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Freezing of assets and evidence

Freezing of property or evidence in the European Union may be required to enable its use in a criminal trial or in view of its confiscation. It can be done on the basis of the Council Framework Decision which establishes the rules under which a Member State is to recognise and execute in its territory a freezing order issued by a judicial authority of another Member State in the framework of criminal proceedings.

What is a 'freezing order'?

For the purpose of a cross-border procedure the 'freezing order' means any measure taken by a judicial authority in a Member State to prevent the destruction, transformation, displacement, etc., of property. Evidence means objects, documents or data which could be produced as evidence in criminal proceedings. The Member States taking part in the procedure are the: 'issuing State' (the one that made, validated or in any way confirmed a freezing order) and 'executing State' (in whose territory the property or evidence is located).

Decisions executed without verification of double criminality

As an exception to the general rule it is possible on the basis of the Framework Decision not to subject certain offences to the double criminality (also known as dual criminality) check (whether the behaviour is punishable in both Member States concerned). This procedure applies only to the most serious offences listed in Article 3 of the Framework Decision as long as they are punishable in the issuing State by a custodial sentence of a maximum period of at least three years (i.e. participation in a criminal organisation, terrorism, corruption, fraud, trafficking in human beings, rape).

The procedure of executing a freezing order

For the purpose of executing the freezing order the certificate is transmitted by the judicial authority that issued it directly to the competent judicial authority for execution in the other Member State. The competent judicial authorities of the executing State must recognise a freezing order without any further formality being required and take the necessary measures for its immediate execution. The executing State must also observe the formalities and procedures expressly indicated by the competent judicial authority of the issuing State in the execution of the freezing order.

Grounds for non-recognition or non-execution

The competent judicial authorities of the executing State may refuse to recognise or execute the freezing order in certain circumstances. Examples of these are: lack of certificate, immunity or privilege of the person concerned, a final judgment has already been given for the same facts.

Postponement of the procedure

The competent judicial authority of the executing State may postpone the execution of a freezing order transmitted in certain circumstances, e.g. if the execution might damage an ongoing criminal investigation or

the property or evidence concerned have already been subjected to a freezing order in criminal proceedings.

Procedural rights

Member States must ensure that any interested party, including third parties, have legal remedies without suspensive effect against a freezing order.

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