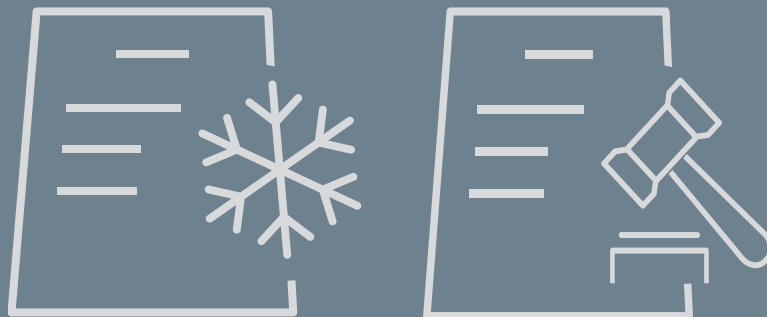




# Note on the Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders

A new legal framework for judicial cooperation  
in the field of asset recovery

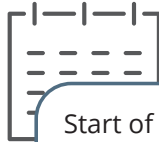


# Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders

A new legal framework for judicial cooperation in the field of asset recovery



First Regulation on mutual recognition in criminal matters **directly and uniformly applicable**



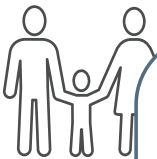
Start of application **19 December 2020**  
Applies to all freezing and confiscation certificates transmitted on this day or after



Single instrument **replacing Framework Decisions** 2003/577/JHA on freezing property and evidence 2006/783/JHA on confiscation orders



- Duty to recognise and execute freezing orders and confiscation orders issued by another Member State within the framework of the proceedings in criminal matters
- Covers various types of confiscation
- No type of criminal offence excluded
- Specific and new grounds for refusal



## Improved **protection for victims of cross-border crime**

- Victim's right to compensation and restitution has priority over the executing and issuing States' interest
- Compensation and restitution of property to victims should have priority over the disposal of frozen or confiscated property
- Property claims to be demanded in the issuing state
- Frozen property to be restituted to the victim as soon as possible



Applies among EU Member States with the exception of Ireland and Denmark



## Time limits:

- **45** days for recognition of confiscation order
- **48** hours for recognition and further 48 hours for execution of freezing order



Standard freezing and confiscation **certificates** in Annexes of the Regulation



[Text of the Regulation in Eur-lex](#)



[Confiscation and freezing on the Eurojust website](#)



[EJN Judicial Library](#)



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## 1. Background and purpose

The new Regulation on the Mutual Recognition of Freezing and Confiscation Orders<sup>1</sup> (hereinafter the “Regulation”) shall apply as of 19 December 2020.

The Regulation introduces a completely new legal framework in the EU governing the area of judicial cooperation in the field of asset recovery, replacing the legal instruments applicable so far. The new regime brings both significant changes and novelties that might affect the everyday casework of practitioners in the Member States.

The purpose of this Note is to (i) provide a brief introduction to the Regulation, (ii) raise awareness of the start of its application and (iii) bring key novelties of the new legal framework to the attention of the practitioners as well as issues that could be of interest during the first days of its application.

The Note does not aim at an analysis of the specific legal issues that may stem from the application of the Regulation nor does it provide an exhaustive list of possible challenging legal issues. Many of them would require substantial analysis that goes beyond the scope of this Note.

## 2. Regulation on the Mutual Recognition of Freezing and Confiscation Orders

### 2.1. Single instrument

The Regulation constitutes a single instrument covering freezing and confiscation orders. It is the first time a regulation governs an area of mutual recognition in criminal matters, meaning it is intended to resolve issues linked to implementation of the existing instruments, as it will be **directly and uniformly applicable in the EU**.

### 2.2. Principle of Mutual Recognition

The Regulation is based on the general principle of mutual recognition, i.e., that all judicial decisions in criminal matters taken in one Member State will normally be directly recognised and enforced by another Member State. The Regulation only sets out a limited number of grounds for non-recognition and non-execution (see below 2.7).

### 2.3. Temporal application<sup>2</sup>

The new legal regime will be applicable as of 19 December 2020. The following instruments will be replaced:

- The provisions of Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence as regards the freezing of property between the Member States bound by it<sup>3</sup>. (Hereinafter FWD 2003).

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<sup>1</sup> 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.

<sup>2</sup> Articles 39 and 40 of the Regulation.

<sup>3</sup> Please note that provisions of Framework Decision 2003/577/JHA as regards freezing of evidence were replaced by Directive 2014/41/EU

- The Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders. (Hereinafter FWD 2006).

References to these two instruments shall be construed as references to the Regulation.

**19 December 2020** will be the first day of application of the Regulation. This effectively means that it will become applicable to freezing and confiscation certificates transmitted on this day or after. Freezing certificates and confiscation certificates transmitted prior to this day will follow the legal regimes of the FWD 2003 on freezing orders and FWD 2006 on confiscation orders until the final execution of the freezing order or confiscation order.

## 2.4. Material and territorial application

### 2.4.1. Subject matter

The Regulation lays down rules under which a Member State recognises and executes in its territory freezing orders and confiscation orders issued by another Member State within the framework of the proceedings in criminal matters. It is worth noting that the term 'proceedings in criminal matters' differs from term 'criminal proceedings' used in FWD 2003 on freezing orders and might cover broader area of application. There is a duty to recognize and execute even though there is no comparable domestic measure<sup>4</sup>.

The Regulation covers a wide scope of types of confiscation, such as value based confiscation, non-conviction-based confiscation, extended confiscation, third party as far as the criminal law guarantees are provided, including certain types of preventive confiscation provided there is a link to a criminal offence. The Regulation does not apply to any freezing and confiscation orders issued in the frame of proceedings in civil and administrative matters.

### 2.4.2. Criminal offences

The Regulation does not pose a threshold on applicable criminal offences. The criminal offences covered by the Regulation should not be limited to particularly serious crimes that have a cross border dimension. No type of criminal offence is excluded<sup>5</sup>.

### 2.4.3. Territorial scope

The Regulation will be applicable among the EU Member States with the exception of Ireland and Denmark that are not bound by it and are not subject to its application<sup>6</sup>.

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<sup>4</sup> Recital 13 of the Regulation. "Proceedings in criminal matters" is an autonomous concept of Union law interpreted by the Court of Justice of the EU. It 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 on the freezing and confiscation of instrumentalities and proceeds of crime. It also covers other types of orders 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.

<sup>5</sup> Recital 14 of the Regulation

<sup>6</sup> Recitals 56 and 57 of the Regulation

## 2.5. Transmission – standard certificates and procedures

Freezing and confiscation orders shall be transmitted by means of standard freezing and confiscation certificates, set out, respectively, in Annexes I and II. The transmission of the freezing or confiscation certificate shall suffice, unless Member States make a declaration to the effect that the original freezing or confiscation order or a certified copy thereof must accompany them<sup>7</sup>.

## 2.6. Time limits for recognition and execution

The Regulation establishes time limits for recognition and execution of freezing and confiscation orders. It establishes a deadline of 45 days for the recognition of a confiscation order and in an urgent case a deadline of 48 hours for the recognition and a further 48 hours for the execution of freezing orders. These time limits can be postponed under strict conditions detailed in the Regulation<sup>8</sup>.

## 2.7. Grounds for refusal

The Regulation introduces grounds for refusal that differ from the current regime. The Regulation, similarly to other mutual recognition instruments, introduces listed offences in relation to which dual criminality is not required<sup>9</sup>. Another novelty worth highlighting is the referral to fundamental rights as an (exceptional) ground for refusal<sup>10</sup>.

## 2.8. Victims' rights

One of the major changes and novelties of the new Regulation is the aim at improving the protection of victims of crime in cross-border cases. The Regulation introduces a new regime and the very first time that the EU level the rights to restitution and compensation of victims are considered, including priority over interests of issuing and executing States.

None of the FWDs (2003 or 2006) contains any provision on victims. FWD 2003 on freezing orders provides only for a possibility to freeze property for purposes of confiscation, but not with a view to safeguarding the victim's right to restitution. FWD 2006 on confiscation orders does not address the rights of the victim either.

The Regulation addresses victims' needs to get **compensation for damages or to get stolen assets restituted** from the State where the property was confiscated. A possibility to receive a decision on compensation or restitution during criminal proceedings exists in several Member States but until the Regulation, there was no specific provision which took into account such a decision in cross border confiscation cases. The Regulation addresses this issue. In cases where the victim has been

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<sup>7</sup> Articles 8 and 14 of the Regulation

<sup>8</sup> Articles 9 and 20 of the Regulation

<sup>9</sup> Article 3(2) of the Regulation

<sup>10</sup> Article 8(10)(f) of the Regulation

granted a decision on compensation or restitution and the assets have been confiscated in another State following the mutual recognition procedure, the **victim's right to compensation or restitution will have priority over the issuing and executing State's interests**. This means that the provisions on the disposal of the confiscated property or of the money obtained as a result of the confiscation as well as its division between the issuing and the executing State have a residual application obtained as a result of the confiscation as well as its division between the issuing and the executing State have a residual application<sup>11</sup>.

The Regulation pays special attention to the **restitution of frozen property to victims**. Accordingly, the compensation and restitution of property to victims **should have priority** over the disposal of frozen or confiscated property<sup>12</sup>. 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 the Regulation.

Under the Regulation, **property claims** must be demanded in the issuing State<sup>13</sup>. If there is a decision to restitute frozen property to the victim, the issuing authority must inform the executing authority. The executing authority must then take the necessary measures to ensure that **the frozen property is restituted to the victim as soon as possible**, in accordance with the procedural rules of that State. However, this obligation is subject to three conditions: (1) the victim's title to the property is not contested; (2) the property is not required as evidence in criminal proceedings in the executing State; and (3) the rights of affected persons are not prejudiced<sup>14</sup>.

## 2.9. Affected persons

The Regulation establishes a higher level of protection of affected persons and a definition of "affected person"<sup>15</sup>. Cooperation between Member States 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 under the law of the executing State. 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<sup>16</sup>.

## 3. Conclusions

The Regulation will bring significant novelties to the current legal regime. In this perspective, Eurojust's goal is to follow its practical application, in order to identify the specific legal and practical issues that may stem from it.

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<sup>11</sup> Article 30(7) of the Regulation

<sup>12</sup> Recital 45 of the Regulation

<sup>13</sup> Article 29(1) of the Regulation

<sup>14</sup> Article 29(2) of the Regulation

<sup>15</sup> Article 2(10) of the Regulation

<sup>16</sup> Recital 17 Regulation



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