2006/783/JHA show that the existing regime for the mutual recognition of freezing orders and confiscation orders is not fully effective. Those Framework Decisions have not been implemented and applied uniformly in the Member States, which has led to insufficient mutual recognition and sub-optimal cross-border cooperation.
The Union legal framework on mutual recognition of freezing orders and confiscation orders has not kept up with recent legislative developments at Union and national levels. In particular, Directive 2014/42/EU of the European Parliament and of the Council establishes minimum rules on the freezing and the confiscation of property. Those minimum rules concern the confiscation of instrumentalities and proceeds of crime, including in the cases of illness or absconding of the suspect or accused person, where criminal proceedings have already been initiated regarding a criminal offence, extended confiscation and confiscation from a third party. Those minimum rules also concern the freezing of property with a view to possible subsequent confiscation. The types of freezing orders and confiscation orders covered by that Directive should also be included in the legal framework on mutual recognition.

When adopting Directive 2014/42/EU, the European Parliament and the Council stated in a declaration that an effective system of freezing and confiscation in the Union is inherently linked to the well-functioning mutual recognition of freezing orders and confiscation orders. Considering the need to put in place a comprehensive system for the freezing and confiscation of the instrumentalities and proceeds of crime in the Union, the European Parliament and the Council called on the Commission to present a legislative proposal on the mutual recognition of freezing orders and confiscation orders.

In its communication of 28 April 2015 entitled ‘The European Agenda on Security’, the Commission considered that judicial cooperation in criminal matters relies on effective cross-border instruments and that the mutual recognition of judgments and judicial decisions is a key element in the security framework. The Commission also recalled the need to improve the mutual recognition of freezing orders and confiscation orders.

In its communication of 2 February 2016 on an Action Plan for strengthening the fight against terrorist financing, the Commission highlighted the need to ensure that criminals who fund terrorism are deprived of their assets. The Commission stated that, in order to disrupt organised crime activities that finance terrorism, it is essential to deprive those criminals of the proceeds of crime. To that end, the Commission stated that it is necessary to ensure that all types of freezing orders and confiscation orders are enforced to the maximum extent possible throughout the Union by the application of the principle of mutual recognition.

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

It is important to facilitate the mutual recognition and execution of freezing orders and confiscation orders by establishing rules that oblige a Member State to recognise, without further formalities, the freezing orders and confiscation orders issued by another Member State within the framework of proceedings in criminal matters and to execute those orders within its territory.

This Regulation should apply to all freezing orders and to all confiscation orders issued within the framework of proceedings in criminal matters. ‘Proceedings in criminal
matters’ is an autonomous concept of Union law interpreted by the Court of Justice of the European Union, notwithstanding the case law of the European Court of Human Rights. The term therefore covers all types of freezing orders and confiscation orders issued following proceedings in relation to a criminal offence, not only orders covered by Directive 2014/42/EU. It also covers other types of order issued without a final conviction. While such orders might not exist in the legal system of a Member State, the Member State concerned should be able to recognise and execute such an order issued by another Member State. Proceedings in criminal matters could also encompass criminal investigations by the police and other law enforcement authorities. Freezing orders and confiscation orders that are issued within the framework of proceedings in civil or administrative matters should be excluded from the scope of this Regulation.

(14) This Regulation should cover freezing orders and confiscation orders related to criminal offences covered by Directive 2014/42/EU, as well as freezing orders and confiscation orders related to other criminal offences. The criminal offences covered by this Regulation should therefore not be limited to particularly serious crimes that have a cross-border dimension, as Article 82 of the Treaty on the Functioning of the European Union (TFEU) does not require such a limitation for measures laying down rules and procedures for ensuring the mutual recognition of judgments in criminal matters.

(15) Cooperation between Member States, which is based on the principle of mutual recognition and the immediate execution of judicial decisions, presupposes confidence that the decisions to be recognised and executed will always be taken in compliance with the principles of legality, subsidiarity and proportionality. Such cooperation also presupposes that the rights of persons who are affected by a freezing order or confiscation order should be preserved. Such affected persons, who can be natural persons or legal persons, should include the person against whom a freezing order or confiscation order was issued or the person who owns the property that is covered by that order, as well as any third parties whose rights in relation to that property are directly prejudiced by that order, including bona fide third parties. Whether such third parties are directly prejudiced by a freezing order or confiscation order, should be decided in accordance with the law of the executing State.

(16) This Regulation does not modify the obligation to respect fundamental rights and legal principles enshrined in Article 6 of the Treaty on European Union (TEU).

(17) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union (the ‘Charter’) and the European Convention for the Protection of Human Rights and Fundamental Freedoms (the ‘ECHR’). This includes the principle that any discrimination based on any ground such as sex, racial or ethnic origin, religion, sexual orientation, nationality, language, political opinion, or disability is to be prohibited. This Regulation should be applied in accordance with those rights and principles.

by those Directives. In any case, the safeguards under the Charter should apply to all proceedings covered by this Regulation. In particular, the essential safeguards for criminal proceedings set out in the Charter should apply to proceedings in criminal matters that are not criminal proceedings but which are covered by this Regulation.

(19) While the rules for the transmission, recognition and execution of freezing orders and confiscation orders should ensure the efficiency of the process of recovering criminal assets, fundamental rights are to be respected.

(20) When assessing double criminality, the competent authority of the executing State should verify whether the factual elements underlying the criminal offence in question, as reflected in the freezing certificate or confiscation certificate submitted by the competent authority of the issuing State, would also, per se, be subject to a criminal penalty in the executing State if they were present in that State at the time of the decision on the recognition of the freezing order or confiscation order.

(21) The issuing authority should ensure that, when issuing a freezing order or confiscation order, the principles of necessity and proportionality are respected. Under this Regulation, a freezing order or confiscation order should only be issued and transmitted to an executing authority in another Member State where it could have been issued and used in a solely domestic case. The issuing authority should be responsible for assessing the necessity and proportionality of such orders in each case as the recognition and execution of freezing orders and confiscation orders should not be refused on grounds other than those provided for in this Regulation.

(22) In some cases, a freezing order may be issued by an authority, designated by the issuing State, which is competent in criminal matters to issue or execute the freezing order in accordance with national law, and which is not a judge, court or public prosecutor. In such cases, the freezing order should be validated by a judge, court or public prosecutor, before it is transmitted to the executing authority.

(23) Member States should be able to make a declaration stating that, when a freezing certificate or confiscation certificate is transmitted to them with a view to the recognition and execution of a freezing order or confiscation order, the issuing authority should transmit the original freezing order or confiscation order, or a certified copy thereof, together with the freezing certificate or confiscation certificate. Member States should inform the Commission where they make or withdraw such a declaration. The Commission should make such information available to all Member States and to the European Judicial Network (EJN) provided for by Council Decision 2008/976/JHA\(^1\). The EJN should make that information available on the website referred to in that Decision.

(24) The issuing authority should transmit a freezing certificate or confiscation certificate, together with the freezing order or confiscation order, where applicable, either directly to the executing authority or to the central authority of the executing State, as applicable, by any means capable of producing a written record under conditions that allow the executing authority to establish authenticity of the certificate or order, such as registered mail or secured email. The issuing authority should be able to make use of any relevant
channels or means of transmission, including the secure telecommunications system of the EJN, Eurojust, or other channels used by judicial authorities.

(25) Where the issuing authority has reasonable grounds to believe that the person against whom a freezing order or confiscation order concerning an amount of money was issued has property or income in a Member State, it should transmit the freezing certificate or confiscation certificate that relates to the order to that Member State. On that basis, the certificate could, for example, be transmitted to the Member State in which the natural person against whom the order was issued is residing or, where that person has no permanent address, is habitually residing. Where the order is issued against a legal person, the certificate could be transmitted to the Member State in which the legal person is domiciled.

(26) With a view to the administrative transmission and reception of certificates relating to freezing orders and confiscation orders, Member States should be able to designate one or more central authorities where necessary due to the structure of their internal legal systems. Such central authorities could also provide administrative support, play a coordination role and assist in the collection of statistics, thus facilitating and promoting the mutual recognition of freezing orders and confiscation orders.

(27) Where a confiscation certificate that relates to a confiscation order concerning an amount of money is transmitted to more than one executing State, the issuing State should seek to avoid the situation whereby more property than necessary is confiscated and the total amount obtained from the execution of the order would exceed the maximum amount specified therein. To that end, the issuing authority should, inter alia, indicate in the confiscation certificate the value of assets, where known, in each executing State, so that the executing authorities can take account thereof, maintain the necessary contact and dialogue with the executing authorities on the property to be confiscated, and inform the relevant executing authority or authorities immediately if it considers that there could be a risk that confiscation in excess of the maximum amount might occur. Where appropriate, Eurojust could exercise a coordinating role within its remit in order to avoid excessive confiscation.

(28) Member States should be encouraged to make a declaration stating that, as executing States, they would accept freezing certificates, confiscation certificates, or both, in one or more official languages of the Union other than their official languages.

(29) The executing authority should recognise freezing orders and confiscation orders and should take the measures necessary for their execution. The decision on the recognition and execution of the freezing order or confiscation order should be taken, and the freezing or confiscation should be carried out, with the same speed and priority as for similar domestic cases. Time limits, which should be calculated in accordance with Regulation (EEC, Euratom) No 1182/71 of the Council(13), should be set out in order to ensure a quick and efficient decision on the recognition of the freezing order or confiscation order and a quick and efficient execution thereof. As regards freezing orders, the executing authority should start taking the concrete measures necessary to execute such orders no later than 48 hours after the decision on the recognition and execution thereof has been taken.
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 substance of the freezing order. This is without prejudice to the obligation to inform affected persons of the execution of a freezing order in accordance with this Regulation.

The recognition and execution of a freezing order or confiscation order should not be refused on grounds other than those provided for in this Regulation. This Regulation should permit the executing authorities not to recognise or execute confiscation orders on the basis of the principle of ne bis in idem, on the basis of the rights of affected persons or on the basis of the right to be present at the trial.

This Regulation should permit executing authorities not to recognise or execute confiscation orders where the person against whom the confiscation order was issued did not appear in person at the trial that resulted in the confiscation order linked to a final conviction. This should only be a ground for non-recognition or non-execution where trials result in confiscation orders linked to a final conviction and not where proceedings result in non-conviction-based confiscation orders. However, in order for such a ground to be available, one or more hearings should be held. The ground should not be available if the relevant national procedural rules do not provide for a hearing. Such national procedural rules should comply with the Charter and with the ECHR, in particular with regard to the right to a fair trial. This is the case, for example, where the proceedings are conducted in a simplified manner following, solely or partially, a written procedure or a procedure in which no hearing is provided for.

It should be possible, in exceptional circumstances, not to recognise or execute a freezing order or confiscation order where such recognition or execution would prevent the executing State from applying its constitutional rules relating to freedom of the press or freedom of expression in other media.

The creation of an area of freedom, security and justice within the Union is based on mutual trust and a presumption of compliance by other Member States with Union law and, in particular, with fundamental rights. However, in exceptional situations, where there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of a freezing order or confiscation order would, in the particular circumstances of the case, entail a manifest breach of a relevant fundamental right as set out in the Charter, the executing authority should be able to decide not to recognise and execute the order concerned. The fundamental rights that should be relevant in this respect are, in particular, the right to an effective remedy, the right to a fair trial and the right of defence. The right to property should, in principle, not be relevant because freezing and confiscation of assets necessarily imply an interference with a person's right to property and because the necessary safeguards in that respect are already provided for in Union law, including in this Regulation.

Before deciding not to recognise or execute a freezing order or confiscation order on the basis of any ground for non-recognition or non-execution, the executing authority should consult the issuing authority in order to obtain any necessary additional information.
(36) When examining a request from the executing authority to limit the period during which the property should be frozen, the issuing authority should take into account all of the circumstances of the case, in particular whether the continuation of the freezing order could cause unjustified damage in the executing State. The executing authority is encouraged to consult with the issuing authority on this issue before making a formal request.

(37) The issuing authority should inform the executing authority when an authority of the issuing State receives any sum of money which has been paid in respect of the confiscation order, it being understood that the executing State should only be informed if the amount paid in respect of the order impacts on the outstanding amount that is to be confiscated pursuant to the order.

(38) It should be possible for the executing authority to postpone the execution of a freezing order or confiscation order, in particular where its execution might damage an ongoing criminal investigation. As soon as the grounds for postponement have ceased to exist, the executing authority should take the measures necessary for the execution of the order.

(39) After the execution of a freezing order, and following the decision to recognise and execute a confiscation order, the executing authority should, in so far as possible, inform affected persons known to it of such execution or such decision. To that end, the executing authority should make every reasonable effort to identify the affected persons, verify how they can be reached and inform them of the execution of the freezing order or of the decision to recognise and execute the confiscation order. In carrying out that obligation, the executing authority could ask the issuing authority for assistance, for example where the affected persons appear to reside in the issuing State. The obligation under this Regulation for the executing authority to provide information to affected persons is without prejudice to any obligation of the issuing authority to provide information to persons under the law of the issuing State, for example regarding the issue of a freezing order or regarding existing legal remedies under the law of the issuing State.

(40) The issuing authority should be notified without delay if it is impossible to execute a freezing order or confiscation order. Such impossibility might arise because the property has already been confiscated, has disappeared, has been destroyed or cannot be found at the location indicated by the issuing authority, or because the location of the property has not been indicated in a sufficiently precise manner despite consultations between the executing authority and the issuing authority. In such circumstances, the executing authority should no longer be obliged to execute the order. However, if the executing authority subsequently obtains information that allows it to locate the property, it should be able to execute the order without a new certificate having to be transmitted in accordance with this Regulation.

(41) Where the law of the executing State renders the execution of a freezing order or confiscation order legally impossible, the executing authority should contact the issuing authority in order to discuss the situation and to find a solution. Such a solution could consist in the issuing authority withdrawing the order concerned.
As soon as the execution of a confiscation order has been completed, the executing authority should inform the issuing authority of the results of the execution. Where practically possible, the executing authority should, at that time, also inform the issuing authority of the property or the amount of money that has been confiscated, and of other details that it considers relevant.

The execution of a freezing order or confiscation order should be governed by the law of the executing State and only the authorities of that State should be competent to decide on the procedures for execution. Where appropriate, the issuing and executing authority should be able to invite Eurojust or the EJN to provide assistance, within their remit, concerning issues relating to the execution of freezing orders and confiscation orders.

The proper operation of this Regulation presupposes close communication between the competent national authorities involved, in particular in cases of the simultaneous execution of a confiscation order in more than one Member State. The competent national authorities should therefore consult each other whenever necessary, directly or, where appropriate, via Eurojust or the EJN.

The victims' rights to compensation and restitution should not be prejudiced in cross-border cases. Rules for the disposal of frozen or confiscated property should give priority to the compensation of, and restitution of property to, victims. The notion of ‘victim’ is to be interpreted in accordance with the law of the issuing State, which should also be able to provide that a legal person could be a victim for the purpose of this Regulation. This Regulation should be without prejudice to rules on compensation and restitution of property to victims in national proceedings.

Where the executing authority is informed of a decision issued by the issuing authority or by another competent authority in the issuing State to restitute frozen property to the victim, the executing authority should take the necessary measures to ensure that the property concerned is frozen and restituted to the victim as soon as possible. The executing authority should be able to transfer the property to the issuing State, so that the latter would be able to restitute the property to the victim, or directly to the victim subject to the consent of the issuing State. The obligation to restitute frozen property to the victim should be subject to the following conditions: the victim's title to the property should not be contested, meaning that it is accepted that the victim is the rightful owner of the property and there are no serious claims putting that into question; the property should not be required as evidence in criminal proceedings in the executing State; and the rights of affected persons, in particular the rights of bona fide third parties, should not be prejudiced. The executing authority should restitute frozen property to the victim only where those conditions have been met. Where the executing authority considers that those conditions have not been met, it should consult with the issuing authority, for example to request any additional information or to discuss the situation, in order to find a solution. If no solution can be found, the executing authority should be able to decide not to restitute the frozen property to the victim.

Each Member State should consider establishing a national centralised office responsible for the management of frozen property, with a view to possible later confiscation, as well as for the management of confiscated property. Frozen property
and confiscated property could be earmarked, as a matter of priority, for law enforcement and organised crime prevention projects and for other projects of public interest and social utility.

(48) Each Member State should consider establishing a national fund to guarantee appropriate compensation for victims of crime, such as families of police officers and public servants killed or permanently disabled in the line of duty. Member States could earmark a portion of confiscated assets for that purpose.

(49) Member States should not be able to claim from each other compensation for costs resulting from the application of this Regulation. However, where the executing State has incurred large or exceptional costs, for example because the property has been frozen for a considerable period of time, any proposal by the executing authority to share the costs should be considered by the issuing authority.

(50) In order to be able to address identified problems in the future regarding the content of the certificates set out in the Annexes to this Regulation as quickly as possible, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amendments to those certificates. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(51) Since the objective of this Regulation, namely the mutual recognition and execution of freezing orders and confiscation orders, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and its effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(52) Provisions of Framework Decision 2003/577/JHA have already been replaced by Directive 2014/41/EU of the European Parliament and of the Council as regards the freezing of evidence for Member States bound by that Directive. Provisions of Framework Decision 2003/577/JHA as regards freezing of property should be replaced by this Regulation between Member States bound by it. Framework Decision 2006/783/JHA should also be replaced by this Regulation between Member States bound by it. The provisions of Framework Decision 2003/577/JHA as regards freezing of property, as well as the provisions of Framework Decision 2006/783/JHA, should therefore continue to apply not only between the Member States that are not bound by this Regulation but also between any Member State that is not bound by this Regulation and any Member State that is bound by this Regulation.
(53) The legal form of this act should not constitute a precedent for future legal acts of the Union in the field of mutual recognition of judgments and judicial decisions in criminal matters. The choice of the legal form for future legal acts of the Union should be carefully assessed on a case-by-case basis taking into account, among other factors, the effectiveness of the legal act and the principles of proportionality and subsidiarity.

(54) Member States should ensure that, in accordance with Council Decision 2007/845/JHA[^16], their Asset Recovery Offices cooperate with each other to facilitate the tracing and identification of proceeds of crime and other crime-related property which may become the object of a freezing order or confiscation order.

(55) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, the United Kingdom has notified its wish to take part in the adoption and application of this Regulation.

(56) In accordance with Articles 1 and 2 and Article 4a(1) of Protocol No 21, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(57) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:
Changes to legislation: There are outstanding changes not yet made to Regulation (EU) 2018/1805 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details)


Changes to legislation:
There are outstanding changes not yet made to Regulation (EU) 2018/1805 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.