

# Draft Regulation on Mutual Recognition of Confiscation and Freezing Orders Passes First Review in the EP

Thomas Wahl

On 17 January 2018, the European Parliament confirmed that MEPs can start trilogue negotiations with the JHA Council and the Commission as regards the legislative draft on a regulation on mutual recognition of freezing and confiscation orders. The [confirmation](#) goes back to [Rule 69c](#) of the Rules of Procedure of the European Parliament (see also news on [Money Laundering of ##](#)).

The original proposal was tabled by the European Commission on 21 December 2016 ([COM\(2016\) 819 final](#); see [euCRIM 4/2016](#), p. 165).

The position of the European Parliament is based on a [report](#) by LIBE committee member and MEP [Nathalie Griesbeck](#) (ALDE, FR). It suggests several amendments to the Commission's draft, including in particular:

- Broadening the scope of the type of assets that can be seized or confiscated;
- Introducing tighter deadlines for the execution of a confiscation order;
- Possibility for the issuing authority to set specified dates for execution of the order if confiscation or freezing is urgent;
- Changing some mandatory grounds for refusal into optional ones, e.g., the non-maintenance of formal requirements, extraterritorial jurisdiction, or double criminality;
- Prioritizing the compensation of victims;
- Promoting the re-use of frozen and confiscated assets for social purposes.

The EP's amendments introduce several safeguards that should improve the protection of individuals. For instance, a refusal ground of "ordre public" is proposed. It would allow the executing authority to refuse the recognition of a confiscation or freezing order if there are substantial grounds for believing that executing it would be incompatible with the obligations of the executing State in accordance with Article 6 TEU and the Charter. This clause also appears in the Directive on the European Investigation Order and is called for in legal literature.

Furthermore, third parties are to be better protected. Recognition of a confiscation order can be refused if it relates to a specific item of property not belonging to the natural or legal person against whom the confiscation order was made (in the issuing Member State) or to any other natural or legal person who was a party to the proceedings (in the issuing State).

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ISSN: 1862-6947

<https://euCRIM.eu>



The amendments of the EP also introduce obligations to inform interested parties following the execution of a confiscation or freezing order. Provisions on effective legal remedies have been foreseen.

The main aim of the new legislation in the form of a regulation (the first in the area of mutual legal assistance within the EU) is to make freezing and confiscation of property more efficient. Only an estimated 1.1% (€1.2 billion) of all criminal proceeds in the EU are ever confiscated. The regulation would replace two pieces of former legislation (see [eucrim 4/2016, p. 165](#)). It is part of the Commission's [Action Plan against terrorist financing](#) of December 2016. The Union's legislators consider the adoption of the proposal together with the directive on harmonising the money laundering offense by criminal law a priority.

Trilogue talks may start immediately, since the JHA Council already adopted a [general approach](#) on the topic at its meeting of 8 December 2017 (see [eucrim 4/2017, p. 176-177](#)).

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