



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 27 July 2011

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**COPEN 188
EUROJUST 115
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NOTE

from: General Secretariat
to: Delegations

Subject: Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.
- Consolidated version of the certificate concerning the execution of confiscation orders.

Delegations find attached the consolidated version of the certificate concerning the execution of confiscation orders.

CERTIFICATE
referred to in Article 4 of Council Framework Decision 2006/783/JHA
on the application of the principle of mutual recognition
to confiscation orders

(a) Issuing and executing States

Issuing State:

Executing State:

(b) Court which issued the confiscation order:

Official name:

Address:

.....

File reference:

Tel. No.: (country code) (area/city code)

Fax No.: (country code) (area/city code)

E-mail (when available)

Languages in which it is possible to communicate with the Court

.....

Contact details for person(s) to contact in order to obtain additional information for the purpose of the execution of the confiscation order, or, where applicable, for the purpose of coordination of the execution of a confiscation order transmitted to two or more executing States, or for the purpose of the transfer to the issuing State of monies or properties obtained from the execution (name, title/grade, tel. no., fax no., and, when available, e-mail)

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(c) Authority competent for the execution of the confiscation order in the issuing State (if the authority is different from the Court under point (b)):

Official name:

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Address:

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Tel. No.: (country code) (area/city code)

Fax No. (country code) (area/city code)

E-mail (when available).....

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Languages in which it is possible to communicate with the authority competent for the execution:

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Contact details for person(s) to contact in order to obtain additional information for the purpose of the execution of the confiscation order or, where applicable, for the purpose of coordination of the execution of a confiscation order transmitted to two or more executing States, or for the purpose of the transfer to the issuing State of monies or properties obtained from the execution, (name, title/grade, tel. no., fax no., and, when available, e-mail)

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(d) Where a central authority has been made responsible for the administrative transmission and reception of confiscation orders in the issuing State:

Name of the central authority:

.....

.....

Contact person, if applicable (title/grade and name):

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Address:

.....

File reference

Tel. No.: (country code) (area/city code)

Fax No.: (country code) (area/city code)

E-mail (when available):

(e) Authority or authorities which may be contacted (if point (c) and/or (d) has(have) been completed):

Authority mentioned under point (b)

Can be contacted for questions concerning:

Authority mentioned under point (c)

Can be contacted for questions concerning:

Authority mentioned under point (d)

Can be contacted for questions concerning:

(f) Where the confiscation order is a follow-up to a freezing order transmitted to the executing State pursuant to Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence ¹, provide relevant information to identify the freezing order (the dates of issue and transmission of the freezing order, the authority to which it was transmitted, reference no. if available):

.....

.....

(g) Where the confiscation order has been transmitted to more than one executing State, provide the following information:

1 The confiscation order has been transmitted to the following other executing State(s) (country and authority):

.....

.....

¹ OJ L 196, 2.8.2003, p. 45.

2. The confiscation order has been transmitted to more than one executing State for the following reason (tick the relevant box):

2.1. Where the confiscation order concerns one or more specific items of property:

Different specific items of property covered by the confiscation order are believed to be located in different executing States.

The confiscation of a specific item of property involves action in more than one executing State.

A specific item of property covered by the confiscation order is believed to be located in one of two or more specified executing States.

2.2. Where the confiscation order concerns an amount of money:

The property concerned has not been frozen under Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence

The value of the property which may be confiscated in the issuing State and any one executing State is not likely to be sufficient for the execution of the full amount covered by the confiscation order.

Other reason(s) (to be specified):

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.....

(h) Information regarding the natural or legal person against whom the confiscation order has been issued:

1. In the case of a natural person

Name:

Forename(s):

Maiden name, (where applicable):

Aliases, (where applicable):

Sex:

Nationality:

Identity number or social security number (when possible)

Date of birth:

Place of birth:

Last known address:

.....

Language(s) which the person understands (if known):

.....

1.1. If the confiscation order concerns an amount of money:

The confiscation order is transmitted to the executing State because (tick the relevant box):

- (a) – the issuing State has reasonable grounds to believe that the person against whom the confiscation order has been issued has property or income in the executing State. Add the following information:

Grounds for believing that the person has property / income:

.....

Description of the property of the person / source of income:

.....

Location of the property of the person/source of income (if not known, the last known location):

- (b) – there are no reasonable grounds, as referred to under (a), which would allow the issuing State to determine the Member State to which the confiscation order may be sent, but the person against whom the confiscation order has been issued is normally resident in the executing State. Add the following information:

Normal residence in the executing State:

.....

.....

1.2. If the confiscation order concerns specific item(s) of property:

The confiscation order is transmitted to the executing State because (tick the relevant box):

- (a) – the specific item(s) of property is(are) located in the executing State.
(See point (i))

- (b) – the issuing State has reasonable grounds to believe that all or part of the specific item(s) of property covered by the confiscation order is (are) located in the executing State. Add the following information:

Grounds for believing that the specific item(s) of property is located in the executing State:

- (c) – there are no reasonable grounds, as referred to in (b), which would allow the issuing State to determine the Member State to which the confiscation order may be transmitted, but the person against whom the confiscation order has been issued is normally resident in the executing State. Add the following information:

Normal residence in the executing State:
.....
.....

2. In the case of a legal person:

Name:

Form of legal person:

Registration number (if available) ¹

Registered seat (if available) ¹

Address of the legal person:

2.1. If the confiscation order concerns an amount of money:

The confiscation order is transmitted to the executing State because (tick the relevant box):

- (a) – the issuing State has reasonable grounds to believe that the legal person against whom the confiscation order has been issued has property or income in the executing State. Add the following information:

Grounds for believing that the legal person has property / income:

Description of the property of the legal person / source of income:

Location of the property of the legal person / source of income (if not known, the last known location):

¹ Where a confiscation order is transmitted to the executing State because the legal person against whom the confiscation order has been issued has its registered seat in that State, Registration number and Registered seat must be completed.

- (b) there are no reasonable grounds, as referred to in (a), which would allow the issuing State to determine the Member State to which the confiscation order may be sent but the legal person against whom the confiscation order has been issued has its registered seat in the executing State. Add the following information:

Registered Seat in the executing State:

.....
.....

2.2. If the confiscation order concerns specific item(s) of property:

The confiscation order is transmitted to the executing State because (tick the relevant box):

- (a) the specific item(s) of property is (are) located in the executing State.
(See point (i)).
- (b) the issuing State has reasonable grounds to believe that all or part of the specific item(s) of property covered by the confiscation order is (are) located in the executing State. Add the following information:

Grounds for believing that the specific item(s) of property is (are) located in the executing State:

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(c) there are no reasonable grounds, as referred to in (b), which would allow the issuing State to determine the Member State to which the confiscation order may be transmitted but the legal person against whom the confiscation order has been issued has its registered seat in the executing State. Add the following information:

Registered seat in the executing State:

.....
.....

(i) The confiscation order

The confiscation order was issued on (date):

The confiscation order became final on (date):

Reference number of the confiscation order (if available):

1. Information on the nature of the confiscation order

1.1. Indicate (by ticking in the relevant box(es)) if the confiscation order concerns:

an amount of money

The amount for execution in the executing State with indication of currency (in figures and words):

The total amount covered by the confiscation order with indication of currency (in figures and words):

- specific item(s) of property

Description of the specific item(s) of property:

.....

Location of the specific item(s) of property (if not known, the last known location):

.....

.....

Where the confiscation of the specific item(s) of property involves action in more than one executing State, description of the action to be taken:

.....

1.2. The Court has decided that the property (tick the relevant box(es)):

- (i) is the proceeds of an offence, or is equivalent to either the full value or part of the value of such proceeds,
- (ii) constitutes the instrumentalities of such an offence,
- (iii) is liable to confiscation resulting from the application in the issuing State of extended powers of confiscation as specified in (a), (b) and (c). The basis for the decision is that the Court, based on specific facts, is fully convinced that the property in question has been derived from:
 - (a) criminal activities of the convicted person during a period prior to conviction for the offence concerned which is deemed to be reasonable by the Court in the circumstances of the particular case,

- (b) similar criminal activities of the convicted person during a period prior to conviction for the offence concerned which is deemed to be reasonable by the Court in the circumstances of the particular case, or
- (c) the criminal activity of the convicted person, and it has been established that the value of the property is disproportionate to the lawful income of that person.

- (iv) is liable to confiscation under any other provision relating to extended powers of confiscation under the law of the issuing State.

If two or more categories of confiscation are involved, provide details on which property is confiscated in relation to which category:

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2. Information on the offence(s) resulting in the confiscation order

2.1. A summary of facts and a description of the circumstances in which the offence(s) resulting in the confiscation order has(have) been committed, including time and place

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2.2. Nature and legal classification of the offence(s) resulting in the confiscation order and the applicable statutory provision/code on basis of which the decision was made:

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2.3. If applicable, indicate one or more of the following offences to which the offence(s) identified under point 2.2 relate(s), if the offence(s) are punishable in the issuing State by a custodial sentence of a maximum of at least 3 years (tick the relevant box(es)):

- participation in a criminal organisation;
- terrorism;
- trafficking in human beings;
- sexual exploitation of children and child pornography;
- illicit trafficking in narcotic drugs and psychotropic substances;
- illicit trafficking in weapons, munitions and explosives;
- corruption;
- 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 of 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 therein;
- forgery of 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/ships;
- sabotage.

2.4 To the extent that the offence(s) resulting in the confiscation order identified under point 2.2 is (are) not covered by point 2.3, give a full description of the offence(s) concerned (this should cover the actual criminal activity involved as opposed for instance to legal classifications):

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(j) Proceedings resulting in the confiscation order

Indicate if the person appeared in person at the trial resulting in the confiscation order:

1. Yes, the person appeared in person at the trial resulting in the confiscation order.
2. No, the person did not appear in person at the trial resulting in the confiscation order.

3. If you have ticked the box under point 2, please confirm the existence of one of the following:

3.1a. the person was summoned in person on ... (day/month/year) and thereby informed of the scheduled date and place of the trial which resulted in the confiscation order and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

3.1b. the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the confiscation order, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial;

OR

3.2. being aware of the scheduled trial, the person had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

OR

3.3. the person was served with the confiscation order on ... (day/month/year) and was expressly informed about the right to a retrial or appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed, and

the person expressly stated that he or she does not contest the decision;

OR

the person did not request a retrial or appeal within the applicable timeframe.

4. If you have ticked the box under point 3.1b, 3.2 or 3.3 above, please provide information about how the relevant condition has been met:

.....
.....

(k) Conversion and transfer of property

1. If the confiscation order concerns a specific item of property, state whether the issuing State allows for the confiscation in the executing State to take the form of a requirement to pay a sum of money corresponding to the value of the property.
 yes
 no

2. If the confiscation order concerns an amount of money, state whether property, other than money obtained from the execution of the confiscation order, may be transferred to the issuing State:
 yes
 no

(l) Alternative measures, including custodial sanctions

1. State whether the issuing State allows for the application by the executing State of alternative measures where it is not possible to execute the confiscation order, either totally or in part:
yes
no

2. If yes, state which sanctions may be applied (nature and maximum level of the sanctions):

Custody.(Maximum period):

Community service (or equivalent) (Maximum period):

Other sanctions. (Description):

.....

(m) Other circumstances relevant to the case (optional information)

.....

.....

(n) The confiscation order is attached to the certificate.

Signature of the authority issuing the certificate and/or its representative certifying the content of the certificate as accurate:

Name:

Post held (title/grade):

Date:

Official stamp (if available)
