

Council and EP Shape Regulation on Freezing and Confiscation Orders



eucrim

European Law Forum: Prevention • Investigation • Prosecution

Thomas Wahl

News

On 20 June 2018, the Council announced that a [political agreement had been reached](#) with the European Parliament on new EU rules for the mutual recognition of freezing and confiscating orders.

The new legislation – the first one in the form of a regulation as regards the area of judicial cooperation – has yet to be approved by the plenary of the European Parliament and the JHA Ministers Council before it can be revised by lawyers linguistically and formally adopted by the two institutions.

The Council further reported that it agreed on the following main issues with EP representatives:

- The principle of mutual recognition prevails, meaning that all judicial decisions in criminal matters taken in one Member State will (principally) be directly recognised and enforced by another EU country;
- Only a limited number of grounds for non-recognition and non-execution are given. In particular, the ground for non-recognition based on fundamental rights (originally not foreseen in the Commission proposal) will be included, but it will be subject to strict conditions;
- The regulation will apply widely, including value-based confiscation and non-conviction based confiscation; certain schemes of preventive confiscation will also be included, provided that there is a link to a criminal offence;
- Standard certificates and procedures are provided for to allow for speedy and efficient freezing as well as confiscation actions;
- Deadlines for the recognition of a confiscation order have been set (usually 45 days); deadlines have also been provided for urgent cases;
- New provisions will ensure that victims' rights to compensation and restitution are respected in cross-border cases.

The new regulation on the mutual recognition of freezing and confiscation orders will replace two framework decisions of 2003 and 2006. These FDs are considered outdated and no longer in line with the latest national and EU legislative developments on freezing and confiscation of the proceeds of crime.

The new regulation dates back to a Commission proposal of 21 December 2016 (COM(2016) 819 final– see [eucri](#)m 4/2016, p. 165). The initiative has been controversially discussed (see also [eucri](#)m 2/2017, p. 73). It was, *inter alia*, questioned whether a regulation is the right instrument for governing cross-border judicial cooperation, whether the proposal entails enough precision and clarity, whether procedural safeguards are being sufficiently respected, and whether an *ordre-public* refusal ground can be singled out.

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

ISSN: 1862-6947



About eucrim

eucrim is the leading journal which regularly informs about current developments in European criminal and “criministrative” law.

All news items are freely accessible at: <https://eucrim.eu/news/>

Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.

The project is co-financed by the [Union Anti-Fraud Programme \(UAFP\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



**Co-funded by
the European Union**