

Initiative by the Governments of the French Republic, the Kingdom of Sweden and the Kingdom of Belgium for the adoption by the Council of a Framework Decision on the execution in the European Union of orders freezing assets or evidence

(2001/C 75/02)

THE COUNCIL OF THE EUROPEAN UNION,

HAS ADOPTED THIS FRAMEWORK DECISION:

Having regard to the Treaty on European Union, and in particular Articles 31(a) and 34(2)(b) thereof,

TITLE I

Having regard to the initiative by the Republic of France, the Kingdom of Sweden and the Kingdom of Belgium ⁽¹⁾,

SCOPE

Article 1

Having regard to the opinion of the European Parliament ⁽²⁾,

Definitions

Whereas:

For the purposes of this Framework Decision,

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| <p>(1) The European Council, meeting in Tampere on 15 and 16 October 1999, endorsed the principle of mutual recognition, which should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union.</p> <p>(2) The principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent authorities quickly to secure evidence and to seize assets which are easily movable.</p> <p>(3) On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition in criminal matters, giving first priority (measures 6 and 7) to the adoption of an instrument applying the principle of mutual recognition to the freezing of evidence and assets.</p> <p>(4) Such an instrument should, initially, apply to a limited number of offences which have already been the subject of a common action in the European Union.</p> <p>(5) Rights granted to the parties or bona fide interested third parties should be preserved,</p> | <p>(a) 'issuing State' shall mean the Member State in which a judicial authority within the meaning of this Framework Decision has taken a freezing order in the framework of criminal proceedings;</p> <p>(b) 'executing State' shall mean the Member State in whose territory the property (asset or evidence) is located;</p> <p>(c) 'freezing order' shall mean any measure taken by a competent judicial authority in the issuing State in order provisionally to prevent the destruction, transformation, moving, transfer or disposal of property that could:</p> <ul style="list-style-type: none"> — be subject to confiscation by the issuing State, — constitute evidence; <p>(d) 'asset' shall mean movable property, corporeal or incorporeal, or immovable property, and legal documents and instruments evidencing title to, or interest in, such property, which the authority issuing the request for the property to be frozen considers:</p> <ul style="list-style-type: none"> — is the proceeds of an offence referred to in Article 2 or an asset equivalent to either the full value or part of the value of such proceeds, <p style="padding-left: 40px;">and</p> <ul style="list-style-type: none"> — may be destroyed, transformed, moved, transferred or disposed of; <p>(e) 'evidence' shall mean objects and documents which could be produced as evidence.</p> |
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⁽¹⁾ OJ C ...

⁽²⁾ OJ C ...

*Article 2***Offences**

This Framework Decision applies to all freezing orders relating to facts which, under the law of the issuing State, constitute one of the following offences:

- (a) illicit trafficking in narcotic drugs;
- (b) fraud affecting the European Communities' financial interests within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests⁽¹⁾ and the Protocols thereto of 29 November 1996⁽²⁾, 27 September 1996⁽³⁾ and 19 June 1997⁽⁴⁾;
- (c) laundering of the proceeds of crime;
- (d) counterfeiting of the euro;
- (e) corruption;
- (f) trafficking in human beings.

TITLE II

PROCEDURE FOR EXECUTING FREEZING ORDERS*Article 3***Notification of freezing orders**

A freezing order within the meaning of this Framework Decision, together with the certificate provided for in Article 7, shall be notified by the judicial authority which issued it directly to the competent judicial authority for execution. If the latter authority is unknown, the judicial authority in the issuing State shall make all necessary inquiries, including via the contact points of the European judicial network, in order to obtain the information from the executing State.

*Article 4***Direct execution**

1. A freezing order, notified in accordance with Article 3, shall be recognised by the competent authority in the executing State without any further formality being required and shall be executed forthwith in the same way as a national freezing

order unless that authority decides to invoke one of the grounds for non-execution provided for in Article 6.

A report on the execution of the freezing order shall be made forthwith to the competent authority in the issuing State by any method which leaves a written record.

2. Any additional coercive measures shall be taken in accordance with the procedure of the executing State.

*Article 5***Duration of the freezing order**

1. The property shall remain frozen in the executing State until that State has replied to any request made under Article 8(1) (a) or (b).

2. If the request or order referred to in Article 8(1) (a) or (b) is not made within the deadline specified in that Article, the measure shall be terminated.

3. After consulting the issuing State, the executing State may lay down appropriate conditions in the light of the circumstances in order to limit the period for which the asset will be frozen. If, in accordance with those conditions, it envisages lifting the measure, it shall inform the issuing State, which shall be given the opportunity to submit its comments.

4. The judicial authorities of the issuing State shall forthwith notify the judicial authorities of the executing State that the freezing order has been lifted.

*Article 6***Grounds for non-execution**

The judicial authorities of the executing State may oppose the execution of the freezing order if the certificate provided for in Article 7 is not produced or the particulars on that certificate are incomplete.

Where no certificate is produced or where the information on the certificate is incomplete, the executing authority may:

- specify a deadline for its presentation or for the missing information to be provided, or
- accept an equivalent document, or

⁽¹⁾ OJ C 316, 27.11.1995, p. 48.

⁽²⁾ OJ C 151, 20.5.1997, p. 2.

⁽³⁾ OJ C 313, 23.10.1996, p. 2.

⁽⁴⁾ OJ C 221, 19.7.1997, p. 12.

- exempt the issuing authority from the requirement if it considers that the information provided is sufficient.

Any decision to refuse execution must be taken and notified forthwith to the judicial authorities of the issuing State by any means which leaves a written record.

Article 7

Certificate

1. The certificate, the standard form for which is given in Annex I, must be signed, and its contents certified as accurate, by the competent authority in the issuing State that ordered the measure.
2. The certificate must be translated into the official language or one of the official languages of the executing State.
3. Any Member State may, either when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

Article 8

Subsequent treatment of the frozen asset

1. The notification referred to in Article 3 must also set out, or be followed within no more than four days by:
 - (a) a request for the property to be transferred to the issuing State
 - for use as evidence;
 - for purposes of confiscation;
 - for restitution to the victim of an offence referred to in Article 2,

in the last two cases, on condition that such transfer is possible between the Member States concerned;

or
 - (b) an order that the asset remain in the executing State pending a request from the issuing State for execution of a confiscation order in the executing State, provided that such an order has already been issued in the issuing State or is due to be issued at a future date.

2. A request:
 - (a) for transfer as referred to in paragraph 1(a) shall be processed by the executing State in accordance with the rules applicable to mutual assistance in criminal matters;
 - (b) for confiscation as referred to in paragraph 1(b) shall be processed by the executing State in accordance with the rules applicable to the enforcement of foreign criminal sentences.

Article 9

Appeals

1. An appeal without suspensive effect may be lodged against a freezing order executed pursuant to Article 4 by the defendant, the victim or any natural or legal person claiming to be a bona fide third party; the action shall be brought before the competent authority in the issuing State or in the executing State in accordance with the national law of each.
2. The freezing order may not be appealed as to its substance in the executing State.
3. The judicial authorities of the issuing State shall be informed that an appeal has been lodged and of grounds pleaded, so that it can submit the arguments that it deems necessary. They shall be informed of the outcome of the appeal.

Article 10

Liability of the issuing State

The issuing State shall be liable, under the conditions laid down in the law of the executing State, for cases where the information on the certificate was inaccurate at the time of its transmission, and this resulted in the execution of a freezing order which has caused injury to one of the persons referred to in Article 9.

The executing State shall make good the injury under the conditions laid down in its national law, provided that the injured party has sued it for damages.

The issuing State shall reimburse to the executing State in full any sums paid in damages to the injured parties.

The executing State shall refrain from seeking compensation from the issuing State for any injury it has itself sustained.

TITLE III

FINAL PROVISIONS*Article 11***Implementation**

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 31 December 2002.

2. By the same date Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. On the basis of a report established on the basis of this information and a written report by the Commission, the

Council shall, by 30 June 2003, assess the extent to which Member States have taken the necessary measures in order to comply with this Framework Decision.

3. The General Secretariat of the Council shall notify Member States of the declarations made pursuant to Article 7(3).

*Article 12***Entry into force**

This Framework Decision shall enter into force on the day of its publication in the Official Journal.

Done at ...

For the Council
The President

ANNEX

CERTIFICATE PROVIDED FOR BY ARTICLE 7

1. Issuing State⁽¹⁾
2. Court or judicial authority issuing the freezing order and certificate
 - 2.1. Name
 - 2.2. Address
 - 2.3. Telephone/fax/e-mail⁽²⁾
 - 2.4. Language(s) in which it is possible to communicate with the issuing authority⁽³⁾
 - 2.4.1. German
 - 2.4.2. English
 - 2.4.3. etc.
3. Offence(s) being prosecuted:
 - 3.1. illicit trafficking in narcotic drugs
 - 3.2. fraud affecting the European Communities' financial interests
 - 3.3. laundering of the proceeds of crime
 - 3.4. counterfeiting the euro
 - 3.5. corruption
 - 3.6. trafficking in human beings
4. Freezing order
 - 4.1. Date
 - 4.2. Purpose of the order
 - 4.2.1. subsequent confiscation
 - 4.2.2. evidence
 - 4.2.3. restitution of property to a victim of crime
 - 4.3. Asset or evidence covered by the freezing order
 - 4.3.1. precise description of the property
 - 4.3.2. exact location of the property
 - 4.3.3. known owner of the property

⁽¹⁾ Each heading of the certificate appears in all the official languages of the European Union: if necessary, headings will be translated on the reverse side of the page and refer to a number on the front side.

⁽²⁾ Telephone and fax numbers should be given in full (i.e. number for callers from abroad); wherever possible, give numbers of direct lines.

⁽³⁾ Optional information, not covered by Article 7.

5. Action to be taken by the executing State after executing the freezing order
 - 5.1. transfer the property to the issuing State
 - 5.2. keep the property in the executing State pending a confiscation order
 - 5.2.1. order already issued
 - 5.2.2. order due to be issued
6. Additional information⁽¹⁾
7. Text of the freezing order attached to this certificate

Done at date

Signature and/or stamp

⁽¹⁾ Optional information, not covered by Article 7.